

complaint challenging the Auditor's valuation of the subject real property for tax year 1999.

Both parties waived an evidentiary hearing before this Board. The county appellees submitted the matter on the record. Appellants, by letter dated September 19, 2001, also requested that we rule on the basis of the record. Said letter reads, as follows:

“We are in receipt of your letter dated 29 September, 2001. Furthermore, we understand, thru [sic] telephone conversation with you, that the hearing scheduled 12 October 2001 before Mr. Thomas L. Wang at 1:30 p.m. will not hear arguments regarding tax assessments [sic] valuations or revisions relative to this case. However, the hearing will hear arguments relative to the Hamilton County Board of Tax Revision proceedings.

“I regret my wife Anna, and myself will not be able to attend the 12 October 2001 hearing in Columbus, Ohio. Since we reside and work full time in the Cincinnati, Ohio area it would be a financial and travel burden for us.

“The reason we did not attend the Hamilton County Board of Tax Revision's final hearing regarding this case is because we were advised of the hearing date via return receipt mail which was undeliverable for nearly two weeks. Our work schedule and the hours of operation of the post office made it impossible to sign for the notice until it was too late for us to make arrangements to attend the hearing. Efforts to contact the Board by telephone was [sic] not possible because the last hours prior to the hearing were on a weekend. The hearing was schedule [sic] for the following Monday.

“Our intentions are genuine. We attended the first hearings of the Hamilton County Board of Tax Revision regarding this matter, but the Board did not have their

argument in order and postponed the hearing to a latter date. No arguments were heard at this meeting! We were not able to attend the next meeting, because of the previous statements, and the Board dismissed the case.

“In view of the above statements we respectfully ask the state of Ohio, Board of Tax Appeals to assign this matter back to the Hamilton County Board of Tax Revision so we may meet and argue our case.

“I certify the above statements are true and correct.”

The pertinent facts before us are not in dispute. Appellants timely filed their complaint for the subject property with the BOR on March 31, 2000. On or about February 24, 2001, the BOR notified appellants of its April 12, 2001 evidentiary hearing. Appellants appeared and testified at said evidentiary hearing; however, the BOR continued the case to allow the Auditor “to give a better appraisal of the property.” (S.T., R. II, 8.) On or about June 15, 2001, the BOR sent notice, by certified mail, of a second evidentiary hearing to the appellants. This hearing was scheduled for July 5, 2001. Appellants did not appear at this hearing and the BOR dismissed the case for failure to prosecute. (S.T., R. I, 1.)

Appellants explain, in their September 19, 2001 letter to the Board of Tax Appeals that they received the notice of the BOR’s second hearing late because of their work schedule and the hours of the postal service. They emphasize that they did appear at the BOR’s first hearing.

The record indicates that appellants picked up the certified notice on Monday, July 2, 2001. The hearing was scheduled for Thursday, July 5, 2001. The

July 4th holiday preceded the hearing date. When appellants did not appear at the BOR's second evidentiary hearing, the BOR dismissed appellants' case for failure to prosecute.

In *LCL Income Properties v. Rhodes* (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. *Id.* at syllabus. LCL was an affirmation of the Court's earlier ruling in *Swetland v. Evatt* (1941), 139 Ohio St. 6, in which it held at paragraph nine of the syllabus that "[a] county board of revision *** is a quasijudicial (sic) 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."

The authority of the BOR to dismiss a case before it when the appellant fails to attend a hearing and submits no evidence in support of its complaint is not in question, as the above-cited case indicates.

But the facts in LCL are much different from the case before us today. In LCL, no one appeared for hearings before the board of revision, the Board of Tax Appeals, or the Supreme Court. Further, there was no evidence presented by the complainant. Here, the record reveals that appellants attended the first BOR evidentiary hearing and presented sworn testimony pertaining to the valuation of the subject property. (S.T., R. II, 1-8.) This hearing was then continued by the BOR

because the auditor's representative requested an opportunity to "actually (view) the property" and to get "a better appraisal." (S.T., R. II, 7.8.)

In light of circumstances of this case, we determine that the BOR's dismissal for failure to prosecute is unlawful and unreasonable since appellants attended the BOR's first evidentiary hearing and presented evidence for the BOR to consider.

Therefore, it is the order of this Board that this matter be remanded to the Hamilton County Board of Revision with instructions that it render a decision as to the value of the subject property in accordance with its statutorily-mandated duties.

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