

interrogatories and document requests. No response has been filed, therefore this motion will be treated as uncontested.

Ohio Adm. Code 5717-1-11, which sets forth this board's rule for allowing discovery, provides in pertinent part:

“ (A) Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The ‘Ohio Rules of Civil Procedure’ shall be followed for discovery purposes * * *.”

In determining whether the above discovery request is proper, this board must first determine whether Patrick Queen, being the owner of the property, is a party to this appeal. Only if Patrick Queen is a party to this appeal may this board have jurisdiction to issue an order compelling discovery on the present motion. See *North Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, July 12, 1996), BTA No. 1995-M-1261, unreported. See, also, *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Interim Order, Aug. 9, 1996), BTA No. 1996-B-65, unreported.

A brief review of the history of the proceedings of this case is required. Pursuant to R.C. 5715.19 the BOE filed a complaint with the Licking County Board of Revision (“BOR”) seeking an increase in the value of the subject property. The property owner did not file a counter-complaint, nor did he make an appearance at the hearing before the BOR. After consideration, the BOR declined to increase the subject

property's value above the auditor's assessment. The BOE then filed an appeal with this board on September 2, 2004. The BOE now requests discovery from the property owner, Patrick Queen.

In the present matter, Patrick Queen did not file a counter-complaint with the BOR and did not attend the hearing. Thus, Patrick Queen did not become a party to the action by virtue of R.C. 5715.19. Patrick Queen has similarly not entered an appearance with this board. Therefore, this board must conclude that Patrick Queen has not become "a party to the action" which would require him to respond to discovery in the manner provided for under Civ. R. 33(A) and 34(B).

We acknowledge that Patrick Queen has the right to participate in an appeal before the board whether or not he entered an appearance before the BOR. *Columbus Apartments Assoc. v. Bd. of Revision* (1981), 67 Ohio St.2d 85; *Lancaster City Schools Bd. of Edn. v. Fairfield Cty. Bd. of Revision* (Mar. 26, 1993), BTA No. 1990-P-686, unreported. In *North Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Oct. 27, 1996), BTA Case No. 1994-G-1499, unreported, the property owner, after filing a counter-complaint with the BOR, attempted to deny that it was a party to the appeal before this board and therefore, escape its obligation to respond to discovery. This board rejected the property owner's rationale and found a property owner who files a complaint with the BOR to be an indispensable party at any later proceedings before this board. However, this case is clearly distinguishable from the subject case. In *North Olmsted Bd. of Edn.*, the property owner made an entry of appearance at the BOR by filing a complaint as to the value of its property. By filing

such a complaint, it became a party to the action before the BOR pursuant to R.C. 5715.19(B).

In the present case, Patrick Queen did not file a complaint with the BOR or make any other appearance. Therefore, he was never a party to that proceeding. Patrick Queen has further not shown any intention to make an appearance before this board. While a property owner who fails to enter an appearance at the BOR and shows no inclination to participate before us shall not be denied the right to participate, he shall not be considered a party for purposes of discovery. Since the property owner is not a party before this board, it cannot be compelled to answer any interrogatories or provide any documents through the manner utilized by the BOE.

Should Patrick Queen, at a later date, attempt to enter an appearance and participate in the hearing before this board (as would be his right), the board would consider appropriate sanctions against him for failure to timely participate in discovery. *North Olmsted*, supra. Such sanctions could include the right to present any evidence previously requested by the BOE wherein the property owner failed to respond.

Based on the foregoing, it is the order of the Board of Tax Appeals that the BOE's motion to compel discovery is denied. While Patrick Queen is not a party to this appeal for discovery purposes, because of his ongoing interest in the subject property, a copy of this order shall be sent to him by certified mail.

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