

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]

[REDACTED] Myrtle Avenue, NE  
Washington, DC 20018

Account No: [REDACTED]  
Case No: 23-251684

Amount in Dispute: \$ 5,281.75

Bill Dates Involved:

8/19/2021

9/22/2021

10/21/2021

11/19/2021

12/21/2021

Before Janet W. Blassingame, Hearing Officer  
September 29, 2023 at 10:00 a.m.

The customer contested the above reference water and sewer bills. The DC Water and Sewer Authority (DC Water) investigated and determined that the charges were valid and no basis existed to adjust the account. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 29, 2023. Present for the hearing were: Adam Carlesco, Esquire, Office of the People's Counsel (OPC), representing [REDACTED] Jason Starks, Customer Outreach Specialist, OPC; Antaeus Hayes, Water Service Manager, OPC; Geneva Parker on behalf of DC Water; and Kimberly Arrington and Kelly Fisher, DC Water, observing.

Mr. Carlesco opened by stating that in this case his client acted promptly and DC Water failed to act promptly. He stated that his client noticed high usage in August 2021 and that there was a leak at the water meter. He stated that the utility noted that the water line was lead and required removal. Mr. Carlesco asserted that it took seven (7) months for replacement of the water line which was performed on March 24, 2022. He stated that an adjustment was granted for charges incurred in January, February, and March 2022, however, the leak was noticed in August 2021. He asserted that his client wants an account adjustment dating back to August 2021 thru March 2022.

Mr. [REDACTED] testified that his home has one bathroom, one outside spigot, a kitchen, and a utility sink. He stated that he has lived in the home since June 2000 and that the water and sewer bill averages \$140.00 per billing cycle. He stated that after the utility replaced the water line, his water and sewer bill has been approximately \$125.00 per billing cycle. He added that in October 2021 his water and sewer bill was \$400.00 and in January 2022, the bill was \$376.00.

Mr. [REDACTED] testified that he notice a spike in water usage in July 2021 but thought that it

was due to the summertime and, maybe, his washing of the car. He stated that his water usage increased from 12 CCF in May 2021 to 16 CCF in July 2021 and in September 2021, his water usage rose to 30 CCF. He stated that upon receiving his bill in July 2021, he checked the toilet, faucets and basement sink and detected no leaks. He stated that he reported the leak at his property in August 2021. He explained that he received a HUNA alert from DC Water and, in response, he went outside and felt that the ground was soft in the front yard. He stated that he called DC Water and notified that utility that he had a leak and that the leak was on the house side. The customer stated that he was told to go on the lead replacement site.

Mr. [REDACTED] stated that he called Ben's Plumbing and Vito Plumbing. He stated that Ben's Plumbing cancelled the appointment and explained to him that the water line was all the way to the street and that a plumber could not do the repair. Mr. [REDACTED] stated that the water was turned off on August 21, 2021 and that he dug up the yard and a handyman started looking for the leak on August 25<sup>th</sup>. He testified that he saw a crack on the side of the water pipe and that the handyman put a clamp on the pipe. He showed pictures of the yard and the hole.

Ms. Parker interjected that DC Water was unaware of the customer doing any excavation in his yard until Mr. [REDACTED]'s testimony.

Mr. Brown stated that his September 2021 water and sewer bill went down because the clamp slowed the leak but did not stop the leak.

Mr. [REDACTED] stated that he called DC Water on August 31, 2021 advising of a leak in his yard and he was told by the utility to call DC Water Voluntary Replacement. Mr. [REDACTED] stated that he informed the DC Water customer representative that he had already made the call to lead replacement and that the department had not contacted him back.

Mr. [REDACTED] stated that after he called lead replacement, he was ultimately told that it was his responsibility. The customer stated that he called DC Water four (4) more times regarding the leak and he was informed that public replacement could take up to two (2) years for performance but that his block was already scheduled for lead pipe replacement so maybe it would take only 3 - 4 months to get out to his property.

Mr. [REDACTED] asserted that when the water line was replaced in March 2022, he experienced no further spikes in water usage. He contended that it is his belief that the leak had existed for some time. Mr. [REDACTED] stated that the pipe line replacement was performed by Capital Paving.

Mr. [REDACTED] contended that he received water and sewer bill reflecting high usage due to the leak from July 2021 to April 2022. He stated that he did not contact DC Water regarding the July bill because he thought he had been correctly charged but that he called in August 2021 regarding the bill because by then, he realized that there was a leak in the yard.

Ms. Parker clarified that the water meter was not leaking and that the leak was in the service line. She stated that the disputed amount was \$1639.64 for the period August 2021 to December 2021 and that the disputed amount did not include the customer's July 2021 charges. In response to a question by Mr. Carlesco, Ms. Parker explained that the water meter is always replaced when lead pipes are replaced.

Ms. Parker testified that this matter is controlled by 21 DCMR 407.1 and 407.2. She stated that DC Water adjusted the customer's account for the period December 28, 2021 to

was due to the summertime and, maybe, his washing of the car. He stated that his water usage increased from 12 CCF in May 2021 to 16 CCF in July 2021 and in September 2021, his water usage rose to 30 CCF. He stated that upon receiving his bill in July 2021, he checked the toilet, faucets and basement sink and detected no leaks. He stated that he reported the leak at his property in August 2021. He explained that he received a HUNA alert from DC Water and, in response, he went outside and felt that the ground was soft in the front yard. He stated that he called DC Water and notified that utility that he had a leak and that the leak was on the house side. The customer stated that he was told to go on the lead replacement site.

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Ms. Parker testified that this matter is controlled by 21 DCMR 407.1 and 407.2. She stated that DC Water adjusted the customer's account for the period December 28, 2021 to

March 21, 2022 and then, went back and adjusted to November 19, 2021 to expand the adjustment period to November 19, 2021 to March 31, 2022. She stated that there was continuous water usage reflected on the account and that was indicative of an underground leak.

Ms. Parker stated that the customer's dispute was untimely but DC Water investigated. She stated that the customer's service was disconnected for unpaid charges. She explained that the customer was in arrears by Three Thousand Dollars (\$3,000.00) when the August 19, 2021 bill was issued.

Ms. Parker stated that the customer was billed upon actual meter reads.

Ms. Parker stated that a customer's dispute does not relate back or apply to previous bill charges.

Ms. Parker stated that DC Water did not hear from Mr. Brown until April 22, 2022 and that he did not contact the utility upon one month after the water line had been repaired. Ms. Parker asserted that she found no record of the customer's call to DC Water until April and the utility did not have a formal dispute by the customer. She stated that the customer did call DC Water's Emergency Call Center on August 31, 2021 but that he was requesting reference to lead replacement. She stated that the customer stated that Ben's Plumbing told him to call Voluntary. Mr. [REDACTED] interjected that, when he called in August 2021 to DC Water, he was calling about the leak in his yard. Ms. Parker said that there was no record in August of such a call and that she only sees the customer's request for lead replacement.

Ms. Parker asserted that the customer's account was adjusted by the utility because there was an underground leak and continuous usage was viewed on the account. She asserted that the usage stopped on November 10, 2021 and then resumed so the adjustment was after November.

Ms. Parker pointed out that, in the letter dated February 1<sup>st</sup>, it was explained that an adjustment was not warranted until after November when the water usage became continuous.

Ms., Parker asserted that something cause water usage at the property to stop and start up on November 10, 2021. She asserted that it is inconclusive what caused the water usage before continuous usage and that 21 DCMR 408.1 was applicable.

Ms. Parker stated that the customer received Four Thousand Dollars (\$4000.00) in residential assistance. She stated that the customer's utility balance as of July 20, 2021 was \$3290 and that his current balance is \$4456.83.

Ms. Parker explained that DC Water's dispute process is started when it receives a dispute from a customer. She asserted that if a customer contacts DC Water regarding a leak but does not say billing, the customer would not be referred to Customer Service.

On cross-examination, Mr. Carlesco asked Ms. Parker what is the appropriate process for a customer to regarding a problem of lead pipe line repair. Ms. Parker responded that, if a customer has a high bill, the customer should call the number on the bill and if Emergency answers but the Call Center is needed, the customer would be referred. Ms. Parker added that the Lead Free Program is a D.C. program and is not funded by DC Water.

Ms. Parker acknowledged that the underground leak issue potentially started in July 2021 but the customer did not appeal the charges until April 2022 after the leak was fixed. Ms. Parker



stated that the investigation is initiated from a bill dispute and DC Water did not receive a dispute.

Ms. Parker testified that the customer did mention that there was a leak but she asserted that a leak may not affect a customer's water bill and as such, the dispute process is not initiated.

Mr. Carlesco mentioned the theory of equitable tolling and asserted that the customer can show diligence.

Ms. Parker asserted that if the customer dug up the yard, then his actions may have damaged the pipe.

Ms. Parker pointed out that 21 DCMR 407.3 refers to three (3) comparable periods to base an adjustment.

Ms. Parker stated that water meters register in cubic feet (CF) and that 100 CF equal 1 CCF. She stated that if usage stops, something is controlling the usage and DC Water does not know what is controlling the usage to cause the leak stoppage. She stated that, in this case, the stoppage could have been caused by the clamp but she would think that the clamp stopping leakage would be steady.

Mr. [REDACTED] noted that the adjustment made to his account was for the period 12/18/21 to 3/31/22 and he noted that Ms. Parker, in her testimony, stated that the utility gave adjustment as of 11/10/21. Ms. Parker responded that the noted period was December 18, 2021 thru January. She stated that the December 21<sup>st</sup> bill period started November 19, 2021. Ms. Parker stated that she would correct the adjustment period and amount. To which, Mr. [REDACTED] stated that he has never been able to understand how the adjustment of \$2106.89 was calculated.

Ms. Parker referred to the note dated 7/14/22 regarding the calculation of the adjustment and she stated that she stands by the adjustment as given and that the utility has given the customer a fair consideration of the adjustment period since he was untimely.

Mr. Carlesco stated that his client tried diligently to respond to the underground leak and was diverted to lead replacement.

Mr. Carlesco asserted that other jurisdictions have informal dispute processes and he believes that this matter could have been resolved. He asserted that his client was sent on a run-around.

Ms. Parker responded that she has a duty regarding raised concerns and she appreciates the same.

Ms. Fisher interjected that the status of the court case which is set for hearing on October 14<sup>th</sup> for a TRO regarding disconnection is paused.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence occupied by [REDACTED] since June 2000. (Testimony of [REDACTED])

2. The period in dispute is August 19, 2021 to December 21, 2021. (Testimony of the parties)
3. The customer noticed an uptick in his water and sewer charges on his July 2021 bill but thought the increase was due to summertime and his car washing for he checked inside of the home in the bathroom, kitchen, and basement sink and detected no leaks. (Testimony of [REDACTED])
4. The customer received a HUNA alert from DC Water and went outside of the home and felt soft ground in the front of his home. (Testimony of [REDACTED])
5. DC Water sent HUNA alerts to the customer on August 23, 2021 and August 26, 2021. (DC Water Customer Interaction Record dated August 23, 2021 and August 26, 2021)
6. The customer contacted DC Water, on August 31, 2021 upon receipt of the HUNA alerts, regarding a leak in his front yard and was diverted to lead replacement by a DC Water representative and told to call DC Water Voluntary Replacement. (Testimony of [REDACTED])
7. The customer contacted the lead pipe replacement office and was told that for a public lead pipe replacement, he may have to wait up to 2 years for service but his neighborhood block was scheduled for lead pipe replacement and he might only have to wait 3 – 4 months. (Testimony of [REDACTED])
8. The customer contacted Vito Plumbing Services and Bens Plumbing regarding the underground leak and Bens Plumbing informed the customer that he had lead pipes on both the DC and private side and, as such, the company could not perform the service. (Correspondence letter by Cheryl McBryde and [REDACTED] to DC Water dated April 22, 2022 in DC Water Customer Interaction Record dated April 22, 2022)
9. Upon being told of the length of time before DC Water's lead replacement office could respond to the leak in his yard and having been told by a plumber that plumbers could not perform the repair because the leak was on lead piping extending from public to private property, the customer engaged in self-help. (Testimony of [REDACTED])
10. The customer turned the water off on August 24, 2021 and dug up his front yard with the help of a handyman. The customer saw a crack in the side of the water pipe and put a clamp on the pipe on or about August 25, 2021. (Testimony of [REDACTED])
11. The customer provided photographs of his yard and hole dug by him to reveal the underground leak. (Testimony and evidence by [REDACTED])
12. According to the customer, the clamp placed on the pipe slowed the underground leak but failed to repair the leak. The customer saw a reduction in his September 2021 water and sewer bill for water usage. (Testimony of [REDACTED])
13. Upon receipt of his August 2021 water and sewer bill, the customer noticed that his water usage was increasing and by September 2021, his water usage had increased to 30 CCF from a low of 16 CCF in July 2021. (Testimony of [REDACTED])
14. DC Water determined that the customer's bill dispute was untimely but investigated his dispute and ultimately adjusted the account. (Testimony of Geneva Parker)
15. DC Water adjusted the customer's account for a significant leak at the water meter for the period 12/21/21 to 3/31/22 in the amount of \$2106.88. (Testimony of the parties; DC Water Customer Interaction Record pg. 17)
16. DC Water added an account adjustment back to 11/19/2021 bill bringing the adjustment period to 11/19/2021 to 3/31/2022. (Testimony of Geneva Parker)
17. After denying that the customer contacted DC Water regarding the leak in the front yard

- of his home. DC Water acknowledged that the customer did call the DC Water Emergency Call Center on August 31, 2021 requesting referral to the lead replacement line because Bens Plumbing told him to call the DC Water Voluntary Replacement office. (Testimony of Geneva Parker)
18. Because the customer called the Emergency Call Line and asked for lead replacement and did not say that he was disputing his bill, he was not referred to Customer Service and no bill dispute was initiated. (Testimony of Geneva Parker)
  19. The customer contacted DC Water Customer Service in April 2022 after the replacement of the lead pipe had been performed and at that time, he requested an account adjustment. (Testimony of the parties)
  20. Ms. Parker testified that there was no record of the customer calling DC Water Customer Service to dispute his bill until April 2022. (Testimony of Geneva Parker)
  21. The decision to grant an adjustment of the customer account was based upon DC Water's determination that there was an underground leak at the property because there was continuous water usage after November 10, 2021. (Testimony of Geneva Parker)
  22. DC Water saw stoppage in usage at the property up to November 10, 2021. (Testimony of Geneva Parker)
  23. DC Water acknowledged that the underground leak potentially started in July 2021. (Testimony of Geneva Parker)
  24. A water meter dial turns every 100 CCFs of water thru the meter. (Hearing Officer takes judicial notice of this fact)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Water is obligated to investigate a challenge to a bill and, as necessary, may:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Review account to ensure accurate account status; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.

3. 21 DCMR §407.2 states, in part, if the investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing.

4. If, pursuant to §407.2, the leak is determined to have been caused by the Authority or is determined to be the result of infrastructure for which the Authority is responsible for maintaining and repairing, the Authority shall repair the leak and the General Manager shall adjust the bill to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. If the leak is determined to have been caused by owner or occupant, no adjustment shall be made. (21 DCMR §407.3)
5. If, pursuant to §407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4
6. If, pursuant to §407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4
7. The adjusted amount, in accordance with § 407.4, shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
  - (a) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
  - (b) The owner has repaired the leak within 10 calendar days after the bill investigation is issued to the owner or occupant;
  - (c) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and
  - (d) The request for adjustment has been made in accordance with § 402.1 (a).
8. DC Municipal Regulation 21 DCMR § 402.1 which was effective July 17, 2020 reads as follows: An owner or occupant may challenge the most recent charges assessed by WASA for water, sewer and groundwater sewer service by either:
  - (a) Paying the current charges in the bill and notifying WASA in writing, within thirty (30) calendar days after the bill date, the reason(s) why the bill is believed to be incorrect and that the bill is being paid under protest; or
  - (b) Not paying the current charges in the bill and notifying WASA in writing within thirty (30) calendar days after the bill date, the reason(s) why the bill is believed to be incorrect.

9. 21 DCMR § 402 is a claim processing rule enacted to ensure the orderly transaction of the utility's business, however, DC Water can waive the rule. (See, Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013)

### DECISION

The customer established a prima facie case that there was an underground leak at his property that caused excessive water loss for which he should have been entitled to an account adjustment. DC Water did adjust the customer's account based upon a finding of the existence of an underground leak, however, the customer disputes the adjustment period granted and seeks expansion of the adjustment period warranted in his matter.

DC Water asserted that the customer's bill dispute was untimely. It premised its response upon a position that, because the dispute was untimely, it gave a fair consideration to the customer, even though, it was not required to do so.

The Court in the Gatewood case recognized what it referred to as a "muddled response" to the customer's bill dispute challenged, in that the customer's challenge was untimely but DC Water accepted the challenge all through the administrative hearing process. The Court concluded that the utility's regulatory scheme does not anticipate untimely investigations and adjudications and the utility can waive its time requirements.

In this case, the utility, after determining that the customer failed to timely dispute his bill, did conduct an investigation and grant an account adjustment. As such, once the time limitation is waived, the utility has an obligation to conduct an investigation and consider the grant of an adjustment for the period of the existence of the underground leak. DC Water cannot arbitrarily set an adjustment period because it is being nice and "fair" to a customer who is untimely in making a bill dispute after the time limit is waived.

During testimony, the utility acknowledged that the underground leak "potentially" started in July 2021. A review of the water meter read records reflects that the customer probably had a leak dating back to at least May 2021 because there is a record of continuous water usage at the property with rare intermittent stoppages of one or two hours. DC Water sent the customer a HUNA alert on August 23, 2021 and, again, on August 26, 2021, prompting the customer to inspect his property and call DC Water regarding his finding of soft soil in his front yard. The customer testified that when he was told the length of time that he would have to wait before the utility could repair the leak and he was told by an independent plumber that a plumber could not repair the underground leak, he engaged in self-help and dug up his front yard, located the crack in the lead pipe and clamped the pipe. Ms. Parker, on behalf of DC Water, asserted that, until the testimony of the customer on the day of the hearing, the utility was unaware of the customer's self-help effort. As such, the utility, not having knowledge of the customer putting a clamp on the leaking pipe, did not consider what, if any effect, the customer's effort to mitigate the water loss might have had on slowing the leak or even stopping registration of water loss on the water meter.

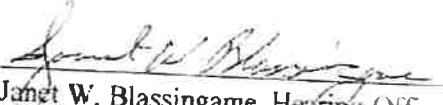
The Hearing Officer takes judicial notice that the water meter will only turn upon 100 CCF of water moving thru the meter. As such, just because the meter does not move, it does not mean that water is not moving thru the meter. The meter dial turns every 100 CCFs of water. Likewise, the Hearing Officer is convinced that the customer contacted DC Water in August 2021 regarding the underground leak and he was led to believe that his only recourse was to wait for months for repair by DC Water, hire a plumber, or, try to stem the water loss himself until the utility could repair the leak when he was told that a private plumber could not perform the repair. As such, the Hearing Officer credits the customer's testimony and finds that the utility employee who took the customer's call should have directed him, appropriately, to report the existence of the underground leak. DC Water acknowledges that the customer called its Emergency Call Center and the Hearing Officer is convinced that it should not be the burden of the customer to figure out what office within the utility's system, he must contact to report a problem after he had, in fact, contacted the utility in an effort to seek assistance. When the customer was told that his neighborhood was slated for lead pipe replacement, such information is not readily accessible to the public and the customer had to be in touch with the utility to obtain such information. The Hearing Officer believes that the utility had an obligation to investigate in August 2021 whether an underground leak existed at the customer's property and to determine who was responsible for repair. At the very least, the adjustment should relate back to August 2021 when the utility sent the HUNA alerts and the customer responded by contacting DC Water regarding his finding of soft ground.

DC Water granted an account adjustment for the period November 19, 2021 to March 31, 2022. Based upon the utility's acknowledgment that the underground leak "potentially" started in July 2021, the meters reads reflecting continuous water usage periods except for one or two hours of registration dating back to May 2021, the utility sending HUNA alerts in August 2021 and the customer's investigation of his property and contacting the utility in August 2021, it is the determination of the Hearing Officer that:

DC Water waived its time requirement for dispute of a water bill regarding this customer. DC Water had an obligation to investigate if an underground leak was present as of August 2021; and,

DC Water should have adjusted the customer's account back to when it was aware or should have been aware of the existence of the underground leak which was, at the latest, in August 2021.

Based upon the foregoing, the customer's request for further adjustment of his account for the existence of an underground leak is GRANTED and DC Water is directed to adjust the account retroactively to August 2021. As such, the period of adjustment of the customer's account due to the existence of an underground leak causing excessive water loss is and shall be August 19, 2021 to March 31, 2022.

  
Janet W. Blassingame, Hearing Officer

Date: June 25, 2024



Copy to:



Myrtle Avenue, NE  
Washington, DC 20018

Adam Carlesco, Esquire  
Office of the People's Counsel  
1133 15<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20005-2710

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: Ryan Greenfield  
3431 14<sup>th</sup> Street NW  
Apt. 3  
Washington, DC 20010

Service Address:  
[REDACTED] 17<sup>th</sup> Street, SE

Account No: [REDACTED]  
Case No: 23-332407

Amount in Dispute: \$ 612.39

Before Janet W. Blassingame, Hearing Officer  
September 8, 2023 at 10:00 a.m.

The customer contested a water and sewer bill for the period August 17, 2022 to September 19, 2022. The DC Water and Sewer Authority (DC Water) investigated and determined that the charges for the period were valid and no basis existed to adjust the account. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 8, 2023. Present for the hearing were: Ryan Greenfield, [REDACTED] and [REDACTED] on behalf of the customer, and LaFatima Black and Kimberly Arrington, on behalf of DC Water.

The property involved is a single-family townhouse having one and one-half (1 ½) bathrooms, a kitchen, dishwasher, washing machine, and one outside faucet. The property was purchased in year 2014 and its latest tenant moved in one year ago on August 14, 2022. The prior tenant vacated the house on July 31, 2022 and the property was vacant for one or two weeks. Pursuant to the rental agreement, the tenant is responsible for payment of the water and sewer bill. The prior tenant's account with DC Water was closed and a new account opened when the current tenant took possession. Ms. Black stated that the bill dated August 16, 2022 in the amount of \$31.47 was paid on September 12, 2022, leaving a \$0 balance.

Mr. Greenfield stated that when the tenants moved in and took over the account, the first water and sewer bill was a shock. He stated that the prior tenants were told that the water meter was not functioning and had to be replaced. He stated that meter reads had not been transmitted for five (5) years. He stated that he thought that the new tenant had been back-billed.

Mr. Greenfield stated that when tenants turn-over possession of the property, he does a usual inspection, cleans and re-paints the property. He stated that he did not see any leaks and he was not aware of any plumbing issues at the property.

Mr. Greenfield asserted that communicating with DC Water has been challenging. He stated that he, initially, thought that the bill in dispute was a billing error by the utility.

Ms. [REDACTED] stated that water usage at the property went down from 36.29 CCF to 30 CCF. She stated that one day she noticed that the toilet was slow to fill and that it was making a noise. She stated that she sent a video to the landlord who, in turn, sent her a toilet replacement part (a flapper). She stated that the part was installed by a friend and that the landlord had sent the part to her by overnight delivery. She stated that the incident involved the toilet in the main bathroom on the 2<sup>nd</sup> floor and that the incident occurred soon after the move-in, maybe a few weeks after taking occupancy. Ms. [REDACTED] stated that a plumber was not called to address the toilet and that water usage has been consistent since the first billing.

Ms. [REDACTED] stated that she established an on-line account with DC Water, but she did not receive any high usage notifications from the utility.

Ms. Black expressed apologies to the customers for their customer service experience. Mr. Greenfield asserted that he receive vastly difference explanations from customer service representatives when he telephoned DC Water regarding the bill at issue. He stated that he has spent a significant number of hours trying to figure out the dispute procedure.

Ms. Black testified that the meter reads, against which the customer was billed, were actual and transmitted by an automated system. She stated that the utility tested the water meter and the meter was determined to have 100.44% accuracy. She stated that the meter was installed at the property on August 19, 2022.

Ms. Black explained that the prior tenant contacted DC Water on August 17, 2022 regarding the bill and the tenant's call prompted the service representative to notice that there was a problem with the water meter at the property. Ms. Black stated that the register on the old meter at the property was blank. She stated that the utility was not able to back-bill the prior tenants at the property because there were no hourly meter reads to establish usage.

Ms. Black stated that Ms. [REDACTED] became an authorized party regarding the water and sewer bill and was able to discuss the account with the utility as of October 6, 2022. She explained that the tenant did not receive high water usage alerts because there was nothing to compare her usage to because this was a new account without usage history.

Ms. Black testified that continuous water usage occurred at the property from August 25, 2022 to August 31, 2022, thereafter, the water usage declined.

Ms. Black stated that DC Water determined that an underground inspection was not needed and it did not conduct an underground inspection because the water usage at the property declined. She explained that an underground leak does not decline until its repaired but, here, the usage declined without need of repair, as such, the utility could rule out the existence of an underground leak as a possible cause of excessive water consumption occurring at the property. She, further, stated that the utility's investigation of the bill dispute found no evidence on overread, faulty computation of the bill or faulty meter. As such, Ms. Black stated that it was the

conclusion of DC Water that its findings of the cause of the increased water usage were inconclusive and, pursuant to DC Municipal Regulations, the customer was not entitled to an adjustment of account.

Ms. Black explained that the automated meter read system is used by DC Water for billing its customers so the utility did not notice that no reads were being sent from the property during the tenancy of the prior tenant. She stated that, when the service representative received the call from the tenant on August 17, 2022, the service representative saw 0 consumption reported on the readings.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a rental property owned by Ryan Greenfield and there was a tenant turn-over in August 2022 with the prior tenant moving out of the property on July 31, 2022 and the current tenant taking possession of the property on August 14, 2022. (Testimony of Ryan Greenfield)
2. The period in dispute is August 17, 2022 to September 19, 2022. (Testimony of the parties)
3. When the old tenant moved out at the end of July 2022, the utility closed the tenant's water and sewer account after the tenant received a final bill and paid the same in full leaving a zero balance.. (Testimony of LaFitma Black)
4. The property owner's lease with his tenant(s) is such that the tenant is responsible for payment of the water and sewer utility bill for water usage at the rented property. (Testimony of Ryan Greenfield)
5. The property owner made [REDACTED] an authorized party on the water and sewer account with DC Water as of October 6, 2022. (Testimony of LaFatima Black)
6. Shortly after moving into the property, Ms. [REDACTED] noticed that a toilet on the 2<sup>nd</sup> floor of the house was slow to fill with water and was making a noise. She took a video of the toilet operation and sent the video to her landlord, who, in turn, sent her a toilet flapper by overnight delivery service. (Testimony of [REDACTED])
7. Ms. [REDACTED] characterized observing the faulty toilet as pretty soon, maybe a few weeks, after her move-in to the property. (Testimony of [REDACTED])
8. Ms. [REDACTED] had a friend install the replacement flapper on the toilet which she had observed making a noise and filling slowly. (Testimony of [REDACTED])
9. There was a spike in water usage at the property from August 25, 2022 to August 31, 2022. (DC Water Meter reads; testimony of LaFatima Black)
10. There had been a meter registration problem regarding the meter at the property during the tenancy of the prior tenant and that tenant was not billed for water usage because the meter was not registering water usage. The prior tenant was not back-billed and the utility installed a new water meter at the property on August 19, 2022. (Testimony of LaFatima Black)
11. The new meter registered continuous water usage occurring at the property from its installation, however, because the water and sewer account was newly established for the

- [REDACTED] tenancy, no usage history existed and no continuous water usage or high-water usage notification was sent to the customer. (Testimony of LaFatima Black)
12. DC Water tested the water meter and the meter was determined to have 100.44% accuracy. (Testimony of LaFatima Black)
  13. DC Water's investigation of the bill dispute found no evidence of meter malfunction, meter overread or faulty computation of the bill. (Testimony of LaFatima Black)
  14. DC Water did not conduct an underground inspection at the property because the usage declined which is an indication that an underground leak does not exist. (Testimony of LaFatima Black)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Water is obligated to investigate a challenge to a bill and, as necessary, may:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Review account to ensure accurate account status; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.

3. 21 DCMR 406.1 – The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant.
4. 21 DCMR 406.2 – If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks.

#### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be responsible for its payment.

While neither the tenant nor the property owner testified as to the exact date that the tenant observed that the toilet was not operating correctly and the tenant took a video which she sent to her landlord, prompting the landlord to overnight to her a replacement part for the toilet. The tenant did testify that she observed the toilet shortly after moving into the property. The


evidence established that continuous usage was occurring up to August 31, 2022, the tenant moved in on August 14, 2022 and DC Water installed the water meter on August 19, 2022. As such, it is reasonable, based upon the testimony of the tenant and the meter reads, to conclude that the usage declined when the tenant's friend changed the toilet flapper since the tenant testified that she observed the faulty toilet shortly after her move-in- maybe a few weeks, and the flapper was changed.

DC Municipal Regulations dictate that if excessive water usage is caused by a household fixture, such as, a toilet, DC Water does not adjust the customer's bill for any of the excessive water usage. (See, 21 DCMR 406.2)

More likely than not, the faulty toilet observed by the tenant was faulty prior to her move-in. The testimony established that the prior water meter was faulty resulting in the prior tenant not being charged for water usage for a substantial period. The testimony, however, further, established that DC Water changed the water meter and the new meter was registering usage at 100.44% accuracy. As such, the new tenant was billed based upon actual water usage and unfortunately, she had a faulty toilet resulting in excessive and continuous water usage until it was fixed by replacing its flapper.

The property owner testified that his lease agreement with his tenants makes the tenant responsible for payment of the water and sewer bill. DC Water's equipment was operating appropriately and the utility is not responsible for defective household fixtures in a residence. This is a contract issue between landlord and tenant regarding repair of faulty fixtures and responsibility for payment of the water and sewer bill. No testimony or evidence presented during the hearing, nullifies the utility's bill for water and sewer service provided to the property.



Based upon the foregoing, the determination by DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

  
Janet W. Blassingame, Hearing Officer

Date: Jan. 25, 2024

Copy to:

Mr. Ryan Greenfield  
3431 14<sup>th</sup> Street, NW, Apt. 3  
Washington, DC 20010

Ms.   
 17<sup>th</sup> Street, SE  
Washington, DC 20003-2431



BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]  
[REDACTED] Gallatin PI NE  
Washington, DC 20017

Account No: [REDACTED]  
Case No: 23-263535

Amount in Dispute: \$ 716.24

Before Janet W. Blassingame, Hearing Officer  
January 17, 2024 at 10:00 a.m.

The customer contested a water and sewer bill for the period December 24, 2022 to January 17, 2023. The DC Water and Sewer Authority (DC Water) investigated and determined that the charges were valid and no basis existed to adjust the account. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 17, 2024. Present for the hearing were: [REDACTED], the customer; and, Stephanie Robinson and Kimberly Arrington, on behalf of DC Water, as well as, Geneva Parker, DC Water, observing only.

The property involved is a single-family townhome having 3 ½ bathrooms, a kitchen, washing machine, dishwasher, utility sink, and two (2) outside faucets. Ms. [REDACTED] has lived in the home for the past 27 years. She is the sole owner and she lives alone. The water and sewer bill has, generally, ranged between \$75.00 and \$150.00.

Ms. [REDACTED] explained that she is in the medical field and is hardly ever home in that her work day runs 12 hours per day.

The customer testified that DC Water was performing work at a neighboring property ([REDACTED] Gallatin St NE) for two (2) weeks during the last week of January 2022 into the first week of February 2023. Ms. [REDACTED] stated that she saw the trucks but did not inquire of her neighbors the nature of the work.

Ms. [REDACTED] stated that she was shocked upon receiving her January 2023 bill for water services. She stated that she, normally, consumes 3000 gallons of water during a billing cycle but, on the disputed bill, it states that she consumed 29,000 gallons of water during the billing period.

Ms. [REDACTED] testified that when she contacted DC Water regarding the bill, the customer service representative told her that she had 20 days to dispute the bill. Ms. [REDACTED] stated that the

service representative did not discuss the water usage, but, did tell her that she might want to get a plumber.

Ms. Murphy stated that her February 2023 bill reflected a decline.

Ms. Murphy testified that Eura A. Branch inspected her home for leaks and plumbing issues and found no leaks. She stated that the inspection occurred on February 10, 2023.

Ms. Murphy stated that she contacted Jason Starks of the Office of People's Counsel, as well as, her DC City Councilman regarding the January 2023 water charges. She complained that DC Water representatives had her waiting for months by telling her that she would be contacted by a DC Water supervisor.

Ms. Murphy asserted that the plumber told her that "something is wrong but not at your home." She stated that the plumber surmised that the problem might be that the water meter was read wrongly.

Ms. Robinson stated that the customer was billed based upon a field read of the water meter by a service technician. She stated that the utility could not see and did not have daily and hourly meter reads from the property. She stated that the customer spoke with DC Water on January 31, 2023 and a visual meter read was scheduled for February 2, 2023. Ms. Robinson stated that an equipment check was performed of February 2, 2023 and the service technician replaced the MTU at the property. Ms. Robinson stated that the MTU at the property had not transmitted meter reads since April 2022. She asserted that DC Water had sent a service technician to the property each month to read the water meter.

Ms. Robinson testified that a field read was taken on January 17, 2023 and the meter read was 34364. She testified that another field read was taken on February 2, 2023 and the meter read was 34611 and that an AMR read was sent on February 15, 2023 and the meter read was 34811.

Ms. Robinson stated that the customer was not sent a high usage alert letter by the utility.

Ms. Robinson testified that she cannot identify the service technician who read the water meter for such identification is not in the meter information.

Ms. Robinson testified that DC Water pulled the water meter from the property for testing and the meter was determined to have been under-registering water usage at the property at 98.25% accuracy. Ms. Robinson stated that DC Water follows the guidelines set by the American Water Works Association and that a water meter is functioning appropriately if its

accuracy is between 98.5% and 101.5%.

Ms. Robinson stated that DC Water placed a new meter at the property on October 2, 2023 when the prior meter was pulled for testing and that the customer has consumed 1.13 CCF of water to present.

Ms. Robinson testified that DC Water has completed its investigation of the customer's dispute of the billing and found that the cause of the consumption is inconclusive and, as such, pursuant to DC Municipal Regulation 21- §408, no adjustment of the bill is accorded.

Ms. Robinson stated that the utility did not conduct an interior inspection of the property. She stated that the investigation consisted of the field work order during which a technician verified the meter read and found that the meter reads were in-line and consistent, and, the utility conducted the meter test. She added that the utility eliminated the existence of an underground leak as a possible cause of increased water usage at the property because the usage declined. She stated that it was the conclusion after the investigation that the usage occurred in the home.

Ms. Robinson looked, during the hearing, for work orders pertaining to 1509 Gallatin St NE and found none. She suggested that another utility might have been working at the property and that Ms. Utility could be checked/ Ms. Robinson asserted, however, that outside work by any utility would not affect the customer's water usage because any water used would not go thru the customer's water meter. Ms. [REDACTED] reiterated that she saw DC Water trucks in her neighborhood during the period in dispute. Ms. Robinson stated that she reviewed Maximo and she saw no utility work having been performed in the neighborhood in late year 2022 to early year 2023.

On cross-examination, Ms. [REDACTED] complained that no one from DC Water ever told her that her water meter was changed. She stated that she expected a better response from DC Water regarding her matter and that she reached out to the utility every week without result. Ms. [REDACTED] stated that no one gave her an answer as to what was going on and where the water could have gone. Ms. Robinson apologized to Ms. [REDACTED] for her customer experience but stated that DC Water is unable to determine how the water was wasted with the home. Ms. [REDACTED] retorted that she was born and raised in the District of Columbia and she would know if she was consuming 29,000 gallons of water. She asserted that she does not have a pool and her plumber said that someone made a mistake. Ms. Robinson responded that DC Water is not trying to make someone pay for something that did not go thru their water meter. Ms. [REDACTED] stated that common sense says where did the water go. Ms. [REDACTED] stated that it is absurd having to wait a year and not get answers from DC Water. She complained that there was no communication between the utility and her as to what might have happened to cause the water consumption.



Ms. Robinson interjected that she, in fact, found a work order dated January 12, 2023 pertaining to [REDACTED] Gallatin St NE and that the work order reflected that the problem was sewer back-up trouble and the issue was resolved on January 13, 2023 by DC Water. Ms. Robinson asserted that water would not have gone thru Ms. [REDACTED]'s meter regarding the matter. She explained that a manhole investigation was done on January 12, 2023 and work was completed on January 13, 2023. Ms. Robinson added that she cannot tell how long DC Water trucks might have been in the neighborhood working on the issue.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is December 14, 2022 to January 17, 2023. (Testimony of the parties)
3. The customer's MTU stopped transmitting meter reads from the property in April 22, 2022 and the utility was sending a service technician to read the water meter each month. (Testimony of Stephanie Robinson)
4. The customer was billed based upon a visual meter read taken by a DC Water service technician for the January 24, 2023 bill statement. (Testimony of Stephanie Robinson)
5. The customer received an unusually high water and sewer bill in January 2023 and the utility could not assess the days of a spike in water usage because the MTU was not transmitting meter reads during the billing period. (Testimony of Stephanie Robinson)
6. The customer was unaware of any leaks or plumbing problems in or about her residence during the period in dispute and she was shocked upon receiving her billing statement in January 2023. (Testimony of [REDACTED])
7. The customer received no HUNA alerts of high-water usage occurring at her property and she did not receive any written notification of high usage from the utility because electronic transmissions were not being received from the property and the utility's HUNA system is dependent upon electronic meter reads. (Testimony of Stephanie Robinson)
8. The customer hired Eura A. Branch on February 10, 2023 to conduct a leak deduction at her residence and no leaks were found. (Testimony of [REDACTED]; Eura A. Branch invoice #119 dated 10-Feb-23)
9. DC Water verified the meter read upon which the customer was billed by sending a service technician to the property to take a meter reading on February 2, 2023 during which the service technician conducted an equipment check and replaced the defective

- MTU at the property. (Testimony of Stephanie Robinson)
10. DC Water received an AMR transmitted meter read on February 15, 2023 which was in-line with the prior visual meter readings taken by service technicians sent to the property. (Testimony of Stephanie Robinson)
  11. DC Water removed and tested the water meter from the property and the meter was determined to have been under registering water usage at the property; the meter accuracy was 98.25% which is below standards set by the American Water Works Association. (Testimony of Stephanie Robinson)
  12. DC Water ruled out the existence of an underground leak as a possible cause of high-water usage occurring at the property because the customer's water usage declined during the next billing cycle and usage at the property has remained normal/low since the period in the dispute. (Testimony of Stephanie Robinson; DC Water Meter Readings-Billed)
  13. DC Water did not conduct an interior inspection the customer's property for water issues but, instead, suggested that the customer hire a plumber.
  14. DC Water was addressing a sewer back-up and manhole issue in the neighborhood of the customer's property from January 12, 2023 to January 13, 2023; however, water, relating to such issues, would not have gone thru the customer's water meter and had not affect upon the customer's water usage or charge for water and sewer services. (Testimony of Stephanie Robinson)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.
3. Meters shall be read quarterly, or at such other times as the Director shall determine. (21 DCMR 308.1 and 309.1)



4. The General Manager shall determine the schedule upon which bills shall be rendered and may establish and implement a monthly billing cycle or such other cycle deemed, in his discretion, appropriate to meet the needs of the Authority... (See, 21 DCMR 308.2)
5. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personnel of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption determined by meter readings. (21 DCMR 308.4)
6. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
7. The property owner is the ultimate party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012)

### DECISION

The customer in this matter was unable to establish that more likely than not the bill in dispute was incorrect or for some other reason she should not be responsible for its payment.

The customer asserted that she had no knowledge of any water issues in or about her property and that she hired a plumber, who inspected the property, and found no leaks. The evidence established, however, that the high usage was over and only occurred during the billing cycle at issue. The plumber inspected the customer's residence on February 10, 2023 whereas the billing cycle at issue ended on January 17, 2023 and high usage was not occurring at the property during the period that the plumber was at the residence, so the plumber's finding of no leaks is understandable and not relevant to the billing dispute.

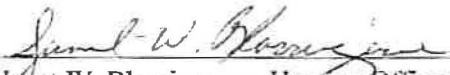
The evidence and testimony established that the meter reading transmittal device (MTU) had stopped working at the property several months before the billing period at issue. The lack of electronically transmitted meter reads affected this matter in two (2) ways; first, the utility cannot pinpoint when the high usage occurred during the billing cycle, and second, the utility's high usage alert system (HUNA) is dependent upon receipt of electronic meter readings sent by the MTU and lacking electronically sent meter reads, the utility lacks the ability to alert the customer of something occurring at his/her property. The customer in this case did not receive any alert of high usage occurring at her property and the lack of such an alert preempted the customer of



investigating and, possibly, mitigating the loss of water and preventing a high bill. While DC Water does have an alert system, the system is a courtesy to customers and does not create any liability upon the utility when a customer incurs high water usage and does not receive an alert. The utility does become responsible to a customer if it fails to read the customer's water meter within three (3) months. 21 DCMR § 308 and 309 dictate that water meters are to be read on a quarterly basis at minimum. In this case, even though the MTU was not functioning to transmit meter reads electronically to the utility, the utility was sending a service technician to read the customer's water meter each month. As such, the utility was satisfying its mandate to read the water meter. Unfortunately, for the customer, neither the utility nor the customer were aware that high water usage was occurring or had occurred at the property until the meter was read and the bill generated. In this case, by the time that the bill was generated and the customer knew that something was amiss regarding water usage at the residence, whatever had caused the high-water usage had stopped for water usage during the subsequent billing cycle was down and back to normal.

On the DC Water's part, the utility investigated the customer's billing dispute and found that the meter reads were in-line and consistent. The utility was able to rule out the existence of an underground leak because underground leaks require repair before the leakage will stop or decline and, in this case, usage declined without repair. Lastly, DC Water tested the water meter from the property and the water meter was determined to have been registering below accepted accuracy. DC Water does not adjust a customer's bill when a water meter under registers water used at a property. The utility will adjust a customer's bill if its investigation finds meter overread or faulty computation. See, 21 DCMR § 405. When a water meter under registers water usage at a property, it means that the customer has not been billed and has not paid for all water used. Ultimately, the property owner is responsible for whatever water usage occurs at his/her property whether the customer was aware of the usage occurring or not. The utility had up to three (3) months to read the water meter either electronically or by service technician and the utility complied with its obligation. While the customer received an unusually high bill and she does not know the cause of the usage and the utility could not notify her of the usage occurring in real time, no evidence or testimony established that the utility did anything to cause the water usage or that the utility wrongly billed the customer. In fact, the evidence and testimony established that the utility under billed the customer because the water meter at the property was under registering water usage.

Accordingly, the determination by DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

  
Janet W. Blassingame, Hearing Officer  
Date: March 19, 2021

Copy to:

[REDACTED]  
[REDACTED] Gallatin Place NE  
Washington, DC 20017

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]  
[REDACTED] Morse Street NE  
Washington, DC 20017

Account No: [REDACTED]  
Case No: 23-221269

<u>Periods in Dispute</u>	<u>Amount in Dispute</u>
12/11/2021 to 1/12/2022	\$ 159.66
1/13/2022 to 2/10/2022	\$ 201.11
2/11/2022 to 3/10/2022	\$ 223.21
3/11/2022 to 4/12/2022	\$ 294.83
4/13/2022 to 5/11/2022	\$ 298.38
5/12/2022 to 6/10/2022	\$ 384.35
6/11/2022 to 7/13/2022	\$ 785.99
7/14/2022 to 8/10/2022	\$1189.88
8/11/2022 to 9/13/2022	\$2470.60

Before Janet W. Blassingame, Hearing Officer  
January 17, 2024 at Noon

The customer contested water and sewer bills for the periods noted above. The DC Water and Sewer Authority (DC Water) investigated and determined that no basis existed to adjust the account beyond an adjustment given for sewer charges. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 17, 2024. Present for the hearing were [REDACTED], the customer, represented by Adam Carlesco, Esquire, of the DC People's Counsel (OPC), and, Geneva Parker and Arlene Andrews, on behalf of DC Water. Kelly Fisher, Esquire and Kristen Gibson, DC Water, observing only.

Mr. Carlesco opened by asserting that, due to inspection delay and lack of communication on the part of DC Water, the customer incurred a significant water and sewer bill caused by an underground leak.

The property involved is single family residence having two (2) bathrooms, a kitchen, a washing machine and one outdoor faucet. Historically, the water and sewer bill has ranged between \$50.00 and \$70.00, per billing cycle.

[REDACTED] testified that he noticed an increase in water usage in March 2022. He stated that he contacted DC Water and was told by a service representative to get a plumber to rule out

interior leaks. He stated that he was told that once interior leaks were ruled out, then, DC Water could perform an underground inspection for leaks.

The customer stated that he did not initiate a formal dispute but he was consistently calling into DC Water requesting an underground inspection and status of his request.

Mr. [REDACTED] testified that, on April 1, 2022, he emailed to DC Water a plumber's report by Metropolitan Plumbing and Sewer which inspected his home on March 29, 2022 and found no leaks. Mr. [REDACTED] stated that the utility scheduled an underground leak inspection for April 12, 2022 but, on the date of the scheduled underground inspection, no DC Water service technician appeared at the property. The customer pointed out that there is a DC Water Work Order dated April 12, 2022 and the Work Order notes the actual start time was 7:55 AM and the actual finish time was 8:10 PM. Mr. [REDACTED] testified that the scheduled inspection time was supposed to have been 4:00 PM. Mr. [REDACTED] questioned the 13-hour window of start to finish time on the Work Order

Mr. [REDACTED] testified that an underground inspection was next scheduled May 19, 2022 but the service technician could not complete the inspection because a curb cock (cc) was needed.

Mr. [REDACTED] stated that he sent DC Water an email on August 30, 2022 demanding action and DC Water conducted an underground inspection on August 31, 2022 and the service technician said the leak was beyond the property line.

Mr. [REDACTED] testified that he received an email on December 20, 2022 informing him that he was responsible for repair of the underground leak and he sent the utility an email in response noting that the inspection results were provided to him eight (8) months after he first presented his water leak issue to the utility.

Ms. Andrews responded that the customer hired a plumber thru American Home Shield and that the plumber suggested to the customer that he ask DC Water of programs. She stated that DC Water sent the customer a list of approved plumbers and the customer selected Ben's off the list. She stated that Ben's did the repair on March 23, 2023 and the customer's usage returned to normal. She stated that she believes that there is a credit on the customer's account. Ms. Parker stated that Mr. [REDACTED] had to wait for approval of Ben's to perform the repair. The customer received assistance for the repair bill which was \$5,000.00, of which, the customer paid \$3,000.00 out of pocket. Mr. [REDACTED] asserted that he had to wait for the list of approved plumbers and the scheduling of Ben's to do the repair.

Mr. [REDACTED] stated that he asked DC Water to shut-off water to the property. He stated that the utility placed a lien on the property in the amount of \$6,310.00 and he paid the lien in the

amount of \$6,310.64 on April 3, 2023 and the lien was released. He stated that \$6,310.64 was the balance on the account for water services and penalties.

Mr. [REDACTED] explained that he has a Power of Attorney for his father [REDACTED], Sr., who is in a nursing home. He stated that his mother remained in the house after his father was placed in the nursing home in September 2019, but his mother passed on June 10, 2021. He explained that, since his mother's death, the property has been vacant. Mr. [REDACTED] stated that his father owns the house and that he [REDACTED], Jr., has keys to the house and pays the bills. Mr. [REDACTED] testified that he stopped paying the water and sewer bill in January or February 2022.

The customer testified that he did not pay much attention to the water and sewer bill or water usage after the death of his mother.

Mr. Carlesco interjected that his client diligently pursued this matter by asking DC Water for an underground inspection and his client wants all charges deleted from the account, Mr. Carlesco asserted that Mr. [REDACTED] relied upon DC Water to figure out the problem but he got administrative delay and a runaround by the utility. He asserted that DC Municipal Regulation 21- §407 requires the utility to investigate the customer's bill dispute and that the investigation is mandatory upon the utility. Mr. Carlesco argued that his client should be entitled to a defense against the charges based upon equity and that DC Water should be estopped due to lack of communication and delay.

On cross-examination by Ms. Andrews, Mr. [REDACTED] stated that he submitted Metropolitan Plumbing's invoice on March 29, 2022. He stated that he was told on April 1, 2022 that the underground inspection was scheduled for April 12, 2022. Mr. [REDACTED] testified that no service technician showed up at the property to conduct an underground inspection between 4:00 and 8:00 p.m., the scheduled time for inspection. Mr. [REDACTED] testified that he was present at the house between 4:00 am and 8:00 pm and that the service technician's statement that he attempted to reach him was false and no attempt was made to reach him in person or by phone. Mr. [REDACTED], again, pointed out that the Work Order states that the work started at 7:55a.m. and finished at 8:10 p.m.

Mr. [REDACTED] restated that the May 19<sup>th</sup> inspection was not completed due to the need for a curb cock. He pointed out that the Work Order noted a 1:00 a.m. start.

Ms. Parker interjected that the DC Water- Water Services Division works 24 hours and that the Work Order start times may be indicative of shift turn-over.

Mr. [REDACTED] retorted that he questions the Work Order because they do not make sense in that they have illogical start and finish times. He pointed out that with respect to the April 12

Work Order, no service technician appeared at the property between 4:00 p.m. and 8:00 p.m. With respect to the Work Order for May 19<sup>th</sup>, he reiterated that the work could not be completed but the report bears a start time of 1:00 a.m., yet, the service technician was at the property in the afternoon.

Ms. Andrews responded that, with respect to the Work Order dated May 19<sup>th</sup>, the service technician was at the property at 5:00 p.m.

Ms. Parker stated that DC Water was not disputing the customer when he asserted that delay occurred in the utility's investigation.

Mr. [REDACTED] continued that no one from DC Water came to the property on August 30, 2022. He stated that he was at the property for ADT. He stated that a service technician did come to the property on August 31, 2022 but DC Water did not provide a start time. Ms. Andrews stated that a DC Water crew came on May 19<sup>th</sup> and another Work Order was generated for installation of curb cock. She explained that the May 19<sup>th</sup> Work Order was completed on August 31<sup>st</sup>.

Mr. [REDACTED] seeks adjustment of \$407.00 but DC Water ruled that the March 2023 repair was not timely made.

Ms. Parker stated that DC Water gave a decision of untimeliness dated 12/1/2023 regarding water but the utility did give an adjustment to the customer for sewer charges. Ms. Andrews added that the customer was given a sewer adjustment in the amount of \$3752.62 pursuant to DCMR 21- §407.6.

Mr. [REDACTED] stated that DC Water kept him in the dark for 8 or 9 months, even though he contacted the utility as soon as he noticed the spike in usage. He asserted that he did everything that he was instructed to do by the utility but there was no communication by DC Water and, then, DC Water put a lien on the property. He stated that he does not understand the delay and not getting a copy of the reports. He stated that he did not get a copy of August 31, 2022 Work Order until December 20, 2023 by email, yet, the email stated that DC Water had made its determination on May 19, 2022. Mr. [REDACTED] pointed out that the August 31, 2022 Work Order stated that the determination of liability was made on that date.

Ms. Parker referred to the DC Water Interaction Notes for September 2, 2022 at pg. 33 where it is noted that Mr. [REDACTED] telephoned DC Water requesting an adjustment for an underground leak on the private side. Ms. Parker stated that the point of the note was that the customer was aware that the leak was on the private side of the property and that DC Water had shared that information with the customer prior to December.



Mr. [REDACTED] retorted that one should look at how much time went by since March 2022 when he initially contacted DC Water requesting an investigation. He asserted that DC Water was not timely in its response in sending an email or correspondence advising him of the leak being on the private side.

Ms. Parker responded that the repairs were not made until March 2023 and Mr. [REDACTED] stated that he could not get the repair done until the underground inspection was performed and the inspection took five (5) months. Ms. Parker stated that Mr. [REDACTED] had been told that he could have a private plumber turn off the water at the property. Mr. [REDACTED] denied ever being told that he could turn off the water. Mr. [REDACTED] referred to pg. 44 of the DC Water Interaction Notes where he informed the service representative that he turned the water off at the service valve and registration continued to show on the water meter. The note adds that the customer was waiting for an underground inspection.

Ms. Andrews declared that no adjustment was warranted pursuant to 21 DCMR §407.5 based upon the repair having been untimely made. She stated that pursuant to 21 DCMR §407.6, an adjustment for sewer charges was granted because that section has no time limit. She stated that DC Water acknowledged the existence of an underground leak and determined that repair was the customer's responsibility.

Ms. Parker noted that the customer never made a formal dispute but, when the matter was sent to escalation, Arlene Andrews sent out the untimely letter to the customer. Ms. Parker stated that Mr. [REDACTED] requested an adjustment before repairs were made to the underground leak. Mr. [REDACTED] stated that the determination that there was an underground leak was not made until August 31, 2022 and Ms. Parker repeated that DC Water told the customer that he could have shut off the water. Mr. [REDACTED] then, stated that DC Water never told him, in writing, that he could shut off the water. To which, Ms. Parker responded that it was a verbal instruction to shut-off the water. Ms. Parker stated that, as of the December 2022 email, the customer was told that he had to fix the underground leak, yet the customer did not fix the leak until March 2023.

Mr. [REDACTED] referring to pg. 45 of the DC Water Interaction Notes points out that he asked that the utility shut-off the water and he was told that DC Water was not doing disconnections. He stated that, when he was told that a plumber could shut off the water, he thought the service representative meant that a plumber could shut off the service valve. He asserted that nothing was said about shutting off the water at the meter. He, also, stated that the December 2022 email advising him of his responsibility to repair the leak did not give notice of any time limit in which the repair had to be performed.

Ms. Parker testified that Mr. [REDACTED] was not listed on the water and sewer account and that

he gave the utility a copy of the Power of Attorney to dispute the period 12/11/21, not April 2022. She stated that the customer's attorney said that his client was diligently trying to get repairs but DC Water has proof that Mr. [REDACTED] knew of his responsibility for repair before 12/22 and that he was only asking for an adjustment before repairs were made.

Ms. Parker admitted DC Water's delay in determining responsibility but she asserted that the customer was given a remedy.

Ms. Parker stated that \$6008.01 was the total amount charged during the disputed period and was not the lien amount.

Ms. Parker stated that Greg Vinson of the DC Water Call Center was working the customer regarding the Lead Replacement Program. She stated that lead pipes were seen on the private side of property in December 2022.

Mr. [REDACTED] interjected that American Home Shield told him to contact DC Water for the Lead Replacement Program.

Ms. Andrews stated that Mr. Vinson emailed the customer regarding the Lead Replacement Program information on February 22, 2023.

Mr. [REDACTED] stated that he reached out to DC Water, after receiving notice of his liability for repair in December 2022, to inquire of the Lead Program and he got the link on February 22, 2023. Mr. [REDACTED] stated that he contacted Ben's Plumbing and the repair was done on March 20, 2023.

Mr. [REDACTED] reiterated his lack of understanding as to why it took DC Water so long to investigate. Ms. Parker replied that Mr. [REDACTED] was not available on at least two (2) occasions according to the Work Orders dated March 19, 2022 and August 31, 2022. To which, Mr. [REDACTED] replied that he was available at the property on April 12, 2022. He pointed out that the DC Water crew wrote that they were at the property on May 19<sup>th</sup> at 1:00 a.m. in the morning. He stated that he was at the property on August 30, 2022 for ADT but when the crew was at the property on August 31, 2022, he was not there. Ms. Parker stated that it was two (2) different crews at the property on April 12, 2022 and again, on April 13, 2022 when a crew was sent to decide responsibility. She stated that the crew of May 19, 2022 asked for an excavation crew and the crew on August 31, 2022 made the determination of responsibility,

Ms. Parker asserted that DC Water knew as of May 19, 2022, that the leak was underground but it did not know if the responsibility for repair was private or public. Mr. [REDACTED] stated that, on May 19, 2022, the technician told him that a curb cock was needed.

Ms. Parker stated that DC Water is not arguing the timeframe in which it took to make the determination. She asserted that the problem is that since December 2022, the customer knew that it was his responsibility to repair the underground leak and he did not make the repair within the timeframe required pursuant to DC Municipal Regulations. She reiterated that the regulations set no timeframe for sewer charge adjustment. Ms. Parker acknowledged that DC Water took longer to determine responsibility but it is the utility's position that the customer did not timely repair the leak after the determination was made.

Mr. [REDACTED] responded that he did timely repair based upon when he was given information by DC Water (regarding the lead pipe replacement program).

Ms. Parker stated that, in addition to adjustment for sewer charges, the customer's account was given a catch-up offer. She stated that the sewer adjustment was \$3752.62; the catch-up adjustment was \$1263.12; late and disconnection fees waived were \$158.96, \$19.73 on August 21 and \$179.98. She stated that the customer has \$4975.56 credit on account. Ms. Parker asserted that, at this point, the only amount at issue is \$657.00 representing 50% of the water charges during the disputed period.

Mr. Carlesco argues that his client should not be prejudiced because he sought assistance to get the repair performed.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved in a single-family residence which had been occupied by [REDACTED] [REDACTED]'s parents. His father, [REDACTED], Sr., is in a nursing home and his mother passed on June 10, 2021, leaving the property unoccupied since her death. (Testimony of [REDACTED])
2. The customer holds a Power of Attorney for his father, Michael Cobb, Sr. (Testimony of [REDACTED])
3. The customer is disputing eight (8) billing periods commencing December 11, 2021 and ending September 13, 2022. (The record in this matter)
4. The customer acknowledged that he did not pay attention to the water and sewer charges following the death of his mother. (Testimony of [REDACTED])
5. The customer telephoned DC Water on February 25, 2022 regarding a high bill and he was told to hire a plumber. (DC Water Interaction Notes pg. 49)
6. The customer turned to American Home Shield which sent Metropolitan Plumbing and

- Sewer to inspect the property for interior leaks; no interior leaks were found and the plumbing service advised the customer to seek an underground inspection by DC Water. (Testimony of [REDACTED]; Metropolitan Plumbing and Sewer, Work Order WO-2113)
7. The customer requested an underground leak inspection on April 1, 2022 and the inspection was scheduled by DC Water for April 12, 2022. (Testimony of [REDACTED]; DC Water Interaction Notes pg. 48)
  8. The customer was present at the property for the scheduled underground inspection on April 12, 2022, however, no service technician appeared at the property for the inspection. (Testimony of [REDACTED])
  9. The underground inspection was re-scheduled for May 19, 2022; however, the inspection did not take place due to the need for a curb cock. (Testimony of [REDACTED])
  10. DC Water knew, as of May 19, 2022, that the leak was underground but it did not know if the responsibility for repair was private or public. (Testimony of Geneva Parker)
  11. Ms. Parker explained that the inspection that occurred on August 30, 2022 was in completion of the inspection scheduled on May 19, 2022. (Testimony of Geneva Parker)
  12. The Work Order for the scheduled August 30, 2022 inspection notes that the technician was tied up on jobs but that the leak was at the meter. (DC Water Work Order date Aug. 30, 2022)
  13. No technician appeared at the property to perform an underground leak on August 30, 2022. (Testimony of [REDACTED])
  14. DC Water performed an underground inspection on August 31, 2022. The customer was not present and had no notice of the inspection. The utility determined that the underground leak was on the private side and the customer was responsible for repair. According to the Work Order remarks, no notice was served on the property owner because a neighbor said no one lived at the property. It was stated on the Work Order that the notice should be mailed to the property owner. (DC Water Work Order dated Aug. 31, 2022)
  15. A Dec. 20, 2022 Interaction Note states that D. Mitchell of DC Water Customer Service called [REDACTED] to inform him that there was a notice that needed to be served to the customer. The note states that a message was left for the customer to contact DC Water. Also, the note stated that the customer was advised that DC Water can adjust the account up to 50% of the access water usage caused at the property. (DC Water Interaction Note by DMitchell, 12/20/2022 @ 11:09:50)
  16. By email dated December 20, 2022, DC Water notified that customer that he was responsible for repair of the underground leak. (Testimony of [REDACTED], email dated Dec. 20, 2022 from D. Mitchell, Customer Service Department)
  17. In December 2022, the customer reached out to DC Water to inquire of lead pipe replacement programs and a DC Water customer service representative provided him a list of contractors/plumbers on February 22, 2023 (Testimony of [REDACTED] and Geneva Parker)

18. No evidence was presented of a formal notice to repair served upon the customer advising of a time limit in which the leak had to be repaired for adjustment consideration; all contact was by email and/or phone calls. (The record in this matter)
19. DC Water recognized the underground leak period as December 11, 2021 to September 13, 2022 for 277 days and 352.69 CCF of water, for purposes of adjusting the customer's sewer charges for the existence of an underground leak. (See, DC Water Interaction Notes pg. 2- Note dated 12/1/23)
20. The customer hired Ben's Plumbing and the underground leak repair was performed on March 20, 2023. (Testimony of [REDACTED]; Ben's Plumbing Invoice dated March 20, 2023)
21. The customer was mailed an untimeliness letter by DC Water dated February 3, 2023 regarding bill dates 4/14/22, 5/12/22, 6/15/22, 7/18/22, 8/11/22, and 9/14/22. (DC Water letter dated February 3, 2023)
22. The customer was denied adjustment for water loss due to the underground leak based upon his failure to repair the leak within 30 days of DC Water's determination that repair responsibility was upon the property owner. (Testimony of Geneva Parker)
23. DC Water adjusted the customer's account, as follows: sewer adjustment = \$3752.62; catch-up adjustment = \$1263.12; late and disconnection fees waived = \$158.96, \$19.73 and \$179.98. (Testimony of Geneva Parker)
24. The record does not contain a bill investigation report or a formal bill dispute, however, DC Water noted that the customer disputed on 02/01/2023. (Testimony of Geneva Parker; DC Water Interaction Note, pg. 13, dated March 31, 2023 by Geneva Parker); the record in this matter)
25. The customer telephoned DC Water, both, before the underground leak was repaired to seek an adjustment of the charges (September 2, 2022) and after the repair and the customer, repeatedly, telephoned and emailed the utility regarding a need for an underground inspection and for adjustment of the account. (Testimony of [REDACTED]; the record in this matter)
26. DC Water does not dispute or deny the truth of the customer's assertion that the utility delayed its responsibility to investigate his property for an underground leak. (Testimony of Geneva Parker)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR§ 420.7 and §420.8)
2. The property owner is the ultimate responsible party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012.

3. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR §403.
4. DC Water may request that the customer submit a plumber's report stating that there are no leaks on the property and that no issues on private property are contributing to increase water usage. (21 DCMR 403.3)
5. 21 DCMR 404.1- Upon completion of the investigation, DC Water shall issue a written decision containing a brief description of the investigation and findings.
6. 21 DCMR 404.2- On the basis of the investigation and findings, DC Water shall make appropriate adjustments to the bill for water or sewer charges in accordance with the provisions of this Chapter.
7. 21 DCMR §407.2 states, in part, If the investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing.
8. If, pursuant to §407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4
9. The adjusted amount, in accordance with § 407.4, shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
  - (a) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
  - (b) The owner has repaired the leak within 10 calendar days after the bill investigation is issued to the owner or occupant;
  - (c) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the



rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and

- (d) The request for adjustment has been made in accordance with § 402.1 (a).
10. The General Manager may, at their discretion, adjust up to 100% of the excess sewer charges resulting from an underground leak if it is determined that the excess water usage did not enter the wastewater system. (21 DCMR 407.7)
  11. Gatewood v DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013) The Court in Gatewood, supra, held that DC Water could impose an administrative filing deadline or claim processing rule for bill disputes and that the utility could, as well, waive its time limits.
  12. Equitable laches comes into play when two prerequisites are met- the defendant must have been prejudiced by the plaintiff's delay and the delay must have been unreasonable. (See, King v. Kitchen Magic, 391 A.2d 1184, 1187-88 (D.C. 1978); Fannie B. Martin v. William Carter, 400 A.2d 326 (D.C. 1979).

### DECISION

This matter posed two (2) issues: When was the customer notified of his responsibility to repair an underground leak, and, Whether the customer has a defense in equity for any delay in his repair of the underground leak as it would pertain to the repair time limit for adjustment of the customer's account for excess water caused by the underground leak?

Based upon testimony, the customer was notified of his responsibility to repair the underground leak, by email, on December 20, 2022. Based upon evidence found in the DC Water Interaction Notes, the customer was notified by phone of the utility's determination of responsibility thru a series of calls 12/21/2022 – 12/22/2022. The Hearing Officer cannot find evidence that the customer was ever served with the official notice to repair and no notification was given to him as to a time limit for repair of the underground leak until his request for adjustment based upon his repair of the leak was rejected with respect to water charges, by email dated March 31, 2023. DC Water did not make a determination of responsibility for repair of the underground leak until August 31, 2022 and the Work Order states that the technician "Could not serve notice because neighbor said no one live there." The Work Order goes further to state that "a notice should get mailed out to who owns the property." The record in this matter, however, is devoid of any notice other than the DC Water email of December 20, 2022. There is an Interaction Note dated 12/20/ 2022 by VMarr of DC Water in which it is written "Will contact meter for a copy of the notice not served. Associate will contact the customer to advise." (See, pg. 24 of DC Water Interaction Notes) There is another note, by Dmitchell of DC Water, also, dated 12/20/2022 stating that "Placed a call to [REDACTED] to inform him that there is a notice that needs to be served to the customer. Left a message for him to contact us so that the notice can be emailed to him. Advise that we can adjust the account up to 50% of the access water usage caused at the property". (See, DC Water Interaction Note pg. 24) On 12/21/2022, the Interaction Note by OVigil @ 13:48:06 was that the customer "Called back in regards to ug inspection. Advised customer per notes that leak was located inside property line. Advised to have a dc. lic, plumber make repairs, and submit PR for possible adjustment of up to 50% or the excess water usage. He understood." By note dated 12/21/2022 @ 13:49:10, OVigil wrote [REDACTED] "Called back in regards to ug inspection. Advised customer per notes that leak

was located inside property line. Advised to have dc lic. Plumber make repairs, and submit pr to us for possible adjustment of up to 50% or excess water usage. Customer stated he already has copy of nofol". The Hearing Officer does not credit OVigil's statement that the customer stated that he already has a copy of nofol. The customer denied receiving the notice in testimony and it appears that the service representative wrote one note without reference to the customer to the customer having a copy of nofol, then, revised the memorandum adding that statement one second later in a revised note. The email of Dec. 20, 2022 references an "attached notice to follow up to make the necessary repairs at the location". As previously stated, no copy of a NOFIL is found in the record and none was entered into evidence.

There was testimony that the customer was aware of his responsibility to repair the underground leak as of September 2, 2022 based upon a call-in to the utility by the customer requesting adjustment of the account before the leak was repaired. (See, Interaction Note dated 9/2/2022 pg. 33) The customer call-in appears to have been in response to a series of HUNA alerts advising of high-water usage occurring at the property. The Hearing Officer cannot ascribe to the customer that he knew more than the utility as to who was responsible for repair before the utility informed him of such a determination. The Hearing Officer suspects that the service representative worded the memorandum of the interaction in such manner as what would be the only logical basis for a customer to request an adjustment since a customer is only entitled to an adjustment if the leak were on the private side and repaired by the customer. The service representative requests that the customer submit a plumber's report but the testimony and evidence establishes that no repair had been made as of September 2, 2022, the utility had only determined responsibility on August 31, 2022 and had not served the customer with notice of his duty to repair the underground leak when the interaction note was written.

DC Water does not refute that it delayed investigating the existence of an underground leak and determining responsibility of repair.

DC Water imposed a time limit upon the customer to repair the underground leak. Citing 21 DCMR 407, the utility denied adjustment of excess water due to the underground leak based upon the customer failing to repair the leak with 30 days of notice of responsibility to repair. As stated above, the customer was told, by email, that he was responsible for repair of the underground leak on December 20, 2022. The customer had the underground leak repaired on March 20, 2023. The customer contends that he was not aware of any time limit to repair, that he diligently pursued repair of the leak upon being told of his responsibility to repair, and he should not be penalized, in the form of rejecting adjustment for excess water caused by the underground leak, because he sought assistance from the District of Columbia for the necessary replacement of lead pipe in repair of the underground leak.

21 DCMR 407.4 dictates that upon the determination of owner responsibility for repair of an underground leak with respect to water, the General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. (See, 21 DCMR §404 and §409



In this case, no investigation report appears to have been mailed to the customer. There is no investigation report in the customer's zip file. No investigation report was tendered as an exhibit. The customer, as noted above, was notified of responsibility to repair by email. If one accepts the December 20, 2022 email as the utility's investigation report, the email lacks required substance as outlined pursuant to 21 DCMR §409. The email dated March 31, 2023 to the customer complies most closely with what is required of an investigation report in that it provides a description of the findings, bill dated disputed, adjustment granted, and appeal information. (See, Interaction Notes dated Mar 31, 2023 pg. 13-14)

The customer asks that he not be penalized for seeking lead pipe replacement assistance through the DC Government. The Hearing Officer agrees with the customer.

The customer's interaction with GVinson of DC Water on February 22, 2023 adds credence and support to the customer's testimony of his diligence in this matter, in that, the service representative notes advising the customer of the lead service line replacement project and giving the customer the link for more information. (See, DC Water Interaction Note dated 02/22/2023 pg. 15)

DC Water admitted to the delay in investigating the existence of an underground leak and for determining responsibility for repair. The utility waited from August 31, 2022 to December 2022 to inform the customer of its findings and after informing the customer of its findings by email and phone, the utility failed to provide an investigation report as required by regulations and it failed to serve the customer with a notice regarding his responsibility to repair and give notice of any time limit in which he was required to do so.

The time limits found in the DC Municipal Regulations are processing rules and can be waived by the utility either intentionally or by action. See, Gatewood v DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013) The Court in Gatewood, *supra*, held that DC Water could impose an administrative filing deadline or claim processing rule for bill disputes and that the utility could, as well, waive its time limits. In Gatewood at footnote 40, the Court writes that "When a customer files a challenge stating 'the reasons why the bill is believed to be incorrect, those reasons trigger an obligatory investigation by the utility, leading to 'findings' and a 'written decision' by the utility's Administrator. (See, Gatewood id. at footnotes 55 and 57 regarding 21 DCMR §402.1(b) and §409.2) DC Water's purpose of imposing time limits upon a customer to dispute a bill is to avoid potential prejudice to the utility's orderly administration of its billing process. In this instance, the utility caused its delay in the obligatory investigation and its issuance of findings and a written decision.

On the customer's part, he did diligently pursue rectifying the underground leak. On August 31, 2022, DC Water found and knew that there was lead pipe on the private side of the property. The utility, also, knew of programs to assist its customers where lead pipe is on a customer's property. The evidence and testimony was that, not only did the utility delay the investigation, it failed to issue its findings in a timely manner and it failed to advise the customer of any applicable time limit for repair or of any resource available to him to assist him in repairing the leak. DC Water did not provide the customer with requested lead pipe replacement program information until February 22, 2023.


The customer, through counsel, seeks defense against any time limit for repair of the underground leak based upon equity. Equitable laches comes into play when two prerequisites are met- the defendant must have been prejudiced by the plaintiff's delay and the delay must have been unreasonable. (See, King v. Kitchen Magic, 391 A.2d 1184, 1187-88 (D.C. 1978); Fannie B. Martin v. William Carter, 400 A.2d 326 (D.C. 1979). Here, the utility delayed in investigating the underground leak and broadcasting its determination of responsibility repair. The utility failed to give the customer notice of a time limit in which to repair and the utility did not provide the link regarding lead pipe replacement assistance to the customer. The customer testified that he had to wait upon DC Water to get the information regarding the approved plumbers for the lead replacement program and Ms. Parker testified that the customer waited for the plumber selected by him from the list to be approved to perform the repair. None of the delays were caused by the customer. Moreover, had there been no delays, the loss of water might have been mitigated or, at least, the customer would have had the opportunity to mitigate the water loss and limit the water charges for excess water caused by the underground leak to the account.

DC Water did adjust the customer's account for sewer charges and the period of adjustment applied was December 11, 2021 to September 13, 2022 for 277 days and 352.69 CCF of water, for purposes of adjusting the customer's sewer charges for the existence of an underground leak. The regulations dictate that the utility is to adjust the customer's account for excess water caused by the underground leak for the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. (See, 21 DCMR §407.4) As previously stated, the utility did not issue a bill investigation report in this matter. Clearly, however, the September 13, 2022 is not the date of issuance of the bill investigation report or, even, 30 days after the utility determined responsibility of repair. Without explanation, because no explanation was given, was to why September 13, 2022 was the cut-off date for adjustment of the account, the Hearing Officer is unable find that September 13, 2022 is the proper date to cut-off the adjustment, as oppose to the date being arbitrary and unfair to the customer. The utility told the customer that he was responsible for the leak repair on December 20, 2022, without giving notice to the customer of a time limit for repair. As already determined, the customer diligently pursued getting the leak repaired, first, by seeking a plumber through American Home Shield and, then, requesting from DC Water information regarding the lead pipe replacement program and ultimately, after obtaining approval for repair, had the leak repaired on March 23, 2023 by a plumber from the list of approved plumbers for the lead pipe replacement program. Based upon the sequence of events and the deficiencies in the utility's response to the customer's request for help in determining why the water use had escalated at the property and his repeated requests for the utility to conduct an underground leak, the Hearing Officer determines that the customer is entitled to the defense of laches against the utility and that the account adjustment for both water and sewer charges should be for the period of December 11, 2021 to March 23, 2023.

Based upon the foregoing, it is the determination of the Hearing Officer that DC Water's denial of an account adjustment for excess water caused by an underground leak, was wrong and the customer is entitled to such an adjustment. The Hearing Officer, further, finds that the period

of account adjustment should be December 11, 2021 to March 23, 2023 and, in addition to adjusting the customer's account for water, DC Water is directed to amend its adjustment for sewer charges to extend the adjustment to March 23, 2023.

SO ORDERED.

  
Janet W. Blassingame, Hearing Officer

Date: March 19, 2024

Copies to:

  
 Morse Street, NE  
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Adam Carlesco, Esq.  
Office of the People's Counsel, D.C.  
1133 15<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20005-2710

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: Genevieve Lucas  
P.O. Box 902  
Clinton, MD 20735

Service Address:  
[REDACTED] M Street, NE

Account No: [REDACTED]  
Case No: 22-309149

Amount in Dispute: \$ 1,171.63

Before Janet W. Blassingame, Hearing Officer  
January 19, 2024 at 10:00 a.m.

The customer contested a water and sewer bill for the period January 12, 2022 to February 9, 2022. The DC Water and Sewer Authority (DC Water) investigated and determined that the charges were valid and no basis existed to adjust the account. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 19, 2024. Present for the hearing were: Genevieve Lucas, the customer; and, LaFatima Black and Kimberly Arrington, on behalf of DC Water, as well as, Geneva Parker, DC Water, observing only.

The property involved is a four (4) unit apartment building. Within the building are four (4) bathrooms and four (4) kitchens. There is one outside faucet, which has been turned off in the basement. Since 2020, the building has been occupied by only 1 tenant.

Ms. Lucas began by stating that she thought that the hearing was cancelled. She stated that a service technician could not get a meter reading because the MTU was wireless, so she was under the assumption that this matter was not going forward.

Ms. Lucas stated that she seldom looks at her water and sewer bill. She stated that she pays the utility a lump sum each month depending upon her tenant's payment and her money flow. Ms. Arrington interjected that Ms. Lucas' account is current and that the customer pays about \$150.00 per month.

Ms. Lucas explained that she has an on-line account. She stated that she opened her bill and realized that she had received a large bill. She stated that she called DC Water and also, met with Richard Lewis, a plumber, to check the unit.

Ms. Lucas testified that her tenant had been sick in the hospital.



Ms. Lucas did not submit a plumber's report.

Ms. Lucas stated that the next bill was not as high but she does not remember the charge. Ms. Black recapped the customer's billing statement. She stated that, in March 2022 the charge was \$758.73 and, in April 2022, the charge was \$944.43. She stated that both March and April had been billed upon actual meter reads. Ms. Black stated that the customer was \$371.63 in May 2022 based upon an estimate and in June 2022, the customer was billed \$164.48 based upon an actual meter read. Ms. Black added that the February 2022 bill, being disputed, was based upon an actual meter read. She stated that the customer's January 2022 bill was estimated at \$157.80 and that the customer's December 2021 bill was \$373.34 based upon an actual meter read.

Ms. Black testified that the customer's water usage increased from 4.53 CCF in November 2021 to 21.05 CCF in December 2021. Ms. Black explained that the customer's February 2022 bill was a catch-up bill based upon an actual read because the January 2022 water usage had been estimated.

Ms. Black testified that the meter read was actual from an automated water meter. She stated that DC Water tested the water meter and the meter was determined to be under registering water usage at the building. The meter was tested on December 5, 2023 and determined to have 64.47% accuracy which is below standard as established by the American Water Works Association. She stated that a water meter is operating accurately if registering between 98.5% and 101.5% of water going thru the meter.

Ms. Black stated that the customer's water usage at the building began increasing between November 2021 and December 2021. She stated that water usage at the building was continuous before November 2021. She stated that in March 2022, water usage would spike a day or two, then, go down, then, the usage would go up again. She stated that water usage at the building declined between May 2022 and June 2022. She stated that water usage at the building in March 2022 was 57.15 CCF; in April 2022, it was 22.40 CCF; in May 2022, it was 9.10 CCF and in June 2022, it was 7.9 CCF.

Ms. Lucas denied having plumbing work done at the building in the Spring 2022.

Ms. Black stated that DC Water did not perform an underground leak inspection because was inside the building. She stated that the utility is only responsible for the meter itself. She explained that if there had been an underground leak, water loss due to the underground leak would not register on the customer's water meter because the meter was inside of the building.

Ms. Black stated that the utility's investigation found no evidence of meter overread or doubtful registration, and, as such, the findings are inconclusive pursuant to 21 DCMR §408.1.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a four (4) unit apartment building owned by Genevieve Lucas. (Testimony of Ms. Lucas)
2. The period in dispute is January 12, 2022 to February 6, 2022. (Testimony of the parties)
3. During the period in dispute, only one person was a tenant in the building. (Testimony of Ms. Lucas)
4. There was continuous water usage occurring at the property prior to November 2021. Usage started declining between May and June 2022 and has remained low to present. (Testimony of LaFatima Black; DC Water Meter Readings-Billed)
5. The customer was billed based upon actual meter readings for bills in November 2021, December 2021, February 2022, March 2022, April 2022. The customer's usage for billing was estimated in January 2022 and May 2022, then, actual meter readings resumed for subsequent billings. (Testimony of LaFatima Black; DC Water Meter Readings-Billed)
6. Because the customer's bill was estimated for the January 2022, the February 2022 bill reflected a catch-up for water used due to an underestimation of usage for the January 2022 billing. (Testimony of LaFatima Black)
7. The customer denied having plumbing work performed at the building but stated that she had a plumber inspect the building. The customer did not submit a plumber's report to DC Water or for the hearing. (Testimony of Ms. Lucas; the Record in this Matter)
8. DC Water tested the water meter from the building and the meter was determined to have been under registering water usage at 64.47%. (Testimony of LaFatima Black)
9. DC Water investigated the bill dispute and found no evidence of meter overread or doubtful meter registration. (Testimony of LaFatima Black)
10. DC Water ruled out the existence of an underground leak, without conducting an inspection, because the water meter was situated inside of the building and, as such, water from an underground leak would not go thru the customer's water meter. (Testimony of LaFatima Black)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR 403.

3. Meter shall read quarterly or at such other times as the General Manager shall determine. (See, 21 DCMR §308.1)
4. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong or for some other reason, she should not be responsible for its payment.

The evidence and testimony established that continuous water usage was occurring at the building prior to November 2021 and water usage was increasing and remained high until sometime in May 2022. The customer's February 2022 bill reflected 72.42 CCF, whereas the utility had estimated January 2022 water usage because the MTU at the property failed to transmit in January 2022. When the MTU resumed transmission and the customer was billed for water usage in February 2022 (the bill in dispute), the actual meter read transmitted from the property reflected water used from the actual meter read received in November 2021 to the meter read received in February 2022 and the February 2022 bill reflected a catch-up of charge for water used in January 2022 for which the estimated charge was insufficient and water used in February 2022.

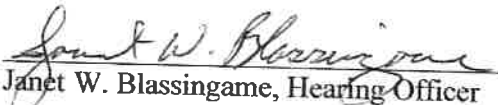
When a MTU fails to transmit, DC Water can send a technician to read the water meter or it can estimate usage for billing purposes. The D.C. Municipal Regulations dictate that the utility must read a customer's water meter at least on a quarterly basis. (See, 21 DCMR §308.1) No error can be attributed to DC Water for its estimating the customer's water usage for one month.

The customer denied having plumbing work performed at the property but usage dropped. Usage started dropping in March 2022 (67.15 CCF), lower in April 2022 (22.40 CCF), and lower in May 2022 (9.10 CCF) Whatever caused the high-water usage from November thru February 2022 was either repaired or turned off because water usage at the building has remained low/normal since May 2022 to present. It is noted that the customer did not submit a plumber's report even though she testified that she met a plumber at the building to inspect the property. The bill in dispute is dated February 15, 2022 and the customer initiated her bill dispute on March 9, 2022. The customer testified that she called DC Water when she received the February bill and she met with the plumber. The customer did not state the date on which she met with the plumber, however, after water usage had been continuous and increasing since November 2021, the customer's March 2022 bill was lower than the bill in February and water usage decrease significantly in May 2022 and has remained low.

DC Water presented testimony regarding its investigation of the customer's bill dispute. The utility tested the water meter and the meter was determined to be under registering water usage and the utility found no evidence of meter overread or doubtful registration.

21 DCMR §408.1 dictates that when all tests and checks fail to find the cause of or a reasonable explanation for excessive water usage, the findings are inconclusive and the utility does not adjust the account for the excessive consumption except in the discretion of the General Manager when public interest is concern. In this case, there has been no demonstration of significant public interest and the General Manager has not exercised discretion to adjust,

Based upon the foregoing, the preponderance of the evidence is that DC Water's determination that the charges are valid and no basis exists for adjustment of the customer's account is correct. Accordingly, the determination of DC Water is AFFIRMED.

  
Janet W. Blassingame, Hearing Officer

Date: MARCH 20, 2021

Copy to:

Ms. Genevieve Lucas  
P.O. Box 992  
Clinton, MD 20735



BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: Amber Overlook Condo Unit  
Owners Association  
P.O. Box 63293  
Washington, DC 20029

Service Address:  
[REDACTED] C Street, SE

Account No: [REDACTED]  
Case No: 23-348244

Amount in Dispute: \$ 4,483.34  
Period: 2/21/23 – 3/20/23  
Adjusted Amount – (\$1,278.98)

Before Janet W. Blassingame, Hearing Officer  
January 19, 2024 at Noon

The customers contested an adjustment to their water and sewer account. In early 2022, the unpaid water bill was \$31,755.25. There was a Catch-up Offer credit of \$4,575.07. The DC Water and Sewer Authority (DC Water) investigated and determined that an adjustment was warranted based on the estimated usage for the billing period. DC Water adjusted the bill dated 3/21/2023 using a daily average consumption from the new meter installed on 3/30/2023. The customers requested an administrative hearing.

This matter was scheduled for a remote hearing on January 19, 2024. Present for the hearing were: Takwana Ross Culbreath, Board President of Amber Overlook Condo Unit Owners Association (“the Condo”); Adam Carlesco, Esq., Office of the People’s Counsel, DC (OPC) on behalf of the Condo; Jasmine Wilson, Secretary of the Condo; TaVon Cook, Treasurer of the Condo; Shanta Gibbs, Vice President of the Condo; Jason Starks, Community Outreach, OPC; and, on behalf of DC Water: Arlene Andrews, Kelly Fisher, Esq. and Kimberly Arrington, as well as, Kristen Gibson, DC Water, observing only.

In opening, Mr. Carlesco stated that his clients were challenging high water usage at the property which fluctuates seasonally. He asserted that DC Water’s response to the customers’ concerns has been inadequate and the utility has not addressed where the leak is coming from. He stated that his clients have used private plumbers and DC Water and they cannot get resolution of the water problem. He stated that they request specific performance and reimbursement for excessive water loss. He stated that his clients initial appeal was on March 21, 2023 pertaining to bill dated 3/21/2023 for the period February 21, 2023 to March 20, 2023.

Ma. Arrington interjected that DC Water adjusted the bill dated March 21, 2023 and that she assumed that this dispute was about the adjusted amount - \$1,278.98. Mr. Carlesco responded that the dispute started because of surging usage and his clients’ inability to get DC

Water to assist in identifying the cause of the usage and to assist in abating the usage. He stated that the dispute is regarding the amount of the account adjustment. He added that the spike occurs between November and March each year and it has occurred since the complex was completed in year 2020.

Ms. Culbreath stated that they are seeking an explanation of the adjustment given.

Ms. Arrington asserted that this hearing only pertains to the March 21, 2023 bill adjustment and no other bill disputes that the customers may have with DC Water.

Ms. Culbreath was the first witness. She described the property as a thirty-two (32) unit apartment complex comprised of four (4) buildings. She stated that there are six (6) one-bedroom units, each having one bathroom and one kitchen. She stated that there are no 2- bedroom units, but, twenty-four (24) 3- bedroom units, each having one kitchen and two and one-half (2 ½) bathrooms and there are two (2) 4- bedroom units, each having one kitchen and three and one-half (3 ½) bathrooms. She stated that all units have a washing machine and dishwasher and there are sub-meters.

Ms. Culbreath testified that, from October to April, the water and sewer bill ranges between Eight Thousand Dollars (\$8,000.00) and Ten Thousand Dollars (\$10,000.00) per billing cycle. She stated that, during the Summer and Fall months, the water and sewer bill ranges from Nineteen Hundred Dollars (\$1,900.00) to Twenty-two Hundred Dollars (\$2,200.00) per billing cycle. She stated that she has been monitoring the complex's water and sewer bills from years 2021 to 2022.

Ms. Culbreath stated that DC Water replaced the water meter in March 2023.

She asserted that she is unclear regarding the basis for the adjustment granted and she does not understand how the adjustment was calculated. She, also, asserted that clear water was flowing of a manhole and no one could cut off the flow of water.

Ms. Culbreath asserted that the sub-meters are registering differing amounts of water used than the amount being billed by DC Water to the complex.

She stated that an underground inspection was supposed to have been done in May 2023 and that a meter test was to be performed. She stated that they have not received a meter test report or been informed of the test findings. She stated that, over the past three (3) years, DC Water service technicians have been out at the property several times, however, the utility has never given notice or findings from the visits.

She testified that a collection of thirty (30) tenants called a private plumber to inspect their units. Ms. Culbreath stated that she does not have the plumber's report. She stated that the Board hired Sky Nova and that the plumber sent a camera down the manhole and found no leaks. Ms. Culbreath, also, does not have the Sky Nova plumber's report.

She stated that DC Water replaced the water meter on March 30, 2023 because the complex required a bigger water meter. She stated that she does not know why a larger water meter was needed and that there was no underground investigation.

Ms. Arrington interjected, again, stating that whatever was done or happened in December is irrelevant regarding this March 2023 dispute. She added by Jason Starks did not



give a reason for the hearing request so DC Water assumes that the bill adjustment is the basis for the dispute. Ms. Culbreath responded that the complex's on-going problem is the basis for the dispute. To which, Ms. Arrington responded that disputes are not on-going. She stated that she checked with their Administrator to see if the customer submitted a Hearing Petition for either their October 2023 or November 2023 bill dispute and there were none. Ms. Culbreath and Mr. Carlesco responded that no disputes were made between April and September because the usage was normal.

Ms. Culbreath stated that apart from submitting a bill dispute, they reached out to the utility seeking financial assistance. She stated that March is the month that water usage at the complex starts to decline.

Mr. Carlesco asserted that a plumber from American Leak Detection said on December 15<sup>th</sup>, that the problem is DC Water's problem. He stated that there was water in the vault which needed to be pumped out. He asserted that a DC Water service technician informed the private plumber of water being in the vault and the plumber says that it's DC Water's problem.

Mr. Starks interjected that this has been an on-going problem since year 2021. He stated that the problem cannot be pinned down and that there has been no resolution confirming the accuracy of the customers' bill. TaVon Cook jumped into the discussion stating that when DC Water attempted to cut-off water, it could not cut-off the water. She asserted that the water line, on the public side, is not connected to the condo property. She stated that water stopped on a unit's meter is not connected to water flow.

Ms. Arrington, in giving the utility's position, stated that she understands the Condo's frustration. She stated that multi-family and commercial property owners have the obligation to investigate their problems. She stated that until the hearing, she did not know of a sprinkler system. She stated that most sprinkler system shut-down in April and she asked Ms. Culbreath if that was the case at the complex. Ms. Arrington, then, stated that she misunderstood the testimony and thought that there was an irrigation system at the property, not a sprinkler system.

Ms. Arrington testified that the account adjustment for the period February 21, 2023 to March 20, 2023 was based upon the failure of an electronic component in the water meter. She stated that a service technician came out to the property on March 28, 2023 and found no meter reads on the water meter and because there were no readings, the water meter could not be tested for accuracy. She stated that the customer's water meter was blank, so the utility gave an account adjustment using comparable usage from the new water meter – 3/29/23 – 4/18/23 for 21 days. She stated that the water meter was removed but it could be tested because the digital component had failed. She stated that the account adjustment had nothing to do with excessive water usage.

Ms. Arrington asserted that the Petition resulting in this hearing was the only petition received by DC Water. She asserted that the utility has conducted an investigation of excessive usage at the Condo but the customer has never submitted a Petition for Administrative Hearing. Ms. Cook responded that the Condo's Board did dispute the water usage but did not understand that they had to petition the utility for a hearing.

Ms. Arrington testified that, with respect to a bill dispute involving multi-family housing, the utility will investigate the dispute but it asks the owner to inspect each unit. She stated that the utility's investigation is to look at the meter reads in its system and to make sure that there is not a leak on the public side of the property. She added that once a customer is represented by legal counsel, DC Water works thru counsel and reports its findings to the attorney.

Testimony was that the Condo was told to have a plumber do a main line system check. It was asserted that DC Water had the proper equipment on-site but the utility said that the private plumber must extract the water from the vault. It was asserted that DC Water did extract the water from the vault on January 11<sup>th</sup> but did not tell the Condo its findings, if any. Ms. Arrington stated that DC Water only owns the water meter, not the meter lid or anything else. She confirmed that DC Water did come out to the property in January 2024. She stated that water usage has been consistent. She stated that it is the property owner's responsibility to determine what the problem is regarding excessive water usage.

Ms. Cook stated that Mr. Dove's report said that he turned the water off. Ms. Arrington refuted Ms. Cook and said that Dove did not turn off the water.

Geneva Parker stated that Mr. Dove, a DC Water technician, works on water main lines. She stated that the water meter at the property is at the end of the parking lot. She asserted that once DC Water determines that the leak is not on public space then the utility has no responsibility. She added that the utility has nothing regarding the sub-meters at the property and she questioned whether the sub-meters have been tested. She stated that DC Water cannot go beyond the meter on public space.

Ms. Cook stated that Guardian was asked to address the discrepancy between the sub-meter readings and the Condo's water and sewer bills.,

Ms. Parker stated that the account adjustment was given because the utility could not confirm actual water usage based upon a meter read. Ms. Parker asked for a mapping of the water system- a plat. Ms. Cook stated that the Board does not have the building plan but they do have the site plan.

Mr. Starks stated that the meter was replaced in March 2023 and that it had been at the property since May 2021. He stated that he thought the case could close after Dove was at the property.

Ms. Parker stated that there is an unreasonable expectation that DC Water will tell the customer what is going on its private property. She asserted that there has been no information for them to help with. Ms. Parker acknowledged that the Condo has a problem. She stated that once more information is provided to DC Water regarding the property, DC Water will look at it and try to assist the Condo. She qualified that the utility cannot send a work crew onto private property. She stated that when public space is at issue, the utility gives notice that the water is going to be shut-off.



Ms. Parker suggested to the customers that a plumber shut off the water to isolate the problem. She added that if this were a leak, the usage would be consistent.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a 32-unit condominium complex consisting of four (4) buildings completed in year 2020. (Testimony of Ms. Culbreath)
2. Since year 2021, water usage at the property surges between November and March each year and, despite hiring private contractors/plumbers, the Condo has been unable to identify the problem since readings from sub-meters at the property are not consistent with the water and sewer bills during the surge periods. (Testimony of Jason Starks and Ms. Culbreath)
3. The Condo disputed its bill dated 3/21/23 for the period 2/21/23 to 3/20/23. (Testimony of the parties)
4. Before the Condo's dispute of the bill, DC Water determined that an adjustment was warranted for the 3/21/23 bill based upon estimated usage for the billing period and DC Water had adjusted the bill using a daily average consumption at the property based upon a new meter that had been placed at the property in March 2023 because the prior water meter had been found blank. (Testimony of Kimberly Arrington and Geneva Parker)
5. The Condo utilized the dispute process and the bill dated 3/21/2023 as a route to get before DC Water, in an effort, to have the utility assist in identifying the cause and rectifying surging water usage at the Condo each year between the months of November and March. (Statement of Mr., Carlesco, Testimony of Ms. Culbreath and Ms. Cook)
6. Although the customers stated that they wanted an explanation of the granted bill adjustment and did not understand the basis for the adjustment, they really want to resolve the high-water usage occurring annually at the property and they want DC Water to find the cause. (Testimony of the parties)
7. DC Water does not conduct leak investigations on private property. (Testimony of Ms. Parker)
8. The Condo's water meter is situated at the end of the Condo parking lot and DC Water's investigation has been limited to determining if the problem is on public or private space and, as in this case, where the property is multi-family, the property owner is responsible for investigating what is occurring on its private property.
9. DC Water determined that whatever is causing the increased annual water usage at the property is on the customer's private property. (Testimony of Ms. Parker)
10. DC Water has offered to try to assist the Condo in identifying the cause of the water usage problem, if the Condo provides the utility with more information such as mapping of the water system, a plat, sub-meter readings and information, however, the utility cannot and will not send a work crew onto private property to investigate the customer's water usage problem.

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.2
3. DC Water may request that the customer submit a plumber's report stating that there are no leaks on the property and that no issues on private property are contributing to increase water usage. (See, 21 DCMR 403.3)
4. 21 DCMR §407.2 states, in part, If the investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing.
5. If the leak is determined to be on private property or on property that is under the control of the owner or occupant, the owner shall repair the leak. (See, 21 DCMR 407.4)
6. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personnel of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption determined by meter readings. (21 DCMR 308.4)
7. The property owner is the ultimate party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012)

#### DECISION

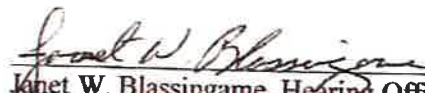
The Condo was unable to establish that more likely than not the bill in dispute was incorrect or for some other reason it should not be responsible for its payment. DC Water

explained the basis of the bill adjustment and there was no testimony or evidence that the adjustment was wrong or unjust.

All parties acknowledged that the Condo has a water issue causing increase usage during certain months of each year. DC Water explained that it does not investigate or solve water issues on private property and that whatever is causing the issue at the Condo is on private property. The Condo utilized the dispute process, as a means, to get before representatives of DC Water, in an effort, to obtain assistance in identifying and resolving their water issue. To that end, the customers were successful. DC Water has agreed to look at and attempt to assist if the customers provide mapping and other documents, have a private plumber perform certain tasks at the property and the customers provide the plumber's findings and report. The utility prefaced its offer of assistance, however, stating that it cannot send a DC Water crew onto private property to investigate and/or assist the customer in resolving the issue.

The Condo has not filed a Petition for Administrative Hearing regarding the annual surge in water usage which concerns the Board and property owners. In fact, the testimony was that the Board did not understand that it had to request a hearing to address their concern. The outcome of the hearing held established that DC Water does not have a responsibility or obligation to the Condo to investigate or resolve the water issue because the same, whatever the cause, is on private property and the property owner is responsible for investigation, repair and payment of the resulting water and sewer bills. In this case, the cause has not been repaired and, as such, there is no issue of an adjustment, other than the adjustment given by the utility for reasons not connected with the annual increased water usage.

Accordingly, not finding any basis to grant the Condo what it wants DC Water to do with respect to identifying the cause of annual increased water usage at the property and there is no evidence or testimony that the adjustment granted due to the blank water meter in March 2023 was incorrect, it is the determination of this Hearing Officer that the Condo is not entitled to any relief and DC Water's actions have been proper.

  
Janet W. Blassingame, Hearing Officer

Date: March 20, 2024

Copy to:

Adam Carlesco, Esq.  
Office of the People's Counsel, D.C.  
1133 15<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20005-2710

Takwana Ross Culbreath, Board President  
Amber Overlook Condo Unit Owners Assoc.  
P.O. Box 63293  
Washington, DC 20029



BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: Shafiq Hirani  
440 L Street NW  
Washington, DC 20001

Service Address:  
[REDACTED] 17<sup>th</sup> Street, NW

<u>Case Number</u>	<u>Period in Dispute</u>	<u>Amount in Dispute</u>
23-358755	3/3/23 – 4/4/23	\$1,581.67
23-385621	4/15/23 – 5/2/23	\$1,819.39
23-435954	5/3/23 – 6/2/23	\$2,038.56
23-588702	8/3/23 – 9/5/23	\$2,587.96

Before Janet W. Blassingame, Hearing Officer  
January 24, 2024 at Noon

The customer contested water and sewer bills for the periods noted above. The DC Water and Sewer Authority (DC Water) investigated and determined that the customer has an underground leak. Upon repair of the leak, the utility adjusted that customer's account for excess water usage caused by the leak. The customer disputes the adjustment amount and seeks further account adjustment. The customer requested an administrative hearing.

This matter was scheduled for hearing on January 24, 2024. Present for the hearing were: Shafiq Hirani, the property owner; Stephanie Robinson and Kimberly Arrington, on behalf of DC Water, and, Kristen Gibson, DC Water, observing only.

The property involved is a mixed-use building. There is a bakery on the ground level and five (5) apartments above. Four (4) of the apartments have one kitchen and one bathroom. The fifth apartment has one kitchen and two (2) bathrooms. The bakery has one bathroom, a mop sink, a triple sink, two (2) hand sinks and an ice maker. Each unit has independent HVAC units and there are two (2) outside faucets. Mr. Hirani has owned the building since 2007. The building is monitored by one water meter. Mr. Hirani stated that the water and sewer bill averaged \$350.00 per billing cycle in 2020; in 2021, the water and sewer bill averaged \$341.00 per billing cycle; and, in 2022, the water and sewer bill averaged \$595.00 per billing cycle.

Mr. Hirani stated that he contacted DC Water in 2022 and was told that the utility rates had increased and that additional fees were being imposed. He stated that the explanation seem plausible. He stated that he reached back to DC Water when the bill continued to rise and he had

a plumber inspect the building in early 2023. Mr. Hirani stated that the plumber did minor repairs relating to flush valves and a shower head drip, but the repairs failed to resolve the issue.

Mr. Hirani testified that DC Water did a site inspection in March 2023 and replaced equipment but the customer does not know what was replaced. He asserted that after the utility replaced equipment at the property, the water and sewer bill escalated greatly. Mr. Hirani stated that he had the plumber back repeatedly. He stated that the water meter was replaced twice in August and that Ms. Robinson suggested that there might be an underground leak.

Mr. Hirani testified that leaks were found by Aaron Roberts Plumbing and Ace Plumbing found an underground leak in the utility room on October 12, 2023. The customer stated that once the underground leak was repaired, DC Water made adjustments to the water and sewer account.

Mr. Hirani disputes the length of time that it took to get a resolution of the problem. He asserted that DC Water should have provided more assistance and guidance.

There was no water and sewer bill between July and August, 2023.

Ms. Robinson stated that the customer made consecutive disputes from 4/4/23 to 10/3/23 and that the utility granted an account adjustment spanning 3/3/23 to 11/2/23. She stated that the adjustment was for 50% excess water and 100% sewer, amounting to \$8,071.39 representing 276 CCF of water and 553.90 CCF of sewer.

Mr. Hirani stated that the overall water and sewer charges were \$15,000.00 to \$16,000.00 and that the adjustment did not bring the charges in-line with the building's normal usage.

Mr. Hirani acknowledged that he is the ultimate party responsible for what goes on in the building but he asserted that DC Water could have helped more.

The customer identified GAG General Construction as an earlier plumber and that report was not turned into DC Water. He stated that GAG General Construction was not the right type of plumber to resolve the situation.

Mr. Hirani stated that he asked that more adjustment be added to the account and Ms. Robinson said no.

Ms. Robinson testified that the customer was billed based upon actual meter reads from March 3, 2023 to October 3, 2023. She stated that the meter reads transmitted from the property on hourly.

Ms. Robinson stated that the water meter was removed for testing on July 3, 2023 and the meter was tested on July 6, 2023 and determined to have 100.42% accuracy. She stated that DC Water installed a new meter at the property on July 3, 2023. She stated that DC Water conducted an underground inspection on April 19, 2023 and registration was found on the water meter. She stated that the technician stopped the water at the valve. She stated that notice was served on the

customer. She stated that DC Water served notice on the customer again on October 6, 2023 because registration was found on the water meter.

Ms. Robinson stated that the customer contacted DC Water on April 19, 2023 thru the Call Center and he filed the first dispute on April 22, 2023 and requested an underground inspection. She added that the utility did not assist the customer in finding a plumber. Ms. Arrington interjected that DC Water cannot and does not recommend plumbers to its customer. Ms. Arrington stated that the utility can only advise a customer to get a plumber.

Ms. Robinson stated that in preparing for the administrative hearing, an underground inspection was scheduled in October 2023 because of continuous usage and the utility wanted to rule out that there was an underground leak on the property outside.

Ms. Robinson explained that the customer warranted an adjustment because the leak could not be seen because it was under the floor of the utility room. She added that the plumber had to go down 24 inches.

Ms. Arrington interjected that, with respect to multi-family property, it is the responsibility of the property owner to do inspections and the property owner is responsible for anything inside of the building. She stated that an underground inspection is conducted to determine if the leak is on the private or public side. She asserted that DC Water does not conduct interior inspections multi-family properties.

Ms. Robinson stated that the customer was told that water registration was found in the building and not on public space. She, further, stated that she told the customer that he had been granted the full/maximum adjustment allowed by regulation 21 DCMR 407.4 which states that a property owner is responsible for repair of leaks within the property. She stated that the plumber's report stated that six (6) toilets were found defective, a defective head drip and an underground leak found in the utility room. Ms. Robinson asserted that the customer's water usage decreased after the repairs were made and that the repair met the criteria for an adjustment.

Ms. Robinson testified that, after the April inspection, the customer filed his disputes. She stated that DC Water advised the customer in April, to get a licensed plumber. She did apologize to the customer for the length of time required to get him to understand that he needed to get a plumber. Ms. Arrington stated that the apology is to the customer for his feelings but, DC Water did nothing wrong and did everything it could under its regulations.

Mr. Hirani stated that DC Water came out to the property three (3) times- in April, July, and October 2023. Ms. Robinson interjected that the July trip was to remove the water meter. Ms. Robinson interjected that the utility was at the property in July 2023 to remove the water meter.

Mr. Hirani complained that the service technician ran late in April for the underground leak inspection. He stated that the tenants had been told not to use water between 4:00 pm and 5:00 p.m. due to the scheduled inspection, however the service technician did not conduct the underground inspection until 7:00 p.m. Mr. Hirani stated that by 7:00 p.m., he believed that the

tenants were using water. He stated that, in October 2023, the service technician was also late arriving at the property and the technician did not get to the property until 7:00 p.m. when he was supposed to arrive between 4:00 p.m. and 6:00 p.m. The customer stated that the technician suggested to him that there was an underground leak because continuous water usage was occurring at the property.

Mr. Hirani stated that, before talking with Ms. Robinson, he did not understand the possibility of an underground leak existing inside of the building. He stated that he reached out to probably thirty (30) plumbers before finding ACE Plumbing which had specialized skill to find underground leaks. The customer further asserted that he was never told that continuous water usage was occurring at the property until he conversed with Ms. Robinson. He stated that Ms. Robinson told him that the water flow was 6x - 10x times above normal for the building. He reiterated that he did not understand until October and his conversations with Ms. Robinson. He stated that he received no guidance from the utility in April 2023 to help him understand the nature of the problem. Mr. Hirani asserted that he believes that DC Water has a responsibility to guide its customers on how to handle water problems. He asserted that this has been a great learning experience but at a great cost.

Ms. Robinson offered an apology on behalf of the utility for the length of time required to get a resolution. Mr. Hirani responded that because of the lateness of the inspection in April, tenants were using water after the scheduled inspection time frame. Ms. Arrington responded that the window given to customers is 3 hours for inspections. Ms. Arrington pointed out that each inspection that occurred at the property was within the 3 hours window. Mr. Hirani responded that he was never told of a 3 hours window.

Ms. Arrington stated that when the utility pulls the water meter, water is not interrupted to the building.

Mr. Hirani stated that he is not able to control his tenants using water. He asserted that he told the tenants when water would be interrupted and the service technicians were late beyond when he told the tenants not to use water. He reiterated that he did not understand that usage was continuous until he talked with Ms. Robinson. Mr. Hirani stated that as soon as he understood that usage was continuous, he got it repaired.

Ms. Arrington apologized to the customer if he feels that DC Water did not respond promptly. She added that the adjustment was based upon the utility's regulations.

Ms. Robinson stated that there is hold on the account and that the balance owed is \$5,934.98.

Based upon that foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a mixed-use building, having a commercial bakery on the street level and five (5) apartments above. (Testimony of Shafiq Hirani)
2. The periods in disputes are: March 3, 2023 to June 2, 2023 and August 3, 2023 to September 5, 2023. (Testimony of the parties)
3. The customer made consecutive disputes to DC Water of bills from April 4, 2023 to October 3, 2023. (Testimony of Shafiq Hirani)
4. The customer noticed that the water and sewer bills were increasing for the building starting in year 2022 but when he called DC Water, he was told that rates had increased and he accepted the explanation as plausible cause for the increase. (Testimony of Shafiq Hirani)
5. The customer contacted DC Water in April 2023 regarding a significant increase in the water bill and he was instructed to hire a plumber to inspect the interior of the building. (Testimony of the parties)
6. The customer hired a plumber who found interior leaks in the building but, upon repair, the water and sewer usage remained high. (Testimony of Shafiq Hirani)
7. DC Water conducted an underground inspection on April 19, 2023 and registration was found on the water meter. Notice was served on the customer that a leak was found inside of the service valve. The customer was told to perform dye tests on toilets before hiring a plumber. (Testimony of Stephanie Robinson; DC Water Work Order dated April 19, 2023)
8. The customer was skeptical of the inspection results because the service technician was late, arriving after the time frame that tenants had been told not to use water. The property owner believed that the tenants were using water during the inspection. (Testimony of Shafiq Hirani)
9. The customer disputed the water and sewer bill on April 22, 2023. (Testimony of Stephanie Robinson)
10. The customer hired and had several plumbers to inspect the property without resolution of the high usage. The customer stated that the plumber (unspecified) did minor repairs to include flush valves and shower head drips. (Testimony of Shafiq Hirani)
11. On October 6, 2023, DC Water conducted a second underground inspection to rule out the existence of an underground leak on public space in preparation for the administrative hearing. Registration was found on the water meter and the customer was served notice of an internal issue. (Testimony of Stephanie Robinson; DC Water Work Order dated October 6, 2023)
12. Upon conversation with Ms. Robinson, the customer was told of continuous usage occurring at the building and of the possibility of an underground leak inside of the building. (Testimony of Shafiq Hirani)
13. The customer hired Ace Plumbing (Aaron Rogers) and on October 12, 2023, the plumber found six (6) defective toilets, a shower head leak, and a leak under the floor in the utility room of the building. (Testimony of the parties; Plumber's Report by ACE Plumbing (Aaron Rogers) dated October 12, 2023)
14. The water meter was removed for testing on July 3, 2023 and the meter was tested on July 6, 2023 and determined to have 100.42% accuracy (Testimony of Stephanie Robinson)

15. Upon repair of the leak in the utility room of the building and submission of the plumber's report, utility granted an account adjustment spanning 3/3/23 to 11/2/23. The adjustment was for 50% excess water and 100% sewer, amounting to \$8,071.39 representing 276 CCF of water and 553.90 CCF of sewer. (Testimony of Stephanie Robinson)

### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR§ 420.7 and §420.8)
2. The property owner is the ultimate responsible party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012.
3. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR §403.
4. DC Water may request that the customer submit a plumber's report stating that there are no leaks on the property and that no issues on private property are contributing to increase water usage. (21 DCMR 403.3)
5. 21 DCMR 404.1- Upon completion of the investigation, DC Water shall issue a written decision containing a brief description of the investigation and findings.
6. 21 DCMR 404.2- On the basis of the investigation and findings, DC Water shall make appropriate adjustments to the bill for water or sewer charges in accordance with the provisions of this Chapter.
7. 21 DCMR §407.2 states, in part, If the investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing.
8. If, pursuant to §407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant



shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4

9. The adjusted amount, in accordance with § 407.4, shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
  - (a) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
  - (b) The owner has repaired the leak within 10 calendar days after the bill investigation is issued to the owner or occupant;
  - (c) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and
  - (d) request for adjustment has been made in accordance with § 402.1 (a).
10. The General Manager may, at their discretion, adjust up to 100% of the excess sewer charges resulting from an underground leak if it is determined that the excess water usage did not enter the wastewater system. (21 DCMR 407.7)
11. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant, (21 DCMR 406)

### DECISION

The customer failed to establish a prima facie case that the determination of DC Water was wrong or for some other reason he should not be responsible for payment of the bills.

The evidence and testimony established that there was an underground leak in the utility room of the customer's building, as well as, other interior plumbing issues to include six (6) toilets and a faulty shower head found by a plumber in October 2023. It was further established that DC Water investigated the customer's bill disputes by first instructing him to hire a plumber to rule out interior leaks at the property, then, it conducted an underground inspection in April 2023 and determined that there was a leak inside of the building.

The customer's contention is that DC Water should have done more to assist him in determining the cause of increased water usage at the building. The customer asserted that he did not know the possibility of an underground leak inside of the building and DC Water should have told him of the same months earlier. He, also, asserted that the utility failed to inform him that continuous water usage was occurring at the property. The customer testified as to having several plumbing inspections performed inside the building and the cause of the leak not be detected. He asserted that as soon as he understood that there might be underground leak inside of the property, he hired a plumber with the necessary equipment and skill to find the leak and

repair the leak. The customer is dissatisfied with the amount of adjustment granted for excess water caused by the underground leak found within the building.

Pursuant to 21 DCMR §407, DC Water may grant an account adjustment of 50% of excess water caused by a leak not visible to the naked eye and 100% of sewer charges for water determined not to have entered the sewer system.


DC Water established that it granted the customer the maximum allowed adjustment for water and sewer for the period from March 3, 2023 to November 2, 2023. The customer started his disputes in April 2023 and the leak was repaired in October 2023. During the testimony, no mention was made that DC Water took into consideration reducing for the defective toilets and/or shower head leak found by the customer's plumber in October 2023. As such, it appears that the customer may have received a greater adjustment than warranted because there were other leaks within the building which contributed to excess water usage and such leaks were not subject to account adjustment. Pursuant to 21 DCMR § 406, the repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant.

The customer contended that DC Water should have done more to assist him in finding the cause of the excessive water usage. Clearly, time elapsed after DC Water advised the customer in April 2023 that the cause of the excess water usage was inside of the building. DC Water, however, was not responsible for the delay in the customer finding and resolving the issue. The testimony and evidence established that the utility conducted an underground leak inspection in April 2023 and as a result of the inspection, the customer was served notice that the cause of the leak was inside of the building. The customer acknowledged, during the hearing, that he understood that he is the ultimate person responsible for what goes on inside of his property. DC Water established that it does not conduct interior inspections for leaks in multi-family buildings and it does not recommend plumbers to its customers when it tells customers to hire a plumber. In this case, the customer testified that he failed to believe the service technician in April 2023, after the underground inspection, because the inspection occurred later than he had informed his tenants to refrain from using water and he thought that the tenants were using water during the inspection. The customer, further, testified without going into details or providing a plumber's report that he hired GAG General Contractors regarding work at the building, but that the company was not the right type of plumbers to resolve the situation. The customer, also, testified that he had plumbers at the property several times. Obviously, the plumbers hired by the customer until he hired ACE Plumbing did not find all the leaks causing excess water usage at the property.

As noted above, the customer acknowledged that he is the ultimate person responsible for what goes on within his property. DC Water had a responsibility to investigate the customer's dispute and it did so through conducting an underground inspection and ruling out such a leak on public space. The utility tested the water meter and found the meter operating properly. The utility informed the customer that the cause of the excess water usage was inside of the building. The customer was told twice- in April and October 2023, that the cause of the leak was inside of the building. The Hearing Officer determines that DC Water fulfilled its responsibility to the customer regarding his problem of high-water usage occurring at the property and the utility

properly applied an adjustment to the customer's account, when the customer repaired the leak under the floor of the utility room within the building.

Accordingly, the customer is not entitled to any further adjustment of the water and sewer account due to excessive water usage caused by a leak not visible to the naked eye which, in this instance, was under the floor of the utility room within the building.

  
Janet W. Blassingame, Hearing Officer

Date: March 20, 2024

Copy to:

Mr. Shafiq Hirani  
440 L Street, NW  
Washington, DC 20001

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY  
DEPARTMENT OF CUSTOMER SERVICES**

In re: Patricia Gore  
4409 Cimarron Lane  
Fort Washington, MD 20744

Service Address:  
[REDACTED] Half Street, SW

Account No: [REDACTED]  
Case No: 23-478758

Amount in Dispute: \$558.11

Before Janet W. Blassingame, Hearing Officer  
January 26, 2024 at 10:00 a.m.

The customer contested water and sewer bills for the period May 12, 2023 to June 13, 2023. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 26, 2024. Present for the hearing were: Patricia Gore, the property owner; Stephanie Robison and Kimberly Arrington on behalf of DC Water, as well as, Kristen Gibson, DC Water, observing only.

The property involved is detached row house having one and one-half (1 ½) bathrooms, one kitchen, a washing machine, a dishwasher and one outside faucet. Two (2) tenants occupy the house which has been owned by Patricia Gore for twenty (20) years. The water and sewer bill is, typically, One Hundred Dollars (\$100.00) per billing cycle. Ms. Gore sold the house on December 19, 2023.

Ms. Gore testified that she received notice from DC Water of high usage occurring at the property. She stated that the alerts started in late April 2023. She stated that a repairman found a defective toilet flapper and that, on May 2, 2023, a new fill valve and flapper were installed. She also, stated that, on May 16, 2023, the chain to lift the toilet flapper had to be adjusted. Ms. Gore testified that after the repairs were performed, she did not receive any more alerts from the utility but she did receive a bill for the period in dispute in the amount of \$558.11.

Ms. Gore asserted that she acted quickly to resolve the problem at the property and was relying upon HUNA alerts and she did not get any alerts after May 13, 2023.

Ms. Robinson testified that the water and sewer charges were based upon actual meter reads transmitted hourly from the property. She stated that the charges were reviewed and determined accurate.

Ms. Robinson testified that HUNA alerts were sent, by phone, to the customer on May 13, 2023, May 16, 2023, May 21, 2023, May 30, 2023, and June 5, 2023. She stated that DC Water did not perform an underground inspection at the property because by August 9, 2023, water usage had returned to within normal range and the customer admitted that existence of leaks in her Petition on August 22, 2023. Ms. Robinson stated that the customer admitted a toilet repair. Ms. Robinson, also, asserted that the customer did not submit a plumber's report.

Ms. Robinson pointed out that 21 DCMR 406.2 dictates that the property owner is responsible for leaking fixtures and faucets.

Ms. Robinson testified that there was a spike in water used at the property from April 25, 2023 to June 13, 2023.

Ms. Arrington stated that DC Water send alerts by email and phone. She explained that there are two (2) types of alerts sent to customers. She stated that HUNA alerts go to the customer's telephone and consecutive usage water alerts are sent by email to the customer.

Ms. Robinson stated that on April 25 and 26, 2023, the utility sent notice of consecutive water usage by email to the customer, as well as, on May 13, 2023.

Ms. Gore stated that after receiving the June 2023 bill from DC Water, she sent the repairman back to the house with instructions for him to repair everything. She stated that he put on a new handle.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is rental property owned by Patricia Gore. (Testimony of Patricia Gore)
2. The period in dispute is May 12, 2023 to June 13, 2023. (Testimony of the parties)
3. There was a significant spike in water usage occurring at the property from April 25, 2023 to June 13, 2023. (Testimony of Stephanie Robinson)
4. DC Water sent the customer alerts of high-water usage and consecutive water usage occurring at the property. HUNA alerts were telephoned on May 13, 16, 21, and 30, continuous water use alerts were emailed to the customer on April 25 and 26, and May 13, 2023. (Testimony of Stephanie Robinson)
5. The customer admitted that toilet repairs were made at the property, due to a defective toilet flapper, on May 2 and 16, 2023. (Testimony of Patricia Gore)
6. The customer stated that after receipt of the bill in dispute, she dispatched a repairman back to the property and a handle was replaced.

#### CONCLUSIONS OF LAW



Ms. Robinson testified that HUNA alerts were sent, by phone, to the customer on May 13, 2023, May 16, 2023, May 21, 2023, May 30, 2023, and June 5, 2023. She stated that DC Water did not perform an underground inspection at the property because by August 9, 2023, water usage had returned to within normal range and the customer admitted the existence of leaks in her Petition on August 22, 2023. Ms. Robinson stated that the customer admitted a toilet repair. Ms. Robinson, also, asserted that the customer did not submit a plumber's report.

Ms. Robinson pointed out that 21 DCMR 406.2 dictates that the property owner is responsible for leaking fixtures and faucets.

Ms. Robinson testified that there was a spike in water used at the property from April 25, 2023 to June 13, 2023.

Ms. Arrington stated that DC Water sends alerts by email and phone. She explained that there are two (2) types of alerts sent to customers. She stated that HUNA alerts go to the customer's telephone and consecutive usage water alerts are sent by email to the customer.

Ms. Robinson stated that, on April 25 and 26, 2023, the utility sent notice of consecutive water usage by email to the customer, as well as, on May 13, 2023.

Ms. Gore stated that, after receiving the June 2023 bill from DC Water, she sent the repairman back to the house with instructions for him to repair everything. She stated that he put on a new handle.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is rental property owned by Patricia Gore. (Testimony of Patricia Gore)
2. The period in dispute is May 12, 2023 to June 13, 2023. (Testimony of the parties)
3. There was a spike in water usage at the property from April 25, 2023 to June 13, 2023. (Testimony of Stephanie Robinson)
4. DC Water sent the customer alerts of high-water usage and consecutive water usage occurring at the property. HUNA alerts were telephoned on May 13, 16, 21, and 30, and continuous water use alerts were emailed to the customer on April 25 and 26, and May 13, 2023. (Testimony of Stephanie Robinson)
5. The customer admitted that toilet repairs were made at the property, due to a defective toilet flapper, on May 2 and 16, 2023 and that a toilet handle was replaced after receipt of the June 2023 water and sewer bill. (Testimony of Patricia Gore)
6. The customer stated that, after receipt of the bill in dispute, she dispatched a repairman back to the property and a handle was replaced.

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR§ 420.7 and §420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR §403.
3. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant, (21 DCMR 406)
4. The property owner is the ultimate responsible party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012.

#### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong or for some other reason, she should not be held responsible for its payment.


The evidence and testimony established that there was spike in water usage at the property from April 25, 2023 to June 13, 2023 and that there was a defective toilet at the property during the period in dispute. It was established that the utility sent HUNA alerts and continuous usage notifications to the customer starting in late April 23, 2023 through May 30, 2023. Moreover, the customer acknowledged that toilet repairs were performed in May and June 2023.

DC Municipal Regulation 21 DCMR 406 dictates that the repair of a household fixture, such as a toilet, is the responsibility of the property owner or tenant, and, DC Water will not adjust for excess water usage caused by the defective household fixture.

In this case, it was clear that the property had a defective toilet during the timeframe at issue. DC Water ruled out the existence of an underground leak and based upon its investigation, there was no evidence of a faulty water meter or miscalculation of the customer's bill and the customer had been billed upon actual meter reads transmitted from the property on an hourly basis.

customer had been billed upon actual meter reads transmitted from the property on an hourly basis.

Accordingly, the determination by DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

  
Janet W. Blessingame, Hearing Officer  
Date: March 20, 2024

Copy to:

Ms. Patricia Gore  
4409 Cimarron Lane  
Fort Washington, MD 20744

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**  
**DEPARTMENT OF CUSTOMER SERVICES**

In re: Mark Rasmussen  
1646 Mrytle Street NW  
Washington, DC 20012

Service Address:  
[REDACTED] Kalorama Rd NW

Account No: [REDACTED]  
Case No: 23-455282

Dates and Amounts in Dispute:  
3/29/2023 – 4/27/23           \$225.39  
4/28/23 – 5/26/23           \$165.14

Before Janet W. Blassingame, Hearing Officer  
January 26, 2024 at Noon

The customer contested water and sewer bills as noted above. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 26, 2024. Present for the hearing were: Mark Rasmussen, the property owner; Stephanie Robison and Kimberly Arrington on behalf of DC Water, as well as, Kristen Gibson, DC Water, observing only.

The property involved is a townhouse having one and one-half (1 ½) bathrooms, one kitchen, a washing machine, a dishwasher, and one outside faucet. Mr. Rasmussen has owned the property since 1992. The property has two (2) tenants who have occupied the house since December 2020. Prior to February 2022, water usage ranged between 2.5 CCF to 3 CCF per billing cycle.

Mr. Rasmussen stated that he received high water usage alerts from DC Water but he did not pay a lot of attention to the water and sewer bills. He stated that the alerts started in February 2022 and he called DC Water to try and figure out the cause. The customer testified that he did a dye test and found a slight toilet leak. He stated that he replaced the toilet flapper. He stated that he did not hire a plumber and did the repair himself. He stated that after the repair, he did not receive another alert from the utility until March 2023 and then, the alerts were consecutive.

Mr. Rasmussen testified that in April or May 2023, he figured out that there had to be another cause of high usage triggering the alerts. He stated that water usage at the property went up to 10 CCF and in May, water usage was over 11 CCF.

Mr. Rasmussen stated that DC Water came out to the property to inspect and when the service valve was turned off, the water continued moving. He stated that the service technician, initially, stated that the leak was on the public side, but he reversed and stated that the leak was on the private side after a second inspection.

The customer stated that Ben's Plumbing found lead pipe. He stated that the lead pipe was replaced through the Lead Program in May 2023.

Mr. Rasmussen testified that DC Water gave an adjustment for the cost of the lead pipe replacement in the amount of \$2,500.00 and the utility adjusted his water and sewer account with a \$170.00 or \$180.00 credit. Mr. Rasmussen asserted that he is grateful for the adjustment granted but he believes that the underground leak started in February 2022. He asserted that he believes that his tenants were paying an inflated water and sewer bill due to the invisible leak.

Mr. Rasmussen stated that DC Water used comparables for when the leak was present. He asserted that one can see a spike in water usage in February 2022 when usage went from 2.05 CCF to 5 CCF, then 7 CCF, and then in August to 8CCF. He asserted that water usage at the property has not been below 8CCF since September 2022 until the pipe repair was done in May 2023.

Mr. Rasmussen asserted that he believes that there has been an overpayment of \$1,400.00 due to the existence of the underground leak.

Ms. Robinson testified that DC Water sent alerts on 2/2/2022 and 2/8/2022. She stated that Mr. Rasmussen contacted the utility in response to the alerts and told the service representative that he believed that the high-water usage was due to a toilet.

Ms. Robinson stated that DC Water sent the customer an alert of consecutive high-water usage starting on March 10, 2023 and alerts continued 3/11/23 (3 times); 5/4/23, 5/5/23 (3 times), 5/6/23 (twice), 5/7/23 and 5/8/23. She pointed out that the customer did not dispute the charges in either February or March 2023.

Ms. Robinson stated that the bills were based on actual meter reads transmitted hourly from the property. She stated that an underground inspection was conducted on 5/3/23 and 5/4/23 and the inspection determined that the leak was on private property.

Ms. Robinson stated that DC Water gave the customer an account adjustment pursuant to 21 DCMR 407.4 in the amount of 50% for water and 100% for sewer. She stated that the adjusted period was 3/29/23 to 5/26/23 pursuant to 21 DCMR 407.5. She stated that, pursuant to 21 DCMR 407.6 the customer's sewer adjustment at 100% amounted to \$197.14.

She stated that DC Water has filed a Motion to Dismiss regarding the customer's dispute for the period 2/22 to 3/23. She stated that the Motion to Dismiss is pending.

Ms. Robinson pointed out that the record reflects that an alert was sent to the customer on 2/8. She asserted that, if an underground leak were present, the customer would have received consecutive usage alerts. Ms. Robinson stated that the consecutive usage alerts started on 3/10/23. Ms. Arrington interjected that the water meter does not show consecutive usage and an underground leak does not auto-fix. She stated that, in March 2022, the water usage at the property was within normal range and that there were stops in water usage until September 2022 bill period of 8/27/22 to 9/28/22. Ms. Arrington stated that the customer did not receive any alerts at that time because the selected threshold by the customer was 6x above normal usage so even though the usage was higher, it did not reach the threshold for issuance of an alert by the



utility. Ms. Arrington stated that the customer began receiving consecutive usage alerts as of 3/10/23.

Mr. Rasmussen stated that after the February 2022 alert, there was a decreased in water usage but in September 2022, water usage started going up. Ms. Arrington responded that the CUNA system was working in September 2022 and the customer's usage was not consecutive between September 2022 and February 2023. She reiterated that consecutive water usage started at the property in March 2023. She asserted that, prior to March 2023, water usage at the property was high but not consecutive.

Mr. Rasmussen stated that the tenants were not paying attention to the raise in water usage and he did not realize until the usage record was looked at for March – April 2023. The customer stated that DC Water was contacted in April 2023 and the utility did the underground check on May 3<sup>rd</sup> and he, then, called regarding the 4/27/23 dated bill.

In referring to the hourly water usage record for the property, Ms. Arrington noted that on 3/23/23, the record shows water used 2 am to 6 am.

Ms. Robinson stated that, before March, the customer's dispute was untimely. She argues that a dispute investigation is triggered when a customer files a written dispute. She stated that the customer filed a written dispute with the utility on 6/27/23 and he called the utility on 4/28/23. She stated that the utility included in the adjustment the 4/27/23 bill period.

Ms. Arrington stated that bill disputes are not continuous and a customer must call in for each bill.

Mr. Rasmussen stated that this was an invisible leak.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a townhouse owned by Mark Rasmussen which has been rented to two (2) tenants since year 2020. (Testimony of Mark Rasmussen)
2. The period in dispute is March 29, 2023 to May 26, 2023. (Testimony of the parties)
3. The customer was alerted by DC Water of increase usage occurring at the property in year 2022 and the customer conducted a dye test and replaced a toilet flapper and there were no more alerts sent until March 2023. (Testimony of Mark Rasmussen)
4. DC Water sent alerts to the customer of consecutive water usage occurring at the property on 3/11/23, 5/4/23, 5/5/23, 5/6/23, 5/7/23, and 5/8/23. (Testimony of Stephanie Robinson)
5. The customer called DC Water on April 28, 2023 regarding a high bill concern. (DC Water Interaction Notes dated 4/28/2023)
6. DC Water conducted underground leak inspections at the property on May 3 and May 4, 2023 and determined that there was an underground leak for which the owner was responsible for repair. The customer was advised of the utility's findings and the customer was served with notice to repair on both dates. (Testimony of the parties; DC

Water Service/Work Order History Reports 23-375483 dated May 4, 2023 and 23-362617 dated May 3, 2023)

7. The customer hired Ben's Plumbing and lead pipe was found on the property. Going through the DC Lead Program, the customer was able to secure financial assistance for replacement of the lead pipes and with replacement of the lead pipe, the underground leak was resolved in May 2023. (Testimony of Mark Rasmussen)
8. The customer completed the lead service replacement on 05/18/23. (DC Water Interaction Notes dated 7/3/23)
9. DC Water adjusted the customer's account providing 50% for excess water caused by the underground leak and 100% sewer charges for the excess water caused by the underground leak for the period 3/29/23 to 4/27/23. The utility used the comparable periods 3/31/22 to 4/28/22 and 4/29/22 to 5/27/22 to determine the usage during the period. (Testimony of Stephanie Robinson; DC Water email to Mark Rasmussen dated July 3, 3034 from Stephanie Robinson)
10. The customer initiated his bill dispute on April 28, 2023 regarding the April 27, 2023 bill. (Testimony of Mark Rasmussen)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR§ 420.7 and §420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR §403.
3. 21 DCMR 404.1- Upon completion of the investigation, DC Water shall issue a written decision containing a brief description of the investigation and findings.
4. 21 DCMR 404.2- On the basis of the investigation and findings, DC Water shall make appropriate adjustments to the bill for water or sewer charges in accordance with the provisions of this Chapter.
5. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant, (21 DCMR 406)
6. 21 DCMR §407.2 states, in part, If the investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location

- where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing.
7. If, pursuant to 21 DCMR §407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4
  8. The adjusted amount, in accordance with § 407.4, shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
    - (e) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
    - (f) The owner has repaired the leak within 10 calendar days after the bill investigation is issued to the owner or occupant;
    - (g) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and
    - (h) The request for adjustment has been made in accordance with § 402.1 (a).
  9. The General Manager may, at their discretion, adjust up to 100% of the excess sewer charges resulting from an underground leak if it is determined that the excess water usage did not enter the wastewater system. (21 DCMR 407.7)
  10. The property owner is the ultimate responsible party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012.

### DECISION

The customer in this matter was accorded an account adjustment based upon the finding and repair of an underground leak on the private property. The customer disputed the period of adjustment and asserted that the underground leak was present in year 2022 and, as such, DC Water should have used a different comparable period which would have afforded a larger adjustment. The customer wrote that he sought an adjustment back to January 2022. In his testimony, the customer stated that water usage started going up in September 2022.

The customer failed to establish a prima facie case that more likely than not the utility was wrong in its adjustment of his account.

Pursuant to 21 DCMR §407.2, if an underground leak is determined to be on private property, as it was in this matter, the owner or occupant is to repair the leak and DC Water, at their discretion, upon request of the owner, may adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4

The adjustment period granted by DC Water was 3/29/2023 to 5/26/2023 and the utility used 3/31/2022 to 5/27/2022 as the comparable period to determine the customer's normal usage without the existence of an underground leak.

DC Water alerted the customer of high-water usage occurring at the property in February 2022 and the evidence and testimony established that there was a defective toilet at the property and after replacement of the toilet flapper, the alerts stopped. Not until March 2023 did DC Water alert the customer of high-water usage, again, occurring at the property and its alert was that there was consecutive water usage occurring, meaning that usage was not stopping but was continuous. The Hearing Officer takes judicial notice that the difference between a fixture leak and an underground leak is that a fixture leak may stop with or without repair but an underground will continue and requires repair before it will stop. In this matter, the high usage in year 2022 was not caused by an underground leak because the usage stopped after repair of the toilet. When consecutive water usage started at the property in March 2023, such usage is indicative of the possibility of an underground leak. The utility's first alert of consecutive usage occurring at the property was on March 11, 2023. The utility confirmed the existence of an underground leak on May 3 and May 4, 2023. The customer called the utility on April 28, 2023 regarding his April 27, 2023 bill and that call initiated the investigation and the utility went out to the property to conduct the underground inspection on May 3, 2023.

The utility adjusted the customer's account back to March 2023 when the first consecutive alert of water usage was issued, however, the alert was issued on March 11, 2023 and the adjustment start date was March 29, 2023. As such, it is the opinion of the Hearing Officer that, at maximum, the adjustment might have started as of the date of the alert- March 11, 2023 and comparables applied based upon that two (2) week earlier start date, however, adjustment is within the discretion of the General Manager of DC Water and the adjustment applied complies with the applicable regulations- 21 DCMR 407.

There was no evidence of consecutive usage occurring at the property prior to March 11, 2023. Increased water usage can be caused by numerous factors to include but not be limited to a defective toilet as was the case in February 2022. Moreover, the regulation states that adjustment will be granted for the disputed bill (bill dated April 27, 2023) and any bill issued during the investigation of the bill dispute. As noted, the customer called regarding the bill dated April 27, 2023 and made a written dispute on April 28, 2023 regarding the bill. There was no evidence or testimony of a prior dispute by the customer which applied to the bill period inclusive of the March 11, 2023 alert sent.

Accordingly, DC Water correctly applied that applicable regulations in granting and adjusting the customer account and the customer failed in his assertion that he was entitled to a larger adjustment period and amount of adjustment. As such, the determination of DC Water is hereby AFFIRMED.

Janet W. Blessingame  
Janet W. Blessingame, Hearing Officer

Date: March 20, 2014

Copy to:

Mark Rasmussen  
1646 Myrtle Street, NW  
Washington, DC 20012



**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**  
**DEPARTMENT OF CUSTOMER SERVICES**

In re: Wyeth Condominium  
c/o Magdieli Property Management LLC  
4200 Wisconsin Avenue NW  
Suite 106-197  
Washington, DC, 20016

Service Address:  
[REDACTED] Georgia Avenue NW

Account No: [REDACTED]  
Case No: 23-469089

Amount in Dispute: \$2,234.58

Before Janet W. Blassingame, Hearing Officer  
January 31, 2024 at 10:00 a.m.

The customer contested water and sewer bills as noted above. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 31, 2024. Present for the hearing were: Arlene Andrews and Kimberly Arrington on behalf of DC Water; Wyeth Condominium Board President, Daphna Shai; Wyeth Condominium Board Members, Andrew Kurtzman, and Cheryl McBride; and, observing only, Kristen Gibson, DC Water.

The property involved is a nine (9) unit condominium building built in year 2019. Each unit has a kitchen, washing machine and dishwasher. Four (4) units have two (2) bathrooms each. Five (5) units have one bathroom, each. The building has one outside faucet and is monitored by one water meter. The water and sewer bill averages \$400.00 per billing cycle.

Mr. Kurtzman testified that, after the period in dispute, consumption dropped and was 50% lower. He stated that they checked with all owners and no one had a leak. He stated that the charges in dispute were received on June 26, 2023. He added that as of June 29, 2023, no meter reads were available.

Mr. Kurtzman stated that DC Water came out to the property on July 12, 2023 and the technician stated that the water meter was blank. He stated that the MTU was replaced. Mr. Kurtzman asserted that he does not understand how a meter read was taken when the meter was blank.

Mr. Kurtzman stated that the water meter was replaced on September 28, 2023.

Mr. Kurtzman asserted that for two (2) years, each month of June, high water usage is charged to the condominium. He asserted that the high water charged, only, has occurred during the month of June.

Mr. Kurtzman stated that the condominium has had a structural issue. He stated that in July, a panic note was sent to all owners to be more responsible. He added that the building had two (2) vacancies in July and in August 2023, there was at least one vacant unit.

Mr. Kurtzman stated that no plumber inspected the building.

Daphna Shai interjected that the MTU was replaced on July 12, 2023. Mr. Kurtzman stated that change to AMR from field reads seems to have effected reads at/from the building.

Ms. Andrews stated that there are two (2) components regarding DC Water equipment at the building- the water meter and the MTU. She stated that the water meter registers water usage and the MTU transmits meter reads.

Ms. Andrews stated that the MTU at the building was changed on July 12, 2023. She stated that there is no record that the water meter was blank on July 12, 2023. She stated that the field read of the water meter taken by the service technician on July 12<sup>th</sup> was in-line with previous field reads and that the condominium was charged based upon an actual meter reading by the service technician.

Ms. Andrews testified that DC Water tested the water meter from the building and the meter was determined to have 98.2% accuracy.

Ms. Andrews stated that the investigation report dated August 3, 2023 made the finding that no adjustment was warranted. She asserted that this matter is controlled by 21 DCMR 408.1 regarding inconclusive findings, in that, no cause of the high usage was determined based upon all tests and checks performed by the utility. She explained that the utility checked the customer's billing and no error was found in the utility's billing of the customer.

Ms. Andrews asserted that because the water usage at the building declined, the decline in usage is indicative that the usage was controlled at the premises and no underground leak is present.

Ms. Andrews stated that the customer explained the declined in that there were vacancies in the building.

Ms. Andrews stated that the November 2022 field read was of 11.90 CCF and the December 2022 field read was of 21.8 CCF. She stated that the MTU stopped transmitting in December 2021, although the last transmittal was August 22, 2022. She stated that the utility was mostly not getting transmitted meter reads from the property. She stated that the MTU was replaced on July 12, 2023.

Mr. Kurtzman gave examples of water usage from prior years. He stated that in year 2021, in June, the water usage was 5 CCF and in August, the water usage was 3 CCF. He stated that in year 2022 in June, the water usage was 9.1 CCF and in August, the water usage was 7.2 CCF.

Ms. Andrews read from pg. 10 of the Interaction Note dated 6/29/23 that there were no reads in Alclara system noted, may not receive reads. Ms. Andrews attempted to clarify and stated that the utility may not receive the meter reads but the reads are/remain on the water meter. She stated that the service technician uses a handheld meter reader to obtain the meter read and the technician, then, uploads the meter read into Alclara. She stated that, when the MTU is working, meter reads are transmitted hourly. She stated that manually obtained meter reads are stored for billing system purposes. She stated that AMR reads are available for customers but Alclara is used by DC Water for billing. She added that the HUNA alert system is provided as a courtesy to customer and can be used only on transmitted meter reads. She added that the condominium must set up an on-line account for alerts to be sent by the utility,

Mr. Kurtzman interjected that no alerts were received by the condominium and Ms. Andrews responded, referring to pg. 7 of the Interaction Notes, that Calarina Shai called in to remove information for HUNA. She stated that the note might have been referencing Daphna Shai.

The Hearing Officer interjected to clarify that no MTU transmissions means no HUNA alerts.

Mr. Kurtzman stated that the property manager told him that there were no reads on the water meter and that the meter was blank with no visible numbers.

Ms. Arrington stated that there may have been a misunderstanding. She stated that the MTU was not working but the water meter was capturing usage.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a nine (9) unit condominium building. (Testimony of Andrew Kurtzman)
2. The period in dispute is 5/24/23 to 6/26/23. (Testimony of the parties)
3. There was a significant increase in water usage reported to have occurred at the building in June 2023. (DC Water Meter Readings-Billed)
4. The customer was billed based upon a field read taken by a service technician. (Testimony of Arlene Andrews; DC Water- Meter Readings- Billed)
5. The customer asserted that for the past two (2) years, the condominium has received a high water and sewer bill for reasons unknown. (Testimony of Andrew Kurtzman)
6. The subsequent July 2023 bill reflected a decline in water usage at the building. (Testimony of Andrew Kurtzman; DC Water- Meter Readings-Billed)

7. Building owners were asked if there were any leaks in their respective units and each owner denied a plumber issue. (Testimony of Andrew Kurtzman)
8. No plumber inspected the building for leaks or other plumbing issues that may have caused increase water usage during the period at issue. (Testimony of Andrew Kurtzman)
9. DC Water ruled out the existence of an underground leak as a cause of increase water usage at the building because the usage declined and underground leaks require repair to stop leaking. (Testimony of Arlene Andrews)
10. DC Water investigated the bill dispute and found no billing error. (Testimony of Arlene Andrews)
11. DC Water tested the water meter and the meter was determined to have 98.2% accuracy. (Testimony of Arlene Andrews)
12. The MTU at the building started having transmission issues in December 2021 with the utility receiving sporadic transmission of meter reads or the utility would dispatch a service technician to obtain a manual read of the water meter. (Testimony of Arlene Andrews and Kimberly Arrington)
13. Even though the MTU may fail to transmit meter readings electronically, the meter reads are available in the water meter and service technicians use a handheld device to read the water meter and the service technician then uploads the meter read for billing purposes. (Testimony of Kimberly Arrington)
14. In the absence of electronically transmitted meter readings by the MTU, the utility's HUNA alert system is not available to customers. (Testimony of Kimberly Arrington)
15. The customer did not receive a HUNA alert of high usage occurring at the building. (Testimony of Andrew Kurtzman)
16. A customer must have an on-line account with DC Water to receive HUNA alerts and contact information must be on-file with the utility. (Testimony of Arlene Andrews)
17. Calarina Shai called DC Water to remove contact information from the condominium's water and sewer account for HUNA alerts. (Testimony of Arlene Andrews; DC Water Interaction Note pg. 7)
18. The Hearing Officer takes judicial notice that DC Water follows the standards set by the American Water Works Association and that a water meter is considered operating accurately if between 98.5% and 101.5% registration.

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR§ 420.7 and §420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;

- (d) Check the meter for malfunction;
- (e) Check the water-cooled air conditioning system, if any, for malfunction; and
- (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR §403.

3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
4. The property owner is the ultimate responsible party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012.

#### DECISION

The condominium's property owners, through their representatives, failed to establish a prima facie case that more likely than not the bill is dispute was wrong or for some other reason they should not be responsible for payment of the water and sewer charges.

The condominium did receive an unusually high bill in June 2023. The condominium's bill in July 2023 declined significantly.

DC Water has an obligation to investigate a bill dispute and, in this matter, the utility did investigate by testing the water meter, confirming the meter read and ruling out the existence of an underground leak. Regarding multi-family dwellings, the utility does not inspect the property interior for leaks and/or plumbing issue. Whatever may be occurring within the building is the responsibility of the property owner(s). Here, the Board asked the condominium owners if anything was amiss in their respective units and each owner denied any problem. The testimony was that no plumber was hired to inspect the building and/or individual units for leaks or plumbing issues which may cause or did cause excessive water usage in June 2023. There was testimony of a structural issue involving the condominium, however, DC Water is not responsible for the parties' building. The property owners are responsible for water and sewer usage at the property and they failed to seriously investigate the cause of the increased water usage that occurred.

On DC Water's part, its investigation showed no cause of increase water usage that was



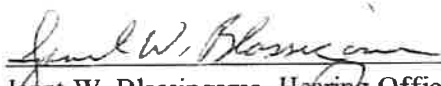
attributable to the utility. In fact, the water meter test reflected that the meter was under registering water used at the building. As such, the property owners were not being charged fully for all water used. The Hearing Officer takes judicial notice that DC Water follows the standards set by the American Water Works Association and that a water meter is considered operating accurately if between 98.5% and 101.5% registration. The utility, also, gave testimony and evidence that the customer had been billed based upon field read taken by a service technician and that the failure of the MTU in transmitting meter read had no bearing upon the water meter registering usage. DC Water asserted that because the usage declined next billing cycle, the usage was controlled within the building. There was no evidence or testimony that the utility was incorrect.

There seemed to be some misunderstanding that meter reads were unavailable in June 2023. The utility explained that no meter read was available electronically but that reads were in the water meter. There was explanation regarding the difference between the billing system and high usage alert notification system used by DC Water and it was explained that the utility obtained the customer's usage from the water meter thru sending a service technician to obtain a meter reading using a handheld device.

21 DCMR 408 dictates that when all tests and checks fail to find the cause of excessive water usage, the findings are inconclusive and DC Water does not adjust the customer's account due to excessive water usage.

In this matter, all of DC Water's tests and checks did not find a cause of the excessive water usage and the property owners failed to investigate a cause other than to ask owners if something was wrong in their units.

Based upon the foregoing, the determination of DC Water that the charges are valid and not basis exists to adjust the customer account is hereby AFFIRMED.

  
Janet W. Blassingame, Hearing Officer  
Date: March 20, 2024

Copy to:

Andrew Kurtzman  
1326 Chetworth Ct.  
Alexandria, VA 22314

Wyeth Condominium  
c/o Magdieli Property Management LLC  
4200 Wisconsin Avenue NW  
Suite 206 – 197  
Washington, DC 20016

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]

[REDACTED] Minnesota Ave. NE  
Washington, DC 20019

Account No: [REDACTED]  
Case No: 23-488759

Amount in Dispute: \$ 1,053.78

Before Janet W. Blassingame, Hearing Officer  
January 31, 2024 at Noon

The customer contested a water and sewer bill for the period May 23, 2023 to June 23, 2023. The DC Water and Sewer Authority (DC Water) investigated and determined that the charges were valid and no basis existed to adjust the account. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 31, 2024. Present for the hearing were: [REDACTED] the customer; LaFatima Black and Kimberly Arrington, on behalf of DC Water, as well as, Kristen Gibson, DC Water, observing only.

The property involved is single family home purchased by Ms. [REDACTED] in year 2005. The house has four and one-half (4 ½) bathrooms, one kitchen, a washing machine, a dishwasher, and two (2) outside faucets. Historically, the water and sewer bill has ranged between Sixty Dollars (\$60.00) and One Hundred Dollars (\$100.00) per billing cycle.

Ms. [REDACTED] asserted that she does not know what happened to cause high usage. She stated that she has not had good water pressure for years and that she complained to DC Water regarding the water pressure in year 2022. She stated that the utility came out to her house to test the water pressure and the utility said that the water pressure would be fixed for free. Ms. [REDACTED] stated that, through the Lead Pipe Program, the water pipes, from the house to the street, were changed in February – March 2023 and when the pipes were changed, water pressure was restored.

Ms. [REDACTED] testified that her water and sewer bill after the pipe change was One Hundred Dollars (\$100.00). she stated that her next bill was the bill now in dispute which is over One Thousand Dollars (\$1,000.00). Ms. [REDACTED] stated that she was told by the utility that consumption increased and that because usage decreased the next billing cycle, she must have done something. Ms. [REDACTED] denied doing anything to effect water consumption in her home.

Ms. [REDACTED] testified that a friend inspected the house for plumbing issues but she has no plumbing report because her friend was not a licensed plumber.

The customer stated that Lynn Plumbing did dye tests in the home and the plumber said that the water meter was still running even though water was off in the house. Ms. [REDACTED] stated that she called E. Thomas Co. Plumbing and their report was received on January 26, 2024. Ms. Bynum stated that Lynn Plumbing was at the property in December 2023 and her friend inspected the house in August 2023.

Ms. [REDACTED] testified that E. Thomas Co. Plumbing changed the toilet flapper in the hallway. She stated that the plumber turned off two (2) toilets and replaced one flapper. She stated that in total the plumber found three (3) toilets leaking on January 26, 2024.

Ms. [REDACTED] asserted that her friend told her that she could not use the amount of water charged and that no leak was found in the house. She testified that Lynn Plumbing did dye tests and found two (2) leaking toilets on the second floor of the house and one in the powder room. She restated that Lynn Plumbing told her that the water meter continued running after the water was turned off. Ms. [REDACTED] added, that Clark found the same two (2) toilets but she asserted that the plumber found three (3) defective toilets. Ms. [REDACTED] stated that she changed the flapper in the powder room and the plumber did the upstairs.

Ms. [REDACTED] stated that she wanted to dispute her August bill as well. Ms. Black stated that Ms. [REDACTED] had used the Dispute Portal but her dispute was untimely, and, she did not submit a Petition. Ms. Black stated that the customer's bill dispute for June 2023 was timely and is the basis for the hearing today. She stated that the bills for April, May and July 2023 were not timely disputed and no Petitions were filed. Ms. Black stated that the utility did accept the customer's dispute of the August 2023 bill.

Ms. [REDACTED] responded that she called the utility to ask when her hearing would be scheduled and she did not know that the BIR (Investigation Report) had the petition. Ms. Arrington responded that Ms. [REDACTED] did not turn in a Petition for the other disputed bills. Ms. [REDACTED] stated that she thought by submitting one Petition for untimely bills, that Petition would suffice. She stated that she did not know that she had to submit petitions for other bills.

Ms. [REDACTED] stated that water usage declined after August 2023.

Ms. Black testified that before the customer's lead pipes were replace, she had only been charged by DC Water for fees and no water consumption. Ms. Black stated that following the pipe replacement, the utility replaced the MTU at the property and the customer's first bill thereafter was for 1.06 CCF in the amount of \$55.71. Ms. Black gave a rundown of the customer's bills by bill date and water consumption as follows:

April 2, 2023	4.65 CCF	\$116.37
May 23	3.26 CCF	\$92.84
June 23	57 CCF	\$1053.70
July	26.33 CCF	\$498.37
August	33.87 CCF	\$631.23
Sept – Oct	47.11 CCF	\$1055.32
Nov.	2.89 CCF	\$92.14
Dec.	3.49 CCF	\$102.27

Ms. Black explained that the customer's September and October water and sewer charges were combined in the October Billing Statement and the customer's consumption was 47.11 CCF.

Ms. Black asserted that, depending upon bathroom use and flushing a toilet, the customer's usage will fluctuate. She asserted that most likely the customer's high usage was caused by a toilet running. She pointed out that one can see stops in usage at the property.

Ms. Black stated that there was a spike in water usage at the property was from 6/7/23 to 6/24/23.

Ms. Black testified that the meter reads upon which the customer was billed were actual. She stated that the utility tested the water meter and the meter was determined to have 100.3% accuracy. She stated that the meter test was performed on September 29, 2023. She explained that after the spike which occurred from 6/7/23 to 6/24/23, water usage at the property declined. Ms. Black stated that the utility's investigation found no evidence of overread or faulty computation, and, as such, it is the utility's conclusion that the findings of cause are inconclusive pursuant to 21 DCMR 408.1.

On cross-examination, Ms. Black stated that the water meter was pulled for testing on September 23, 2023 and because the water meter was located outside of the house, the utility did not tell the customer of the meter pull. Ms. Black stated that the utility can look at the recorded water usage and can tell the time of increase and decline in usage and because water usage did decline at the property, the utility knows that an underground leak did not exist at the property.

Ms. Black stated that CUNA (consecutive water usage) alerts were sent to the customer's telephone number and email address. She stated that the CUNA alerts were outlined in the BIR sent to the customer on August 30, 2023 and that they are listed in the Interaction Notes on pg. 6.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by Tina Bynum. (Testimony of [REDACTED])
2. The period in dispute is May 23, 2023 to June 23, 2023. (Testimony of the parties)
3. The customer sought to dispute bills for the months of April, May, July, and August, but DC Water did not schedule the periods for hearing because the disputes were untimely and the customer failed to petition for hearing regarding the bills. (Testimony of LaFatima Black)
4. Before 3/3/2023, the customer's water usage was estimated at zero usage and the customer was not charged for water consumption by DC Water. (Testimony of the parties; DC Water Interaction Note dated 8/31/2023 pg. 6)
5. Lead pipes were replaced at the property on February 14, 2023 and DC Water installed a new water meter at the property on 3/3/2023 and the customer was billed based upon



- actual water usage from 3/3 – 3/22/23 going forward; prior bills had only reflected fees. (DC Water Interaction Note dated 8/31/2023 pg. 6)
6. DC Water sent CUNA alerts to the customer's telephone on 7/29, 8/4, 8/15, 8/16 and 8/20. (DC Water Interaction Note dated 8/31/2023 pg. 6; Testimony of LaFatima Black)
  7. Based upon meter reads from the property, high water usage occurred 6/7 thru 6/24, 7/3 thru 7/4, 7/12 thru 7/14, 7/24 thru 7/28 and 8/2 thru 8/4. (DC Water Interaction Note dated 8/31/2023 pg. 6)
  8. Water usage at the residence declined after August 2023. (Testimony of LaFatima Black)
  9. The customer contacted DC Water in the belief that she had an underground leak and the utility advised her to get a licensed plumber because it appeared to be an internal issue causing the increased usage. (DC Water Interaction Note dated 8/31/2023 pg. 6)
  10. The customer had a plumber friend inspect the property and no leaks were detected in August 2023. (Testimony of [REDACTED])
  11. The customer hired a licensed plumber thru Thomas E. Clark Plumbing and the plumber found three (3) leaking toilets- one in the powder room and 2 upstairs. (Testimony of [REDACTED])
  12. Lynn Plumbing performed dye tests and found two (2) leaking toilets on the second floor and one leaking toilet in the powder room. (Testimony of [REDACTED])
  13. The customer testified that she turned the toilets off on the second floor and replaced the flapper of the toilet in the powder room. (Testimony of [REDACTED])
  14. In later testimony, the customer said the plumber fixed the upstairs toilets and she fixed the toilet in the powder room. (Testimony of [REDACTED])
  15. DC Water tested the water meter and the meter was determined to have 100.3% accuracy. (Testimony of LaFatima Black)
  16. DC Water ruled out the existence of an underground leak as a cause of high-water usage occurring at the property because the usage declined. (Testimony of LaFatima Black)
  17. DC Water's investigation of the bill dispute found no evidence of overread or faulty computation of the customer's bill. (Testimony of LaFatima Black)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR§ 420.7 and §420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR §403.

3. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant, (21 DCMR 406)

#### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong or for some other reason, she should not be responsible for its payment.

The testimony and evidence established that prior to March 2023, the customer had not been charged for water consumption and had only been billed for fees by DC Water. After lead pipe replacement and installation of a new water meter at the property, the utility started billing the customer based upon actual water usage. The customer's first few bills based upon actual usage were normal but subsequent bills reflected increase water usage occurring at the property. DC Water started sending CUNA alerts to the customer in July 2023. The customer believed that she had an underground leak but toilets leaks were found within the residence. The customer testified that she turned off two (2) leaking toilets but repaired another and, at some point, the other toilets were repaired as well.

DC Water documented its alerts to the customer and it investigated the bill dispute. The utility ruled out the existence of an underground leak and it found no evidence of overread of the meter or faulty computation of the customer's bill. The utility, also, tested the water meter and the meter was found to be registering water usage appropriately.

DC Municipal Regulation 21 DCMR 403 dictates that DC Water will not adjust a customer's account when excessive water usage is caused by a household fixture, such as a toilet.



Here, the evidence and testimony was that there were three (3) faulty toilets found at the residence and there was no evidence of a faulty water meter, miscalculation of the customer's bill or of the existence of an underground leak that could have accounted for the either increased water usage or an error in charge.

Accordingly, the determination of DC Water that the charges were valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

  
Janet W. Blassingame, Hearing Officer

Date: March 20, 2024

Copy to:

Ms.   
 Minnesota Ave. NE  
Washington, DC 20018

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**  
**DEPARTMENT OF CUSTOMER SERVICES**

In re: 219-223 Valley Hudson Tree LLC  
69 W Street NW  
Washington, DC 20001

Service Address:  
[REDACTED] Valley Avenue, SE

Account No: [REDACTED]

Case Number	Date	Amount in Dispute:
23-394105	2/28/23 – 3/27/23	\$3,156.99
23-394112	3/28/23 – 4/26/23	\$2,497.18

Before Janet W. Blassingame, Hearing Officer  
February 2, 2024 at 10:00 a.m.

The customer contested water and sewer bills as noted above. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on February 2, 2024. Present for the hearing were: Sharia Shanklin, the co-property owner and property manager; Arlene Andrews and Kimberly Arrington on behalf of DC Water, as well as, Kristen Gibson, DC Water, observing only.

The property involved is a four (4) unit apartment building purchased in year 2021. Two (2) units have two (2) bathrooms, a kitchen, a washing machine, and a dishwasher. Two (2) units have two and one-half (2 ½) bathrooms, a kitchen, a washing machine, and a dishwasher.

The building underwent renovation starting in July 2022. The owners moved residents from unit to unit during unit renovations. One tenant was unwilling and unable to move and by January 2023, the tenant and her family were the sole building occupants; the other three (3) units were vacant.

Ms. Shanklin stated that the water and sewer bill for the building in November 2022 was \$241.36; in December 2022, the bill was \$195.87; and, in January 2023, the bill was \$407.46.

Ms. Shanklin testified that she spoke with DC Water regarding an underground inspection and no underground leakage was found. She stated that Dream Plumbing was hired and the plumber found a running bathroom toilet in unit 2 which was occupied by the tenant who had not moved from her unit during the property renovation.

Ms. Shanklin testified that the tenant did not tell the landlord of the defective toilet in her unit. She stated that the unit was inspected on April 28, 2023 and after repair, the water and sewer bill for May 2023 was \$440.43; the bill for June 2023 was \$500.00.

Ms. Shanklin testified that the tenant was behind in her rent payments. The tenant had thirty (35) guinea pigs in her unit and the tenant almost, totally, destroyed the unit. Ms. Shanklin stated that the tenant moved out in September 2023. She added that the tenant was not sued for rent or property damage.

Ms. Shanklin asserted that quarterly inspections were performed in units of cooperating tenants, however the one tenant would not allow inspections by the landlord. Ms. Shanklin stated that the tenant's son told the plumber that the toilet had been running for a long time.

Ms. Shanklin stated that had the LLC known or been made aware of the defective toilet, the plumbing issue would have been resolved immediately. She asserted that her company is committed to the community and that it is a good landlord. She acknowledged that the tenant applied to the Emergency Rental Assistance Program and the property owner was able to recoup \$8200.00 in back rent owed.

Ms. Shanklin noted that the LLC pays its water and sewer bills consistently and on time.

Ms. Andrews declared that DC Water follows the DC Municipal Regulations which, in turn, determine if an adjustment is applicable to a customer's account. Ms. Andrews pointed out that pursuant to 21 DCMR 406, leaking faucets and household fixtures are the property owner's responsibility and no adjustment is granted. Ms. Andrews stated that no adjustment was warranted in this matter due to the existence of a running toilet which was repaired by the plumber. Ms. Shanklin asked whether the utility takes into consideration the negligence of the tenant and Ms. Andrews responded that DC Water does not get in the middle of landlord/tenant disputes and that the property owner is responsible for repair of the defective fixture and for payment of the water and sewer bill. Ms. Shanklin, then, asked if there can be a reduction in the water and sewer bill and Ms. Andrews responded that there is no discretion regarding responsibility for the charges, however, the customer can re-establish the installment plan on the account.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a four (4) unit apartment building. (Testimony of Sharia Shanklin)
2. The period in dispute is February 28, 2023 to April 26, 2023. (Testimony of the parties)
3. The property owner had a tenant who refused to allow the landlord to inspect the occupied unit resulting in the landlord not knowing the condition of the unit. (Testimony of Sharia Shanklin)
4. There was extremely high water usage occurring at the property during the period in dispute and when the uncooperative tenant allowed access to the unit, a plumber found a

constantly running toilet. (Testimony of Sharia Shanklin; Dream Plumbing Services, Inc. invoice dated April 28, 2023)

5. After repair of the defective toilet, water usage at the building declined. (Testimony of Sharia Shanklin)
6. DC Water found no underground leak at the property. (Testimony of Sharia Shanklin)

### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR § 420.7 and §420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR §403.
3. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant, (21 DCMR §406)
4. The property owner is the ultimate party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012)

### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong or for some other reason, she should not be responsible for its payment.


The property owner/manager acknowledged that a defective toilet was found in the unit of a tenant and once the toilet was repaired, water usage at the property declined.

21 DCMR §406 dictates that the responsibility for household fixtures, such as a defective toilet, are of the property owner.



Here, the property owner was seeking some relief from the utility for the failure of its tenant to inform the landlord of a defective toilet in her unit. As noted, DC Water is not responsible for what is defective in a property owner's building and the utility has no discretion to give relief to the property owner from its obligation to pay valid charges incurred for water used or loss at its property when the cause is a defective toilet.

Accordingly, the determination of DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

  
Janet W. Blassingame, Hearing Officer

Date: March 20, 2024

Copy to:

219-223 Valley Hudson Tree LLC  
c/o Sharia Shanklin  
69 W Street, NW  
Washington, DC 20001

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY  
DEPARTMENT OF CUSTOMER SERVICES**

In re: Urban Condominium Assoc.  
c/o Christopher Linn  
[REDACTED] 11<sup>th</sup> Street, NW, Unit [REDACTED]  
Washington, DC 20010

Service Address:  
[REDACTED] 11<sup>th</sup> Street, NW

Account No: [REDACTED]

Case Number	Date	Amount in Dispute:
23-498429	5/25/23 – 6/27/23	\$848.21
23-527565	6/28/23 – 7/27/23	\$619.53

Before Janet W. Blassingame, Hearing Officer  
February 2, 2024 at Noon.

The customer contested water and sewer bills as noted above. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on February 2, 2024. Present for the hearing were: Christopher Linn on behalf of the property owner; LaFatima Black and Kimberly Arrington on behalf of DC Water, as well as, Kristen Gibson, DC Water, observing only.

The property involved are two (2) row houses converted into eight (8) condominium units. The conversion was done in year 2014. The building has a total of ten (10) bathrooms and each unit has a kitchen, a washing machine, and a dishwasher. Additionally, the building has two (2) patio sinks and two (2) outside faucets. Mr. Linn stated that the outside faucets have been turn-off from the inside of the property. He stated that, before year 2021, the average water and sewer bill for the property was \$304.00 but since September 2023, the water and sewer bill average has been \$343.00. He stated that the water and sewer bills, before the period in dispute, were: January 2023 - \$435.00; February 2023 - \$437.00; March 2023 - \$501.00; April 2023 - 628.00; and, May 2023 - \$604.00.

Mr. Linn testified that upon receipt of the March 2023, he did not think that the bill reflected an upward trend but, then, the charges went up in April 2023, as well. He stated that he sent a message to the unit owners inquiring as to whether anything was leaking in their respective units. Mr. Linn stated that he contacted DC Water on May 26, 2023 regarding the property's high water and sewer bills and he was told by a DC Water representative to check the property for interior leaks and it was suggested to him to hire a plumber.

Mr. Linn stated that in looking back at the historical usage since year 2021, the property has used 9000 gallons of water per month.

Mr. Linn stated that the water meter was re-set on September 28, 2023. He asserted that the utility did not communicate why the meter was re-set but the reading value went down and the usage went down substantially and now, the monthly usage is 8969 gallons.

Mr. Linn, referring to the plumber's report dated June 28, 2023 by James A. Wheat & Sons, he asserted that the plumber could not find any major source to account for usage. The Hearing Officer interjected that she saw, in the plumber's report, that the plumber found that the toilet in unit 7 failed the dye test and that the toilet in unit 6 had a bad fill valve. Mr. Linn stated that the toilet in unit 6 was replaced in December. He stated that he does not know, if and when, the toilet in unit 7 was fixed. He stated that he does not know if the toilet in unit 8 was checked since the plumber was unable to conduct a dye test.

Mr. Linn testified that the water and sewer bill in January 2024 went up by \$132.00 notwithstanding fees, and the bill was in the amount of \$343.00.

Mr. Linn asserted that his toilet issue- unit 6, was due to water pressure.

Mr. Linn stated that he cannot recall vacancies in year 2023 but, in the summer months, people were out of town.

Mr. Linn stated that there have been no unit inspections by the Condominium Board and that the water meter was inspected but not the sub-meters in the building. He stated that he believed that it was too costly to inspect the sub-meters.

Ms. Black interjected that the water meter was replaced on September 28, 2023 for testing due to the customer's request for an administrative hearing. She, further, pointed out that unit 5 in the building also had a leaking toilet as found by the plumber. She stated that usage started to decline after June 2023 and she pointed out the building's water and sewer bill charges as follows: August 2023 - \$499.26; September 2023 - 334.23; October 2023 - \$334.91 and November 2023 - \$365.00.

Mr. Linn stated that after the bill dispute in 2021, usage also went down.

Ms. Black stated that the bill period for the August bill was 7/28/23 - 8/24/23. She added that the plumber was at the condominium during two (2) dispute periods.

Ms. Black testified that the customer was billed upon actual meter read. She stated that the utility tested the water meter on October 5, 2023 and the meter was determined to have 99.45% accuracy. Ms. Black explained that DC Water follows the standards set by the American Water Works Association and that a water meter is accurate if between 98.5% and 101.5%.

Ms. Black testified that spikes in water usage occurred May 18 - June 20 and July 17 - July 19, 2023.

Ms. Black pointed out that, per the plumber's report, leaks were found in units 7, 6 and 5 of the condominium and that the plumber recommended a toilet replacement in unit 2. She also pointed out that the plumber checked the water and found no movement on the meter.

Ms. Black stated that DC Water did not conduct an underground inspection because toilet leaks were detected at the property.

Ms. Black cited DC Municipal Code 21 DCMR §406.2 and stated that pursuant to the regulation, the property owner is responsible for excess water caused by a leaking toilet and the utility does not adjust the customer's account for excess water caused by a leaking toilet.

Mr. Linn complained that he felt like he was treated like a defendant during the hearing. He added that he questions the meter test.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is an eight (8) unit condominium created by converting two (2) row houses. (Testimony of Christopher Linn)
2. The period in dispute is May 28, 2023 to July 27, 2023. (Testimony of the parties)
3. There was a spike in usage at the property from May 18, 2023 to June 20, 2023 and July 17, 2023 to July 19, 2023. (Testimony of LaFatima Black)
4. Mr. Linn noticed a gradual increase in the building's water charges beginning in year 2023 and a significant increase in the building's water and sewer charges based upon the March 2023 bill and the April 2023. (Testimony of Christopher Linn)
5. After receipt of the April 2023 bill, owners were asked if anything was leaking in their respective units; all responses were in the negative. (Testimony of Christopher Linn)
6. Mr. Linn contacted DC Water regarding the high-water bills on May 26, 2023 and he was told to check the property for leaks and it was suggested that a plumber be hired. (Testimony of Christopher Linn)
7. James A. Wheat & Sons, Inc was hired to check each individual unit and the building common areas because of the gradually rising water bill. (Testimony of Christopher Linn)
8. Based upon the plumber's inspection, defective toilets were found in units 2, 3, 6, and 7, as well as, a defective shower handle in unit 3. The plumber reported that he could not conduct a dye test on the toilet in unit 8. (James A. Wheat & Sons, Inc. plumber's report dated June 28, 2023)
9. The plumber turned off water to the main valve to the whole building and checked the meter pit in the front yard and saw no movement on the meter. The plumber determined that the increased water usage was not due to a water service leak. (James A. Wheat & Sons, Inc. plumber's report dated June 28, 2023)
10. Water usage at the property started to decline after June 2023. (Testimony of LaFatima Black)
11. DC Water tested the water meter and the meter was determined to have 99.45% accuracy. (Testimony of LaFatima Black)

12. DC Water ruled out the existence of an underground leak based upon the plumber's report and due to the existence of toilet leaks found by the plumber at the building. (Testimony of LaFatima Black)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR§ 420.7 and §420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
  - (a) Verify the computations made in the formulation of the water and sewer charges;
  - (b) Verify the meter reading for possible meter overread or doubtful registration;
  - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
  - (d) Check the meter for malfunction;
  - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
  - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR §403.

3. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant, (21 DCMR 406)
4. The property owner is the ultimate responsible party to pay for water and sewer services at a property and the obligation to pay DC Water's water and sewer charges runs with the property where the water services are rendered. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012.

#### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong or for some other reason, the condominium should not be held responsible for its payment.

The evidence and testimony established that four (4) out of the eight (8) condominium units had defective toilets and an additional unit's toilet could not be dye tested and, as such, the toilet was not tested for leaks. Additionally, the plumber hired to inspect the building determined that there was no leak on the water service. The meter test determined meter to be functioning accurately. Lastly, usage at the property declined after the plumber was at the building.


Based upon the existence of the defective toilets, the plumber's finding that there was no leak on the service line and the fact that water usage declined after the plumber's visit to the property the weight of the evidence is that the increased water usage that occurred at the property



was the result of the plumbing issues inside of the building and not do to any fault or equipment of DC Water.

21 DCMR §406.2 dictates that the property owner is responsible for water usage caused by a household fixture, such as a leaking toilet, and the utility does not adjust the customer's account for excessive usage caused by a faulty household fixture.

Accordingly, the determination of DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

  
Janet W. Blassingame, Hearing Officer  
Date: March 20, 2024

Copy to:

Mr. Christopher Linn  
Urban Condominium Assoc.  
[REDACTED] 11<sup>th</sup> Street, NW, Unit [REDACTED]  
Washington, DC 20010