NOT FINAL UNTIL DISPOSITION
OF TIMELY FILED MOTION FOR
RE-HEARING, CLARIFICATION,
OR CERTIFICATION.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NUMBER: 2024-17 AP 01

SHARON TORRES,

Appellant,

v.

MIAMI-DADE COUNTY,

Appellee.
_____/

Opinion filed: December 12, 2024

On Appeal from an administrative decision by a Miami-Dade County Hearing Officer.

Karen B. Parker, Esq. of Karen B. Parker, P.A., for Petitioner.

Geraldine Bonzon-Keenan, Esq., County Attorney, and Cristina Rabionet, Esq., Assistant County Attorney, of the Office of the County Attorney, for Respondent.

Before: TRAWICK, DE LA O, and ARECES, R., JJ.

TRAWICK, Judge.

This appeal, brought by Appellant Sharon Torres ("Appellant") against Miami-Dade County ("Appellee") seeks review of the Hearing Officer's Findings of Fact and Conclusions of Law entered on February 23, 2024, which affirmed water bill charges totaling over $8,000 dollars, and the decision of the Miami-Dade County Water and Sewer Department ("County") to deny Appellant's application for a One-Time Lifetime Credit adjustment of the high water bill.

The standard of review of a local administrative action under Florida Rule of Appellate Procedure 9.030(c) is as follows:

> [w]here a party is entitled as a matter of law to seek review in the circuit court from administrative action, the circuit court must determine [1] whether procedural due process is accorded, [2] whether the essential requirements of law have been observed, and [3] whether the administrative findings and judgment are supported by competent, substantial evidence.

City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982). *See also Dept. of Highway Safety and Motor Vehicles v. Alliston* 813 So. 2d 141,144 (Fla. 2d DCA 2002); *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000).

Procedural due process requires that the agency provide reasonable notice and a fair opportunity to be heard. *Housing Authority of the City of Tampa v. Robinson*, 464 So. 2d 158, 164 (Fla. 2d DCA 1985).

> While "the concepts of due process in an administrative proceeding are less stringent than in a judicial proceeding, they nonetheless apply." *A.J. v. State, Dep't. of HRS*, 630 So. 2d 1187, 1189 (Fla. 2d DCA 1994); see also *Hadley v. Department of Admin.*, 411 So. 2d 184, 187 (Fla. 1982)("In such proceedings, it is sufficient if the accused ... has reasonable opportunity to defend against attempted proof of such charges...."). **This opportunity to be heard must be meaningful**. *See Metropolitan Dade County v. Sokolowski*, 439 So. 2d 932, 934 (Fla. 3d DCA 1983); *Rucker v. City of Ocala*, 684 So. 2d 836, 841 (Fla. 1st DCA 1996) ("To qualify under due process standards, **the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive** (sic)."). "Due process envisions a law that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties." *Scull v. State*, 569 So. 2d 1251, 1252 (Fla. 1990).

Miami-Dade Cnty. v. Reyes, 772 So. 2d 24, 29 (Fla. 3d DCA 2000). (emphasis added).

This Court must also determine whether the lower tribunal applied the correct law. *City of Deerfield Beach v. Valliant*, 419 So. 2d 624, 624 (Fla. 1982). A departure from the essential requirements of the law occurs when there has been a violation of a clearly

established principle of law resulting in a miscarriage of justice. *Combs v. State*, 436 So. 2d 93, 96 (Fla. 1983). Miami-Dade County Code Section 32-96 provides that "[t]he water and sewer service rendered by the Department, as measured by water meters, shall be *prima facie* evidence of the quantity of water delivered to the customer and of sewage collected from the customer."

The Appellant argues that the ruling below should be quashed because the hearing officer misapplied the law by effectively treating the County's meter flow test result as an irrebuttable legal presumption of the meter's accuracy, rather than considering the test result as prima facie evidence that could be countered by Appellant. If Appellant's argument is correct, the hearing officer's use of the test result in making his determination was in direct contradiction of the holding in *Miami-Dade County v. Reyes*, where the court, in considering a similar factual scenario, stated:

> The County's guidelines for evidence at hearings, as stated in its October 24, 1997 letter to Reyes, violates this unambiguous mandate in section 32–96 by stating that when the meter is found to be within acceptable standards of accuracy, a "very strong presumption is created" in favor of the accuracy of the water bill. "**Prima facie evidence is evidence sufficient to establish a fact unless and until rebutted." *State v. Kohler*, 232 So. 2d 166, 168 (Fla.1970). Prima facie evidence does not amount to a**

legal presumption. The natural evidence that an average consumer would have to challenge the accuracy of a water bill and attempt to rebut the County's evidence, such as much lower prior and subsequent billing history, testimony from family and friends on water consumption at the residence, and an inspection by a plumber, are automatically given "little weight" by the Hearing Officer, according to the October 24, 1997 letter. **Given the County's discounting of almost all evidence a customer could produce, short of hiring an expert in engineering, the County's evidentiary rules take what should be prima facie evidence of water consumption, the meter accuracy, and raise it to the level of a virtual irrebuttable presumption in favor of the County.** If Reyes had a water bill charging him for 1,000,000 gallons, what evidence could he possibly present that would be given serious weight to challenge such an astronomical bill if the County meter tested within the acceptable standards of accuracy? **These procedural rules regarding the weighing of evidence deny Reyes a reasonable, meaningful, full, and fair opportunity to challenge his water bill. Accordingly, Reyes has been denied his due process rights by the County's administrative hearing.**

The findings of administrative hearing officers are to be given deference, but not at the expense of due process. While the circuit court erred in re-weighing the evidence, it was absolutely correct in holding that the County's evidentiary procedures **amounted to an irrebuttable presumption which was virtually impossible for Reyes to overcome.** A consumer should not be held hostage to an astronomically high water bill merely because the meter tests within acceptable standards and be left defenseless at a hearing on the matter. This is particularly important in a case such as this, where the amount in question, $2,300.55, can be financially devastating. To most people, an unexpected bill of this magnitude can obliterate all or a significant part of their savings, or force

> them to borrow the money necessary to maintain their water service.

Reyes, 772 So. 2d at 29-30 (emphasis added).

In the instant case, although the hearing officer stated that the meter test results constitute *prima facie* evidence, the hearing officer's verbal explanation betrayed a misinterpretation of the County Code and a misunderstanding of the term "*prima facie evidence.*" This conclusion is borne out when, in announcing his findings, the hearing officer stated:

> My determination is, is that once that original meter was removed, and that was Meter 20219004, a new meter was placed in there, according to the testimony. **That old meter was tested and found to be within working -- acceptable working parameters. That ends it for my determination because the rules say that once that is done and the evidence was presented by testimony, as it was today, that is prima facie evidence that that actual consumption of water went through that -- the meter.**

Hearing Transcript at 36.

Rather than considering evidence that could have rebutted the meter test result, the hearing officer expressly stated that the County's meter test result evidence "ended" his "determination." This was error. Evidence presented by the Appellant that was not properly

considered by the hearing officer due to the irrebuttable presumption he afforded the meter test result included:

1. Appellant's hiring of a plumbing company to conduct a check of her property. They determined that there were no leaks anywhere in the home. This countered the assertion that a leak may have caused the high meter reading.
2. When the meter was changed without notice to the Appellant, the recording of water consumption immediately returned to normal. Appellant testified as follows: "So when I received this bill and it showed that the meter had been changed on May 25th, immediately that that [*sic*] was changed the consumption went back to normal immediately." Hearing Transcript at 24. At the hearing, the County verified this as a fact, admitting as follows: "The customer stated that her consumption had gone back to normal after the meter change, which is true. Her consumption with the new meter did go back down to normal." Hearing Transcript at 8.
3. Miscommunications and mishaps occurred throughout the process of reviewing the high water bills. For instance, the Appellant was told that she could not have the meter re-

tested or independently tested because the meter had been discarded. The Appellant testified:

> I had asked for the meter to be -- for us to obtain the meter on October 4th of 2022, and I was told then that the meter had been disposed of. I know Ms. Lafargue said it was placed in a property in April of '23, but we had requested it because all of this was taking place back in '22. But, you know, finally in October I requested that the meter be tested, if we could have it independently tested. And at that point, I was told the meter had been disposed of.

Hearing Transcript at 33.

In response to the Appellant's testimony regarding this last issue, the County admitted that it likely did misinform Appellant that the meter was discarded even though it was not (explaining that old meters were usually discarded). The County also admitted that it did not actually discard the meter, but rather, it eventually placed the meter in operation at another location months later in 2023. The Appellant was ultimately denied the opportunity to have the meter retested or independently tested.

In failing to appropriately consider any of this evidence due to the irrebuttable presumption he gave the meter test, the hearing officer stated:

> I am finding that based upon the evidence presented to me, although it was done according to you in a haphazard fashion and **you weren't given an opportunity to -- to contest it, either before -- because of miscommunication or otherwise, I still cannot hold the department responsible**. So I am finding in favor of the department in terms of this matter ..."although I feel and understand that there was a serious issue here on one side or the other, **it seems that under the rules, I have to find in favor the department and against you.**

Hearing Transcript at 37 (emphasis added).

Based upon our review of the record in this case, we find that the hearing officer denied Appellant due process and failed to observe the essential requirements of the law when he afforded the County's meter test result an irrebuttable legal presumption of correctness that could not be overcome. Due to the hearing officer's misinterpretation of the term "prima facie evidence," the hearing officer did not properly consider the evidence presented by the Appellant that challenged the accuracy of the meter.

Additionally, the hearing officer failed to sufficiently address the denial of the Appellant's application of the One-Time Lifetime Credit which is intended for situations such as in the instant case where the unrefuted evidence indicated that 1) there was an extremely high bill exceeding six times the normal charges, 2) no leak was found

after an investigation, and 3) there was no other explanation for the high water bill that would qualify the bill for any of the other types of available credits and adjustments. Miami-Dade County Code Section 32-101, entitled "One-Time Lifetime Credit for Customers," states that a customer may apply for a 50% credit adjustment for "a bill that exceeds six (6) times the past year's average, as applicable, monthly or quarterly consumption but is unable to show the Department that the high bill is due to a leak, concealed or visible, and cannot otherwise explain the high water bill." In the instant case, although the Appellant satisfied all of the requirements for applying for such credit, the application for the One-Time Lifetime Credit was expressly denied because of an unsupported notation, based on an unnoticed field test of the meter, of a "possible leak." This allegation was not supported by competent, substantial evidence. Countering this was an affidavit from a licensed plumber indicating that there were no concealed or visible leaks on the property. In not considering this affidavit and balancing it against the notation of a "possible leak," the hearing officer misinterpreted the law by giving the meter test result an irrebuttable presumption of correctness. Instead he improperly

ignored the evidence presented by the Appellant that would have supported a One-Time Lifetime Credit.

Accordingly, the decision below is **QUASHED** and this matter is remanded for further proceedings consistent with this opinion.

DE LA O, and ARECES, R., JJ., concur.

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