

## OHIO BOARD OF TAX APPEALS

Board of Education of the Brooklyn City School District,	)	
	)	CASE NOS. 2006-Z-2213
	)	2006-Z-2254
Appellant/Appellee,	)	
	)	(REAL PROPERTY TAX)
and	)	
	)	ORDER
Milton Cohen (Trustee),	)	
	)	(Denying Motion to Remand and
Appellee/Appellant,	)	Scheduling Merit Hearing)
	)	
vs.	)	
	)	
Cuyahoga County Board of Revision and Cuyahoga County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Bd. of Edn.	-	Brindza McIntyre & Seed LLP David H. Seed 1111 Superior Avenue, Suite 1025 Cleveland, Ohio 44114
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney 1200 Ontario Street, 8th Floor Cleveland, Ohio 44113
For the Property Owner	-	Sleggs, Danzinger & Gill Co., LPA Steven R. Gill 820 West Superior Avenue, Suite 400 Cleveland, Ohio 44113

Entered February 24, 2009

These appeals are now considered by the Board of Tax Appeals upon the filing of a motion by the Board of Education of the Brooklyn City School District to remand with instructions to dismiss the complaint initiating these proceedings. The property owner, Milton Cohen (Trustee), filed a motion contra in response to the board of education's motion to remand.

In its motion, the board of education moved this board to remand the instant appeals to the board of revision with instructions to dismiss the underlying complaint filed by the property owner. The board of education asserts that the underlying complaint filed by the property owner with the county board of revision failed to properly invoke the jurisdiction of the county board of revision since the property owner was not correctly identified on the complaint. Motion to Remand, Brief at 1. The board of education argues that "Cohen, Milton (Trustee)" is listed as the owner of the property on Line 1 of the complaint and Milton Cohen died in 1996. The board of education provided copy of a quitclaim deed whereby the subject property was transferred on August 30, 1988 to "Milton Cohen, an individual, as Successor Trustee under a certain Amended and Restated Trust Agreement dated October 18, 1976" and a certified copy of a certificate of death for Milton Cohen. Motion to Remand, Exhibits 1-2. Due to his death in 1996, the board of education argues that Milton Cohen could not have filed the complaint as to the subject property in March 2006. Furthermore, the board of education argues that under the terms of the trust agreement, the subject property may have been owned by a successor trustee at the time the complaint was filed with the board of revision. In any event, the board

of education argues that the decrease complaint filed with the county board of revision was jurisdictionally defective as the property owner was not correctly identified on Line 1 of said complaint.

In the motion contra, the property owner argues that Milton Cohen, Trustee is the legal titleholder to the subject property and was correctly identified as such on Line 1 of the decrease complaint. Like the board of education, the property owner submitted a copy of the quitclaim deed along with its motion. Also, the property owner argues that had the complaint been completed in a different manner, that is, listing a name other than Milton Cohen, Trustee as the owner of the property on Line 1, the complaint would have been jurisdictionally defective. Therefore, the decrease complaint, the property owner argues, did properly invoke the jurisdiction of the county board of revision.

A review of the record in this appeal reveals that a complaint was filed with the Cuyahoga County Board of Revision on March 31, 2006 requesting a decrease in the real property tax valuation of the subject property for tax year 2005. S.T. at Ex. A. In the complaint, “Cohen, Milton (Trustee)” was listed on Line 1 as the owner of the property. Said complaint was signed by legal counsel for the property owner. Id. The property record card included in the statutory transcript certified to this board by the Cuyahoga County Auditor reflects “Cohen, Milton (Trustee)” as the owner of the subject property. S.T. at Ex. D. The board of revision rendered a decision on the complaint wherein the value of the subject property was determined to be \$7,000,000 which represented a reduction of \$1,182,000. S.T. at Ex. F.

R.C. 5715.19 and 5715.13 specify certain requirements for filing a complaint with a board of revision. More specifically, R.C. 5715.19(A)(1)(e) provides:

“Any person owning taxable real property in the county or in a taxing district with territory in the county \*\*\* may file such a complaint regarding any such determination affecting any real property in the county \*\*\*.”

Additionally, where, as here, the complaint before the board of revision is a decrease complaint, R.C. 5715.13 provides:

“The county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.”

A valid complaint filed pursuant to R.C. 5715.19 and 5715.13 must include all information that goes to the core of procedural efficiency. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591; *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142; *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10. In this context, this board has previously discussed the need for a complainant to correctly identify an owner of a property the valuation of which is being challenged. *Trotwood-Madison City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported; *Triple V's Holding v. Cuyahoga Cty. Bd. of Revision* (Apr. 24, 2000), BTA No. 1997-K-1701, unreported. This board has concluded that the need to identify an owner runs to the core jurisdiction of a county board of revision.

This board has recently considered a series of cases where the property was held in trust. In these cases, this board considered whether the jurisdiction of the board of revision was proper where the individual was listed on the complaint as the owner of the property despite the property being held in trust and the trustee being the legal titleholder to the property. See *Brennan v. Franklin Cty. Bd. of Revision* (Oct. 19, 2007), BTA No. 2006-Z-1163, unreported; *Brown v. Montgomery Cty. Bd. of Revision* (Nov. 2, 2007), BTA No. 2006-V-1753, unreported; *Simia v. Cuyahoga Cty. Bd. of Revision* (Mar. 7, 2008), BTA No. 2007-A-564, unreported. In each of these recent appeals, this board found that the complaints failed to invoke the jurisdiction of the board of revision since the legal titleholder to the property, the trustee, had not been properly identified on Line 1 of the complaint. In so doing, this board looked to the Ohio Supreme Court's holding in *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 106 Ohio St.3d 200, 2005-Ohio-4556, for guidance. There, the court considered the significance of properly naming an owner of property where the property is held in trust. The legal titleholder to the property was "Columbus State Community College District, Trustee" whereas "Columbus State Community College District" was reflected as the applicant on an application for exemption from real estate taxes. *Id.* at ¶12. R.C. 5715.27 governs the filing of an application for exemption from real estate taxes and provides that "the *owner* of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation \*\*\*." (Emphasis added).

In *Columbus City School Dist. Bd. of Edn.*, supra, the Ohio Supreme Court distinguished the manner in which real property is titled when the property is held in trust. Citing its earlier decision in *Goralsky v. Taylor* (1991), 59 Ohio St.3d 197, 198, the court stated, “In a trust, the trustee (and not the beneficiary) holds legal title to the trust corpus.” *Columbus City School Dist. Bd. of Edn.*, supra, at ¶11. Because the property was held in trust and titled to “Columbus State Community College District, Trustee,” but the applicant was listed as “Columbus State Community College District” on the application for exemption, the court concluded that the applicant was not the owner of the property and therefore lacked standing to file the application. *Id.* at ¶12. The court explained that to hold otherwise “would require us to disregard well-established trust law.” *Id.* at ¶11.

Likewise, in the instant appeals, this board cannot disregard the well-established trust law. Notwithstanding the fact that Milton Cohen is deceased, the legal titleholder to the subject property appears as Milton Cohen, Trustee. The property record card included in the statutory transcript as well as the quitclaim deed provided to the board by both parties in their motions reflect that the legal titleholder to the subject property is Milton Cohen, Trustee. “Milton Cohen” is a separate legal entity from “Milton Cohen, Trustee.” See *Brennan*, supra, *Brown*, supra, and *Simia*, supra. The legal titleholder to the subject property, Milton Cohen, Trustee, was reflected on Line 1 of the complaint filed with the board of revision. Accordingly, the requirement that the owner be correctly identified on the complaint has been satisfied

by the complaint at issue herein. The fact that Milton Cohen, the individual, is deceased does not alter the above analysis.

Based on the above precedent and the existing record, this board finds that the legal titleholder to the subject property, Milton Cohen, Trustee, was correctly identified on the complaint filed with the board of revision. Accordingly, the complaint properly invoked the jurisdiction of the county board of revision and the board of education's motion to remand is hereby denied.

Further, it is the order of the Board of Tax Appeals that the instant appeals are hereby scheduled for a merit hearing on April 1, 2009 beginning at 9:00 am at the offices of the Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215.

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