

**OHIO BOARD OF TAX APPEALS**

New Boston Local School District )  
Board of Education, )  
 )  
Appellant, ) (CASE NO. 2004-V-588)  
 ) (REAL PROPERTY TAX)  
 )  
vs. ) (DECISION AND ORDER)  
 )  
Scioto County Board of Revision, )  
Scioto County Auditor, and J&G )  
Partnership, Ltd., )  
 )  
Appellees. )

APPEARANCES:

For the Appellant BOE	- Miller Searl & Fitch, LPA R. Alan Lemons 806 Sixth Street Suite 200 P.O. Box 991 Portsmouth, OH 45662-0991
For the County Appellees	- Lynn Alan Grimshaw Scioto County Prosecuting Attorney Scioto County Courthouse Portsmouth, OH 45662
For the Appellee Property Owner	- Perez & Morris LLC Juan Jose Perez 8000 Ravine's Edge Court Suite 300 Columbus, OH 43235

Entered: October 1, 2004

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

This appeal is now considered by the Board of Tax Appeals following a motion filed on behalf of the New Boston Local Board of Education (“BOE”) to vacate the decision of the Scioto County Board of Revision (“BOR”). Counsel for appellee property owner J&G Partnership, Ltd. (“J&G”) has responded to said motion.

The BOE argues that the underlying complaint filed before the BOR on behalf of J&G was insufficient to establish jurisdiction before the BOR because the complaint was prepared and filed by an individual not licensed as an attorney in the state of Ohio and not otherwise authorized to file the complaint.

A review of the statutory transcript (“S.T.”) certified to this board by the Scioto County Auditor indicates that the original complaint, seeking a decrease in the auditor’s valuation of the subject parcel, was filed by Mr. Gary Parsley, who identifies himself as the president and member of J&G. Neither the complaint nor the remainder of information within the statutory transcript suggests that the individual who identified himself as the complainant and who has signed the complaint is an attorney authorized to make such filing, or that an attorney prepared and filed the complaint in question. Nevertheless, the BOR proceeded to reduce the value for the subject property.

In *Sharon Village Ltd. v. Licking County Bd. of Revision* (1997), 78 Ohio St.3d 479, and *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, the Supreme Court of Ohio concluded that only individual owners of real property and attorneys-at-law were authorized to prepare and file real property complaints. Compare *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), 91 Ohio St.3d 308, paragraph one of the syllabus (“An attorney who signs an R.C. 5715.19 valuation complaint in his or her capacity as an attorney-at-law and files it, or directs its filing, in accord with R.C. Chapter 5715, has thereby ‘prepared and filed’ that complaint for purposes of

determining whether jurisdiction has vested in a county board of revision, as contemplated by *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, 678 N.E. 2d 932.”).

In response to *Sharon Village Ltd.*, supra, and *Worthington*, supra, the General Assembly enacted Sub.H.B. 694, 147 Ohio Laws, Part III, 5373 (eff. Mar. 30, 1999). Through that enactment, both R.C. 5715.13 and 5715.19 were amended to allow real property complaints to be filed by designated persons who were statutorily authorized to act in a representative capacity, including an officer of a corporation.

J&G argues that the amendments made to R.C. 5715.13 and 5715.19 permit Mr. Parsley to prepare and file the complaint below. Nevertheless, in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, the Cuyahoga County Court of Appeals found the amendments to R.C. 5715.13 and 5715.19 to be unconstitutional violations of the separation of powers:

“Pursuant to Section 2(B)(1)(g), Article IV of the Ohio Constitution, the Ohio Supreme Court shall have original jurisdiction of ‘admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.’ ‘The Supreme Court has consistently indicated that it alone has the inherent power to regulate, control and define the practice of law in Ohio.’ *Washington Cty. Dept. of Human Serv. v. Rutter* (1995), 100 Ohio App.3d 32, 36, citing to *State ex. rel. Green v. Brown* (1962), 173 Ohio St. 114, 18 O.O.2d 361, 180 N.E.2d 157, paragraph one and two of the syllabus; *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 10 O.O. 95, 12 N.E.2d 288, paragraph one of the syllabus. The Ohio Supreme Court has repeatedly held that the filing of a complaint before the Board of Revision constitutes the practice of law. *Sharon Village Ltd. v. Licking County Bd. of Revision* (1997), 78 Ohio St.3d

479 syllabus; *Lakeside Ave. L.P. v. Cuyahoga County Bd. of Revision* (1999), 85 Ohio St.3d 125, 126; *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, 158. Amended R.C. 5715.19(A) permits persons who are not attorneys or the owners of the property to file complaints before the Board of Revision on behalf of the owner and therefore permits non-attorneys to engage in what has been uniformly recognized as the practice of law.

“The General Assembly has no authority to authorize lay persons to engage in the practice of law in a representative capacity for another entity and the Ohio Supreme Court has taken no action to sanction such conduct. *Washington Cty. Dept. of Human Serv.*, supra at 37; see, also, *Alliance v.[sic] Group, Inc. v. Rosenfield* (1996) 115 Ohio App.3d 380, 387 (the General Assembly may not usurp the constitutionally granted functions of the Supreme Court set forth in Section 5, Article IV of the Ohio Constitution). The amended version of R.C. 5715.19(A) does exactly that as it allows non-attorneys to practice law. Because the statute clearly violates the separation of powers between the judiciary and legislative branches, the amended statute is unconstitutional.”

This board has previously found on several occasions that the court’s ruling is persuasive, as we do today. See *City of Strongsville, Strongsville Bd. of Edn. and The Glidden Co. v. Cuyahoga Cty. Bd. of Revision*, (Apr. 27, 2001), BTA Nos. 1997-M-300-301, 304-305, 310, 323, unreported. See, also, *Bd. of Edn. of the Whitehall City School District v. Franklin Cty. Bd. of Revision* (Mar. 19, 2002), Franklin App. Nos. 01AP-878, 01AP-879, unreported, where the Tenth District Court of Appeals affirmed this board’s decision to remand a complaint filed by a non-attorney to the BOR with instructions to dismiss, and found the analysis in *C.R. Truman* to be persuasive authority.

In its response to the motion, J&G acknowledges that it is a limited liability company; however, counsel argues that the entity is “operated” as a general partnership. Furthermore, J&G argues that Mr. Parsley is “treated” and “viewed” as a general partner. Based upon its characterization of Mr. Parsley as a general partner, J&G argues that the complaint below was valid given this board’s decision in *V.F. Holdings v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 12, 1997), BTA No. 1997-M-664, unreported, where we held that partners in a general partnership each have an ownership interest which authorizes them to bring a complaint in their own name.

The facts in *V.F. Holdings*, supra, are not consistent with the issue before us today involving a limited liability corporation. Consistent with the court’s decision in *Sharon Village*, supra, this board has previously held that individuals not licensed to practice law are not permitted to prepare and file complaints on behalf of limited liability corporations. *Bd. of Edn. of the Whitehall City School Dist.*, supra, (following *C.R. Truman*, supra, and holding a member of a limited liability company may not file a complaint with a county board of revision); *Bd. of Edn. for the Toledo Public Schools v. Lucas Cty. Bd. of Revision* (Apr. 3, 1998), BTA No. 1997-P-1299, unreported (dismissing complaint filed by “member” of a limited liability company); *AP ADA Limited Partnership vs. Ottawa Cty. Bd. of Revision* (August 27, 2004), BTA No. 2004-T-379, unreported (dismissing complaints filed by a member of a limited liability corporation).

Furthermore, in *Geiger v. King*, Franklin App. No. 03AP-1228, 2004-

Ohio-2137, the Tenth District Court of Appeals held:

“It is well-settled that ‘[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law.’ *Union Savings Assn. v. Home Owners Aid* (1970), 23 Ohio St.2d 60, syllabus. Accordingly, courts have held that a complaint or other pleading undertaken on behalf of a corporation by a non-attorney is a nullity. See, e.g., *Coburn v. Toledo Hosp.* (Jan. 19, 2001), Lucas App. No. L-00-1215; *Talarek v. M.E.Z., Inc.* (Sept. 10, 1998), Lorain App. No. 98CA007088; *Sheridan Mobile Village, Inc. v. Larsen* (1992), 78 Ohio App.3d 203, 205; *Palmer v. Westmeyer* (1988), 48 Ohio App.3d 296, 297; *Bd. of Trustees for the Memorial Civil Ctr. v. Carpenter Co.* (Aug. 9, 1982), Allen App. No. 1-81-38. Accord *Tubalcain Trust v. Cornerstone Constr., Inc.* (May 26, 1994), Franklin App. No. 93APE12-1701 (‘[a] trust, like a corporation, cannot act on its own behalf but, instead, must act through an individual. Since only attorneys can represent another party in litigation before a court, necessarily an attorney must be engaged to represent a trust’). See, also, *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156.”

J&G further argues that the Ohio Supreme Court has not ruled on the constitutionality of the amendments made to R.C. 5715.13 and 5715.19, and implies that the appellate court’s unreported decision in *C.R. Truman, L.P., supra*, is not controlling authority in the judicial district from which it arose, and therefore, is not controlling before this board. The Supreme Court’s rule on unpublished courts of appeals’ decisions states that unpublished opinions of courts of appeals are not considered controlling authority, but rather are persuasive authority. See S.Ct.R.Rep.Op. 2(G). As stated above, we have previously found on several occasions that the court’s ruling is nevertheless persuasive, as we do today.

A review of the record shows that the original complaint was signed, prepared, and filed by Mr. Parsley, president and member of J&G. No evidence has been provided that indicates that Mr. Parsley is licensed to practice law within the state of Ohio.

We conclude that such complaint was insufficient to invoke the jurisdiction of the Scioto County Board of Revision. Therefore, considering the record before us, it is the decision and order of the Board of Tax Appeals that this matter be remanded to the Scioto County Board of Revision with instructions that it dismiss the complaint, and the county auditor shall restore the value of the subject parcel as it was initially assessed.

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