

OHIO BOARD OF TAX APPEALS

Lonnie Durham (tr.),)	
)	CASE NO. 01-A-216
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Hamilton County Board of Revision)	
and Hamilton County Auditor,)	DECISION AND ORDER
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Lonnie Durham, <i>pro se</i> 293 Mystic Avenue Cincinnati, Ohio 45216
For the County	Michael Allen Hamilton County Prosecuting Attorney By: Thomas J. Scheve Assistant Prosecuting Attorney 230 East Ninth Street, Suite 400 Cincinnati, Ohio 45202

ENTERED: December 14, 2001

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a decision of the Hamilton County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 1999.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this Board by the county board of revision, and the record of the hearing before this Board.

The subject real property, a single-family residence, is a 2,031 square foot two-story home containing eight rooms, including five bedrooms, one bath, a kitchen, and a living room, and a detached 2-car garage. The house is situated on a lot that measures approximately .55 acres. The property is located in the 001-Cincinnati Corporation taxing district, Hamilton County, Ohio and appears on the auditor's records as parcel number 243-0004-0002. The value of the parcel, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 17,500	\$ 6,130
BUILDINGS	\$ 46,700	\$ 16,350
TOTAL	\$ 64,200	\$ 22,480

Before considering the merits of the instant appeal, we must consider whether this Board has jurisdiction to consider the instant matter. Specifically, the original complaint, seeking a decrease in the auditor's valuation of the subject property, was filed by Lonnie Durham, who listed himself as trustee of the subject property. The notice of appeal to this Board was also filed by Lonnie Durham in the same manner. Further, Mr. Durham testified before this Board that he is not an attorney authorized to make such filing and he made no representation that an attorney prepared or filed the complaint in question on his behalf.

Based upon our review of the record currently before us and the holding in the Court of Appeals' decision in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appeal denied (Apr. 11, 2001), in

which the Cuyahoga County Court of Appeals found the amendments to R.C. 5715.13 and 5715.19, allowing specified non-attorneys to file valuation complaints before the board of revision, were unconstitutional violations of the separation of powers, we find the original complaint filed on behalf of the property owner should have been dismissed by the board of revision. See, also, *The Dorcas W. Burns Trust v. Ashtabula Cty. Bd. of Revision* (Sept. 12, 1997), B.T.A. No. 97-K-710, unreported, (holding that a non-attorney trustee may not file on behalf of a trust, as the trust and trustee are separate legal entities). We conclude that such complaint was insufficient to invoke the jurisdiction of the Hamilton County Board of Revision. Thus, it is the Decision and Order of the Board of Tax Appeals that this matter be remanded to the Hamilton County Board of Revision with instructions that it dismiss the decrease complaint filed on the appellant's behalf and reinstate the value originally assigned the subject property by the Hamilton County Auditor.

However, even if we were able to consider the merits of the instant appeal, appellant would not prevail. In his testimony before this Board, appellant contended that the real property taxes he pays on the subject property are too high based upon an appraisal that he had secured for the property. Specifically, Mr. Durham's summary appraisal was authored by Steven A. Pastor, a state-certified residential real estate appraiser. In his report, Mr. Pastor utilized only the sales comparison approach, which yielded a value of \$40,000. Under the sales comparison approach, Mr. Pastor utilized three sales of homes within $\frac{3}{4}$ of one mile of the subject, dating from June of 1996 through October of 2000, and adjusted their sale prices for differences between the comparables and the subject, including site acreage, quality of construction, condition, square footage, functional utility, and garage/carport. He concluded to a final value of \$40,000. However, because the appraiser was not present

before this Board to be cross-examined about his report, and, specifically, the adjustments made therein, we would not solely rely upon his stated value for the subject.

Thus, based upon the foregoing, we would have found that the evidence offered by the appellant would not have supported a reduction in the value of the subject property. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495. Accordingly, we would have adopted the valuation for the subject property, as established by the board of revision.

However, as previously discussed, it is the Decision and Order of the Board of Tax Appeals that the subject appeal must be, and hereby is, dismissed.

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