

RECEIVED

MAY 31 2017

ROOM 521

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

DOCKETED

Z&R CAB, LLC, et al.,

JUNE TERM, 2014

JUN - 2 2017

Plaintiffs,

NO. 01394

R. POSTELL
COMMERCE PROGRAM

v.

COMMERCE PROGRAM

PHILADELPHIA PARKING
AUTHORITY,

Control No.: 17022299

Defendant.

ORDER

AND NOW, this 31st day of May, 2017, upon consideration of defendant's Motion for Summary Judgment, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** and **DECREED** that the Motion is **GRANTED** and **JUDGMENT** is **ENTERED** in favor of defendant on all of plaintiffs' refund claims.

It is further **ORDERED** and **DECREED** that the Philadelphia Parking Authority ("PPA") shall provide the putative class members with the following administrative protest procedure:

1. On or before August 1, 2017, the PPA shall issue Notices of Assessment ("Notices") to the members of the taxicab industry to whom it charged assessments and fees from July 16, 2004 to July 9, 2013.
2. The Notices shall contain an itemization of the assessments and fees charged and paid, as well as information regarding the 53 Pa C.S. § 5707.1(b) petition process.
3. The Notices shall give the recipient sixty (60) days in which to file a single petition challenging all or any of the 2004-2013 fees on the grounds set forth in 53 Pa C.S. § 5707.1(b).

Z&R Cab, Llc Etal Vs Ph-ORDOP




14060139400089

4. Within thirty (30) days thereafter, the PPA shall provide a 53 Pa C.S. § 5707.1(b) hearing to any such petitioner.

5. Within thirty (30) days thereafter, the PPA shall issue its Order, including a decision and detailed findings.

6. Within thirty (30) days after the PPA issues its Order, the petitioner may appeal it to Court of Common Pleas of Philadelphia County as provided in 53 Pa C.S. § 5705(d).

BY THE COURT



PATRICIA A. McINERNEY, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

Z&R CAB, LLC, et al.,	:	JUNE TERM, 2014
	:	
Plaintiffs,	:	NO. 01394
	:	
v.	:	COMMERCE PROGRAM
	:	
PHILADELPHIA PARKING	:	Control No.: 17022299
AUTHORITY,	:	
	:	
Defendant.	:	

OPINION

Plaintiffs purport to represent a class of taxicab owners and drivers, medallion owners, and other members of the taxicab industry who paid fees to the Philadelphia Parking Authority (“PPA”) between July 16, 2004, and July 9, 2013. The class seeks a refund of all such fees paid during that period. Those fees were spent by the PPA to cover its annual costs of inspecting, licensing, and otherwise regulating the taxicab industry in Philadelphia.

Defendant PPA filed a Motion for Summary Judgment asking this court to rule that the plaintiffs are not entitled to a class-wide refund. That Motion is presently before the court.

Prior to 2004, all taxicabs and limousines operating in Pennsylvania were regulated by the Pennsylvania Public Utility Commission. However,

[i]n 2004, the General Assembly transferred part of this regulatory responsibility to the [PPA], *i.e.*, the regulation of taxicab and limousine service in Philadelphia. This new regulatory regime for the City of Philadelphia is set forth in Chapter 57 of the Parking Authority Law, 53 Pa. C. S. §§ 5701–5745.

Chapter 57 provided the [PPA] with the funding needed to undertake its new regulatory responsibilities. Section 5708 of the Parking Authority Law established the “Philadelphia Taxicab and Limousine Regulatory Fund,” which derives its revenue from the fees paid by the various taxicab and limousine companies regulated by the Parking Authority. . . . The fees paid by these companies change

from year to year; the Parking Authority publishes its annual fee schedule on its website and in the *Pennsylvania Bulletin*.¹

In 2012, several taxicab companies filed suit against the PPA in Commonwealth Court challenging the constitutionality of Section 5707(b) of the Parking Authority Law. The Commonwealth Court ruled that Section 5707(b) was unconstitutional in two distinct ways:

1. The statute violated the doctrine of separation of powers, as embodied in Articles II and VIII of the Pennsylvania Constitution, because the statute allowed the PPA to set its own budget and fee schedule with minimal legislative involvement or guidance (hereinafter the “State Constitutional Violation”);² and
2. The members of the taxicab industry had been deprived of procedural Due Process, as required by the Fourteenth Amendment to the United States Constitution, as well as Article I, Section 1 of the Pennsylvania Constitution, because the statute did not provide any means for the members of the taxicab industry to challenge the fees imposed on them by the PPA (hereinafter the “Federal Constitutional Violation”).³

As a result of the Commonwealth Court’s ruling, the Pennsylvania General Assembly enacted new sections of the Parking Authority Law to correct both procedural defects. Under a revised Section 5707, the PPA’s proposed budget and its yearly fees and assessments imposed upon members of the taxicab industry must be approved by the General Assembly in accord with the procedures suggested in the Commonwealth Court’s opinion.

¹ *MCT Transp. Inc. v. Philadelphia Parking Auth.*, 60 A.3d 899, 901 (Pa. Commw. 2013), *aff’d mem.*, *MCT Transp., Inc. v. Philadelphia Parking Auth.*, 622 Pa. 741, 81 A.3d 813 (Pa. 2013), *and aff’d mem.*, *MCT Transp., Inc. v. Philadelphia Parking Auth.*, 623 Pa. 417, 83 A.3d 85 (Pa. 2013).

² *Id.* 60 A.3d at pp. 904-915. The Commonwealth Court made identical rulings with respect to the PPA’s regulation of the limousine industry. *See Philadelphia Regl. Limousine Ass’n v. Philadelphia Parking Auth.*, 515 M.D. 2012, 2013 WL 3946215 (Pa. Commw. Feb. 14, 2013).

³ *MCT*, 60 A.3d at 915-920.

In addition, under an entirely new Section 5707.1, the Legislature provided for service of “Notice[s] of assessment” and “Assessment hearings:”

- (1) Within 15 days after service of notice of assessment, an owner may file a petition with the authority which specifically avers the reason that the assessment is excessive, erroneous, unlawful or otherwise invalid. The authority may prescribe filing procedures and the form for the petition.
- (2) The authority shall fix the time and place for a hearing on a properly filed petition and shall serve notice thereof upon parties in interest. After the conclusion of the hearing, the authority shall issue a decision and findings in sufficient detail to enable a court to determine, on appeal, the controverted question presented by the proceeding and whether proper weight was given to the evidence.
- (3) The filing of a petition under this subsection does not relieve the owner of the obligation to pay the assessment within the specified time frame. If a refund due from the authority to the objecting owner or an additional assessment payment due from the objecting owner to the authority is required, the payment must be made within ten days after notice of the findings of the authority.⁴

In October, 2013, the plaintiffs in this action filed a class action under 42 U.S.C. §1983 in the United States District Court for the Eastern District of Pennsylvania seeking a full refund of all fees paid under the old, now unconstitutional, Section 5707 of the Parking Authority Law. PPA filed a Motion to Dismiss on the basis that the Commonwealth Court’s decision was prospective only.

The federal court found that the Commonwealth Court’s decision with respect to the Federal Constitutional Violation, *i.e.*, procedural Due Process, was retroactive, but it did not find that the Commonwealth Court’s decision with respect to the State Constitutional Violation, separation of powers, applied retroactively.⁵ Under this reasoning, the plaintiffs should now be

⁴ 53 Pa. Stat. and Consol. Stat. Ann. § 5707.1.

⁵ *Z & R Cab, LLC v. Philadelphia Parking Auth.*, 22 F. Supp. 3d 498, 507 (E.D. Pa. 2014), *vacated and remanded*, 616 Fed. Appx. 527 (3d Cir. 2015) (“[T]he Commonwealth Court’s holding] in MCT Transportation requires retrospective application because it held that the PPA was impairing federally protected Due Process rights.

given individual hearings on the fees they paid between 2004 and 2013, as provided under the new Section 5707.1, but the legislature would not need to approve *nunc pro tunc* the 2004 - 2013 PPA fee schedules.

After determining that the Commonwealth Court's ruling on the Federal Constitutional Violation must be applied retroactively, the federal court found that it lacked subject matter jurisdiction to determine what remedy to apply for that violation.⁶ The court then dismissed the federal action. Less than a week later, plaintiffs filed this action in state court. At the same time, they filed a Motion for Reconsideration with the federal court based on the abstention doctrine.

Upon reconsideration, the federal court determined that its prior dismissal for lack of subject matter jurisdiction, rather than abstention, was appropriate and also held:

[T]he Commonwealth Court held that the PPA violated the United States Constitution only by failing to provide adequate due process for the taxicab plaintiffs to challenge the imposition of regulatory fees (although they held other aspects of the statute violated the Pennsylvania Constitution). Under the Supreme Court's teachings in *McKesson*⁷ and *Harper*,⁸ any remedy for this violation lies exclusively in the hands of the state courts, so long as the remedy is retroactive.

. . . Where the state court interprets a state law or constitution without reference to federal law, it is free to apply its own retroactivity principles.”)

⁶ *Id.*

⁷ *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, Dep't of Bus. Regulation of Florida*, 496 U.S. 18, 38–39, 110 S. Ct. 2238, 2251, 110 L. Ed. 2d 17 (1990) (“Florida requires taxpayers to raise their objections to the tax in a post-deprivation refund action. To satisfy the requirements of the Due Process Clause, therefore, in this refund action the State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a ‘clear and certain remedy,’ for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one.”)

⁸ *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 89–90, 113 S. Ct. 2510, 2513, 125 L. Ed. 2d 74 (1993) (The United States Supreme Court previously “held that a State violates the constitutional doctrine of intergovernmental tax immunity when it taxes retirement benefits paid by the Federal Government but exempts from taxation all retirement benefits paid by the State or its political subdivisions. . . . [T]he Supreme Court of Virginia twice refused to apply [that holding] to taxes imposed before [it] was decided. . . . [W]e hold that this Court's application of a rule of federal law to the parties before the Court requires every court to give retroactive effect to that decision.”)

Defendant PPA states that the Pennsylvania General Assembly amended Section 5707 after [the Commonwealth Court’s decision] to provide prospective standards for assessments and operator protests. Def. Br. at 15. “If Pennsylvania state courts elect to apply those standards to an action by plaintiffs seeking retroactive relief ... there would be no basis for this or any other federal court to find that plaintiffs’ *federal* constitutional rights had not been properly remedied consistent with” [the Commonwealth Court’s decision]. *Id.* (emphasis in original).

We agree—as long as the Commonwealth’s remedy applies retroactively as *Harper* requires. That remedy may include a refund, but need not, since the Commonwealth Court did not hold that the regulatory fees were beyond the PPA’s power to impose or that the taxicab companies were absolutely immune from the tax. The plaintiffs fail to cite any cases to support their contention that we may impose their chosen remedy—a full refund plus interest. We must therefore deny their motion for reconsideration on this ground as well.⁹

Plaintiffs appealed the federal district court’s rulings. In May 2015, the Third Circuit

Court of Appeals reversed and remanded, holding:

The Cab Companies seek compensation for a federal due process violation under §1983. Because this claim arises under the United States Constitution and federal law, 28 U.S.C. §1331 grants the District Court subject matter jurisdiction. . . . Accordingly, the District Court erred in concluding that it lacked subject matter jurisdiction.

* * *

[However,] under principles of comity, deference should be given to state courts to remedy constitutional violations arising from state revenue-raising laws if adequate state remedies exist. . . . Because the District Court concluded it lacked jurisdiction and thus did not address whether it should refrain from adjudicating this case under [the doctrine of comity], we will remand to allow it to decide, among other things, whether comity should be invoked in this case seeking a monetary remedy for the imposition of unconstitutional state fees.¹⁰

Upon remand, the federal district court conclude[d] “that comity concerns at every turn counsel against adjudicating the plaintiffs’ monetary claim in federal court instead of Pennsylvania courts (as they have already elected to do) and we will defer to the ongoing state

⁹ *Z & R Cab, LLC v. Philadelphia Parking Auth.*, 22 F. Supp. 3d 509, 518 (E.D. Pa. 2014).

¹⁰ *Z & R Cab, LLC v. Philadelphia Parking Auth.*, 616 Fed. Appx. 527, 530-31 (3d Cir. 2015) (unpublished opinion).

court proceeding to remedy the violation arising out of unconstitutional state revenue-raising laws.”¹¹ This court is the one to which the district court deferred.¹²

Normally, a request for the refund of an agency assessment would be the subject of an administrative proceeding before the agency that levied the assessment. The agency’s decision to refund or not refund the fees could then be appealed to the appropriate court for review.¹³ With respect to PPA proceedings, the Parking Authority Law now gives this court appellate jurisdiction.¹⁴

The Parking Authority Law did not previously provide for any agency proceeding to challenge PPA’s fees during the time period at issue here, 2004-2013, so there was nothing that could be appealed to this court at that time. However, since the enactment of Section 5707.1 in July, 2013, such a hearing and appeal procedure has existed.

Plaintiffs insist that all the putative class, and potential sub-class, members are entitled to a full refund of all fees they paid from 2004-2013. However, as the federal court observed, “the Commonwealth Court did not hold that the 2004-2013 regulatory fees were beyond the PPA’s power to impose or that the taxicab companies were absolutely immune from the tax.”¹⁵ Instead,

¹¹ Z & R Cab, LLC v. Philadelphia Parking Auth., 2:13-CV-06173-SD, p. 7 (E.D. Pa. July, 7, 2015) (unpublished order).

¹² This court then transferred this matter to the Commonwealth Court based on the Commonwealth Court’s jurisdiction over actions and proceedings against a Commonwealth agency, such as the PPA. The Commonwealth Court disagreed with this court’s jurisdictional analysis and sent the matter back to this court.

¹³ See Mercury Trucking, Inc. v. Pennsylvania Pub. Util. Commn., 55 A.3d 1056, 1075 (Pa. 2012) (Supreme Court reversed the decision of the Commonwealth Court and reinstated the Public Utility Commission’s adjudication that trucking company was not entitled to a refund of the assessment it paid.)

¹⁴ 53 Pa. C.S. 5707.1(c). See 53 Pa. C. S. §5705 (“A person aggrieved by an order of the authority entered pursuant to this chapter may appeal the order to the Court of Common Pleas of Philadelphia County. All such appeals shall be governed by 2 Pa. C. S. Ch. 7 (relating to judicial review) and Chapter 15 of the Pennsylvania Rules of Appellate Procedure.”)

¹⁵ Z & R Cab, 22 F. Supp. 3d at 518.

the Commonwealth court found that the PPA simply denied the plaintiffs procedural due process, *i.e.*, notice, a hearing, and an appeal procedure to challenge their individual assessments.¹⁶

It appears from the federal district court's decisions that it would have found the following remedy acceptable:

1. The PPA shall issue notices of assessment to the members of the taxicab industry to whom it charged fees in the years 2004 - 2013.
2. The Notices shall contain an itemization of the fees charged and paid, as well as information regarding the Section 5707.1(b) petition process.
3. The Notice shall give the recipient a reasonable time period in which to file its petition challenging all or any of the 2004 - 2013 fees.
4. The PPA shall provide a Section 5707.1(b) hearing to any such petitioner, which may then be appealed to a court of law.

The United States Supreme Court would approve such a "clear and certain" post-deprivation remedy.¹⁷ The courts of this Commonwealth would also find such a retrospective procedure reasonable and appropriate.¹⁸ Clearly, the Legislature would also deem it acceptable, since it is the logical, retroactive, application of the statutory notice, hearing, and appeal

¹⁶ MCT, 60 A.3d at 915-920.

¹⁷ See Harper, 509 U.S. at 101, 113 S. Ct. at 2519 ("[I]f no pre-deprivation remedy exists, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation."); McKesson, 496 U.S. at 39-40, 110 S. Ct. at 2252 ("[A] State found to have imposed an impermissibly discriminatory tax retains flexibility in responding to this determination. [The State] may reformulate and enforce the [tax] during the contested tax period in any way that treats petitioner and its competitors in a manner consistent with the dictates of the Commerce Clause. Having done so, the State may retain the tax appropriately levied upon petitioner pursuant to this reformulated scheme because this retention would deprive petitioner of its property pursuant to a tax scheme that is *valid* under the Commerce Clause. In the end, the State's post deprivation procedure would provide petitioner with all of the process it is due: an opportunity to contest the validity of the tax and a 'clear and certain remedy' designed to render the opportunity meaningful by preventing any permanent unlawful deprivation of property.")

¹⁸ See Dunn v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cty., 877 A.2d 504, 516 (Pa. Commw. Ct. 2005), *aff'd mem.*, Dunn v. Bd. of Prop. Assessment, 594 Pa. 410, 936 A.2d 487 (2007) ("[I]n the future, States may avail themselves of a variety of procedural protections against any disruptive effects of a tax scheme's invalidation, such as providing by statute that refunds will be available to only those taxpayers paying under protest, or enforcing relatively short statutes of limitation applicable to refund actions. Such procedural measures would sufficiently protect States' fiscal security when weighed against their obligation to provide meaningful relief for their unconstitutional taxation.") See also Annenberg v. Commw. of Pa., 562 Pa. 581, 606, 757 A.2d 338, 352 (2000) (severing a void tax exclusion and directing the Counties that imposed the unconstitutional tax to "forthwith provide a retrospective remedy consistent with this opinion.")

procedure the Legislature enacted in 2013. Therefore, this court directs the PPA to follow such a procedure with respect to the fees it charged the taxicab industry from July 16, 2004 to July 9, 2013. Given that the fees were charged as much as 13 years ago, this court of equity will give both the PPA and the putative class members more time than the prospective procedures allow, *i.e.*, sixty days each, to perform their initial tasks and marshal their evidence.

CONCLUSION

For all the foregoing reasons, defendant's Motion for Summary Judgment is granted and judgment is entered for defendant and against plaintiffs on plaintiffs' claims for a class wide refund, but the defendant shall provide retroactive notices and hearings to the putative class members.

BY THE COURT



PATRICIA A. McINERNEY, J.