

**OHIO BOARD OF TAX APPEALS**

Phillip & Catherine Kuhn, )  
 )  
 Appellants, )  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) DECISION AND ORDER  
 Hamilton County Board of Revision and )  
 the Hamilton County Auditor, )  
 )  
 Appellees. )

**APPEARANCES:**

For the Appellants-

Phillip & Catherine Kuhn, *Pro se*  
P.O. Box 123  
Hopkinton, MA 01748-0123

For the County-  
Appellees

Michael K. Allen  
Hamilton County Prosecuting Attorney  
By: Thomas J. Scheve  
Assistant Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

Entered December 14, 2001

Mr. Johnson, Ms. Jackson and Ms. Margulies concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed under date of October 7, 2000. Appellants, Mr. and Mrs. Kuhn, challenge the decision, mailed September 28, 2000, of the Hamilton County Board of Revision (“BOR”), appellee.

Both Mr. and Mrs. Kuhn and the appellee in this matter waived hearing

before this Board. However, certain information was provided by way of the attachment to the notice of appeal which we find pertinent.<sup>1</sup> Mr. and Mrs. Kuhn filed a complaint with the BOR challenging the value of their home located in Hamilton County. A hearing date and time was scheduled but appellants failed to appear. Through their notice of appeal, Mrs. Kuhn indicated that she believed that she could provide information regarding her home at the same time she presented information regarding her employer's property. The hearing on her employer's property, a church, was scheduled for the day following the hearing on her home.

When Mrs. Kuhn arrived for the later-scheduled hearing, she was informed that the complaint on her home was dismissed for failure to prosecute. This dismissal was made notwithstanding the fact that an appraiser from the Auditor's office appeared at hearing. Included in the statutory transcript is a copy of the appraiser's "residential appraisal report" which indicates a value for the subject property of \$300,000. The Kuhns subsequently filed a notice of appeal with this Board, challenging the BOR's dismissal.

Before this Board, it is apparent that the Kuhns were, again, dilatory in the prosecution. The record includes letters from the Hamilton County Assistant Prosecuting Attorney indicating a failure on the part of the Kuhns to respond to a settlement offer. In their notice of appeal, Mrs. Kuhn indicated that during the time the appeal was pending, the Kuhns sold their home and moved to the Boston, Massachusetts area. However, Mrs. Kuhn did not explain why she did not respond to the settlement offer.

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<sup>1</sup> We have often admonished that statements made via notice of appeal do not rise to the level of evidence upon which this Board can rely in making a determination. *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), B.T.A. No. 92-P-880, unreported. However, in this matter, the statements made through the notice of appeal do not relate to the value of the subject property but merely express a justification for appellants' failure to appear at the hearing before the BOR. As we must conclude that the BOR was within its authority to dismiss appellants' complaint, we find no harm to any party in presenting such justification within our decision.

In *LCL Income Properties v. Hamilton Cty. Bd. of Revision* (1995), 71 Ohio St.3d 652, the Ohio Supreme Court held that the failure of a property owner to appear at a board of revision hearing is proper grounds for the dismissal of the owner's complaint. *LCL* was an affirmation of the Court's earlier ruling in *Swetland v. Evatt* (1941), 139 Ohio St. 6, in which it held:

“A county board of revision \*\*\* is a quasi-judicial body, and where a taxpayer files a complaint against the assessed value of his real property and thereafter fails to attend a hearing of which he has had notice and no evidence in support of such complaint is offered by or on behalf of the taxpayer, a county board of revision is justified in fixing the valuation complained of in the amount assessed by the county auditor.” Paragraph nine of the syllabus.

When no one appeared before the BOR at the time appointed for Mrs. Kuhn's hearing upon her real property complaint, the BOR was within its authority to dismiss the complaint. We acknowledge that the BOR had before it an appraisal prepared by an employee of the auditor's office which indicated that the Kuhns' property was overvalued. However, the Court was specific in *LCL* to hold that when no evidence is presented *by or on behalf* of the property owner, the BOR may dismiss.

We acknowledge that this remedy may seem harsh in light of the evidence which may have existed to support the Kuhns' claim. However, in discussing the requirement that a notice of appeal be timely filed with this Board, we have previously stated as follows:

“This Board is mindful of the fact that the appellant elected to proceed on his own behalf as he is surely entitled to do. Nevertheless, whether a party wishing to appeal to this Board acts for himself or through an

authorized representative, the action taken must comply with the jurisdictional requirements prescribed by the Ohio General Assembly in order to perfect an appeal in conformity with statutory terms and conditions.” *Martinovich v. Montgomery Cty. Bd. of Revision* (Sept. 24, 1985), B.T.A. No. 82-B-589, unreported, at 7.

The same principle holds true for *pro se* parties who wish to proceed in a quasi-judicial forum such as the BOR. Ms. Kuhn should have contacted the BOR and inquired whether her appearance at the scheduled hearing was necessary for a full consideration of her complaint and not merely assumed that she could make her presentation at a later time. While the actions of the BOR may have been a poor exercise of discretion, they were not without legal basis.

It is the order of the Board of Tax Appeals that the BOR was within its authority when it dismissed the complaint before it. Therefore, the actions of the BOR must be, and hereby are, affirmed.

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