

**OHIO BOARD OF TAX APPEALS**

Board of Education of the Columbus City Schools, )  
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 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Franklin County Board of Revision, )  
 Franklin County Auditor, and Capital City )  
 Housing, LLC, )  
 )  
 Appellees. )

CASE NO. 2006-A-1173  
(REAL PROPERTY TAX)  
ORDER  
(Denying Motion to Remand)

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC  
Mark H. Gillis  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215

For the County Appellees - Ron O'Brien  
Franklin County Prosecuting Attorney  
Paul Stickel  
Assistant Prosecuting Attorney  
373 South High Street, 20<sup>th</sup> Floor  
Columbus, Ohio 43215

For the Appellee Property Owner - Gallagher & Kavinsky, LPA  
Scott B. Birrer  
8740 Orion Place, Suite 200  
Columbus, Ohio 43240

Entered March 2, 2007

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to dismiss<sup>1</sup> filed by the appellant board of education. This matter has been submitted to us upon such motion and brief in support as well as the response thereto from the appellee property owner.

Specifically, the BOE's motion to dismiss provides, in pertinent part:

“Now comes Appellant Board of Education of the Columbus City School District and moves this Board to reverse the decision of the Franklin County Board of Revision, which granted Appellee Capital City Housing, LLC, a reduction in the value of its property, and to remand this appeal back to the Board of Revision with instructions to dismiss the original board of revision complaint filed by the Appellee property owner.

“The grounds for this motion are that the original complaint filed by Appellee, Capital City Housing, LLC, was signed on behalf of the corporate property owner by an individual, Tim Telesz, who is not an attorney licensed to practice law in the State of Ohio. Mr. Telesz identified himself as the ‘complaint’s [sic] agent’ on line 3 of the complaint form and ‘as manager’ at the bottom on the complaint form. A motion to dismiss was made before the Board of Revision. However, the Board went ahead and granted a reduction in the true value of the property.”

In its 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), 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. The appellate court held:

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<sup>1</sup> Although the BOE has characterized its pleading as a “motion to dismiss appeal,” the board shall consider it to be a “motion to remand with instructions to dismiss the underlying complaint.”

“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.”

Thereafter, in *City of Strongsville, Strongsville Board of Education and The Glidden Co. v. Cuyahoga Cty. Bd. of Revision* (Apr. 27, 2001), BTA Nos. 1997-

M-300-301, 304-305, 310, 323, unreported, this board considered the jurisdictional sufficiency of several original complaints, which were prepared and filed by a non-attorney tax manager on behalf of the property owner, The Glidden Co. Finding persuasive authority in *C.R. Truman*, supra, we acknowledged our earlier order where we determined that the complaints in question were prepared and filed by a non-attorney. Accordingly, we held that jurisdiction of the BOR to consider value was not properly established.

Recently, however, in *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852, the Supreme Court reversed a decision of this board in which we remanded a case to the board of revision with instructions to dismiss the underlying complaint and retain the auditor's value because "a corporate officer \*\*\* had engaged in the unauthorized practice of law by preparing and filing a complaint with the board of revision on the corporation's behalf, and therefore, the board of revision lacked jurisdiction to consider the complaint." *Id.* at ¶1. The court in *Dayton Supply* held that "public-interest factors justify an exception to the rule in the instant case. Specifically, corporate officers have a fiduciary duty to the corporation such that accountability and loyalty are not an issue in permitting them to act on behalf of the corporation. Further, assuming that no legal issues are involved or arise in the case before the BOR, hiring an attorney is not necessary, a situation that makes filing a complaint by a corporation more convenient and less expensive." *Id.* at ¶30. The court concluded that "pursuant to R.C. 5715.19, a corporate officer does not engage in the unauthorized practice of law by preparing and filing a complaint with the

board of revision and by presenting the claimed value of the property before the board of revision on behalf of his or her corporation, as long as the officer does not make legal arguments, examine witnesses, or undertake any other tasks that can be performed only by an attorney.” Id. at ¶32.

In the instant case, a review of the record indicates that the original complaint, seeking a decrease in the auditor’s valuation of the subject property, was filed with the board of revision by Tim Telesz, as agent for the property owner, Capital City Housing, LLC, and who the complaint indicates is a part owner/manager of the property owner. Specifically, Mr. Telesz is a 50 percent member and owner of the company. S.T. at Audio Tape. Before the BOR, Mr. Telesz only presented the value claimed for the subject property by the property owner. The question now for this board is whether the holding in *Dayton Supply*, supra, regarding a corporate officer, should be extended to apply to other, arguably similarly situated individuals, including, in the instant matter, a member of a limited liability company.

Previously, in *Bd. of Edn. for the Toledo Public Schools v. Lucas Cty. Bd. of Revision* (Apr. 3, 1998), BTA No. 1997-P-1299, unreported, this board undertook an exhaustive analysis of limited liability companies when applying the court’s earlier holding in *Sharon Village*, supra, regarding the preparation and filing of a complaint with a BOR to a member of a limited liability company. We held:

“Critical to our analysis of this appeal is the nature of the interest a member acquires in a limited liability company. As we observed in *V.F. Holdings v. Cuyahoga Cty. Bd. of Revision* (Dec. 12, 1997), Interim Order, B.T.A. No. 97-M-664, unreported, a partner acquires a direct ownership interest in partnership property and is a party affected as

contemplated by R.C. 5715.13 [sic] A general partnership is a creature of the common law of Ohio, and is an aggregate of individuals not a separate legal entity. *Arpadi v. First MSP Corp.* (1994) 68 Ohio St. 3d 453; *Lakeside Avenue Limited Partnership, et al., v. Cuyahoga Cty. Bd. of Revision* (January 9, 1998), B.T.A. No. 97-K-695, unreported. A shareholder in a corporation, an entity created by statutory law, only owns an interest in the corporation, which is deemed to be personal property, R.C. 1701.24(A), not a direct ownership interest in the corporation property. Similarly, a limited liability company is a statutory creation and in that regard R.C. 1705.34 provides:

“R.C. 1705.34: Holding and Conveyance of Property:

“Real and personal property owned or purchased by a limited liability company shall be held in the name of the company. Conveyance of that property shall be made in the name of the company.’ \*\*\* (Emphasis sic.)

“R.C. 1705.01(H) provides:

“R.C. 1705.01: Definitions:

“(H) “Membership interest” means a members [sic] share of the profits and losses of a limited liability company and the right to receive distributions from that company.’ \*\*\* (Emphasis sic.)

“R.C. 1705.17 further provides:

“A membership interest in a limited liability company is personal property.’

“We conclude therefore that membership in an Ohio limited liability company provides no direct ownership interest in any of the real or personal property of such company.” *Id.* at 4-5.

We went on to determine that a member of a limited liability company, like a corporate officer, could not prepare and file a complaint on behalf of the LLC with the board of revision.

Further, in *Bd. of Edn. of the Whitehall City School Dist. v. Franklin Cty. Bd. of Revision* (Mar. 19, 2002), Franklin App. Nos. 01AP-878, et seq., unreported, the court of appeals also recognized the similarity between a corporation and a limited liability company. Specifically, the court held:

“Effective in 1994, Sub. S.B. No. 74, codified in R.C. Chapter 1705, provided for the formation of limited liability companies. Under former R.C. 1705.01(D)(2)(e), a limited liability company is defined as an entity. Pursuant to former R.C. 1705.03(C)(1), a limited liability company may purchase or acquire an interest in property. In addition, R.C. 1705.34 provides that real property owned or purchased by a limited liability company shall be held and owned in the name of the company, and conveyance of that real property shall be made in the name of the company. Any membership interest in a limited liability company is considered personal property of the limited liability company member. See R.C. 1705.17.

“\*\*\* both a limited liability company and a corporation are separate legal entities. See former R.C. 1705.01(D)(2)(e) and *Agley v. Tracy* (1999), 87 Ohio St. 3d 265, 268, 719 N.E.2d 951 (‘A corporation is an entity separate and apart from the individuals who compose it \*\*\*’). In *Union Savings Assn. v. Home Owners Aid* (1970), 23 Ohio St. 2d 60, 262 N.E.2d 558, syllabus, the Ohio Supreme Court held 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.’ By analogy, then, a limited liability company, as a separate legal entity, cannot maintain litigation in propria persona, or appear in court through an appointed agent not admitted to the practice of law.”

Finally, in *McConnell v. Hunt Sports Ent.* (1999), 132 Ohio App. 3d 657, 687, the court of appeals discussed the presence of a fiduciary relationship in a limited liability company. Specifically, the court held that:

“The term ‘fiduciary relationship’ has been defined as a relationship in which special confidence and trust is reposed in the integrity and fidelity of another, and there is a resulting position of superiority or influence acquired by virtue of this special trust. *Ed Schory & Sons, Inc. v. Soc. Natl. Bank* (1996), 75 Ohio St.3d 433, 442, 662 N.E.2d 1074. In the case at bar, a limited liability company is involved which, like a partnership, involves a fiduciary relationship. \*\*\*

“A fiduciary has been defined as a person having a duty, *created by his or her undertaking*, to act primarily for the benefit of another in matters *connected with such undertaking*. *Strock v. Pressnell* (1988), 38 Ohio St.3d 207, 216, 527 N.E.2d 1235. \*\*\*” (Emphasis sic.)

Here, as in the foregoing case law, we find the interests of a member of a limited liability company and a corporate officer to be sufficiently similar, and as such, we find the court’s holding in *Dayton Supply*, supra, equally applicable to members of a limited liability company. Accordingly, it is the decision and order of this board that the appellant’s motion must be and hereby is denied. This matter will proceed to hearing in the normal course of the board’s schedule.

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