

OHIO BOARD OF TAX APPEALS

Board of Education of the Newark City Schools,)	CASE NO. 2007-A-483
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Licking County Board of Revision, Licking County Auditor, and Frank A. Brewer,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Rich, Crites & Dittmer, LLC Allison J. Crites 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County Appellees	-	Kenneth W. Oswalt Licking County Prosecuting Attorney Dennis E. Dove Assistant Prosecuting Attorney 20 South Second Street Newark, Ohio 43055
For the Appellee	-	Frank Brewer, pro se 152 Irvingwick Drive, Lot 72 Heath, Ohio 43056
Copy to	-	Greg Brewer, pro se 236 Steven Lane SE Newark, Ohio 43055

Entered May 12, 2009

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

The Board of Tax Appeals is considering the above-referenced appeal following the issuance of a show cause order by this board following our review of the

record currently before us. At the merit hearing before this board, counsel to the appellant board of education renewed its motion made previously before the board of revision, seeking dismissal of the underlying complaint in this matter for failure to establish jurisdiction. Because the property owner did not appear before this board at the merit hearing and therefore, did not respond to said motion, a show cause order was issued to determine why this board “should not order that the instant matter be remanded to the Licking County Board of Revision with instructions to dismiss the original complaint and reinstate the value originally assigned the subject property by the Licking County Auditor.” Interim Order, Dec. 3, 2008, at 5.

Specifically, the statutory transcript certified to this board by the BOR reflects that pursuant to R.C. 5715.19, an original complaint for tax year 2006 was filed on March 21, 2007, regarding property owned by Frank A. Brewer. S.T. at Ex. A. On the original complaint, Frank A. Brewer is properly¹ listed as the owner of the subject property on Line 1 of the complaint. Id. On Line 2 of the complaint, Greg S. Brewer is listed as the complainant, if not the owner. Line 3, for the complainant’s agent, was left blank and Line 5, for the complainant’s relationship to property if not owner, indicates “operate business of such property.” Id. The complaint was signed by Greg Brewer, who did not list a title. A counter-complaint, which is not under consideration herein, was also filed by the appellant board of education.

¹ The certified property record card included in the statutory transcript reflects Frank & Dorothea Brewer as the owners of the subject property. S.T. at Ex. C.

At the hearing on May 22, 2007 before the BOR, counsel to the board of education sought dismissal of the property owner's complaint for lack of jurisdiction because it was filed by an improper complainant. However, thereafter, the BOR issued its decision, dated June 11, 2007, wherein the BOR granted a valuation reduction for the subject property for tax year 2006. S.T. at Ex. E. Unsatisfied with the valuation determination rendered by the BOR, the BOE appealed the BOR's decision to this board. On September 3, 2008, this board convened a hearing at which only counsel to the appellant board of education appeared. Thereafter, the board issued its show cause order, to which no response was received. Thus, before we can address the merits of the instant matter, we must first determine whether jurisdiction was properly established before the BOR.

R.C. 5715.13 outlines who has standing to file a decrease complaint and provides that "[t]he 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." Furthermore, with regard to who may file a complaint, R.C. 5715.19 provides that "[a]ny person owning taxable real property in the county or in a taxing district with territory in the county" may file a complaint or "a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located."

Specifically, the Supreme Court has held that “[c]omplainants must fully comply with R.C. 5715.19 and 5715.13 before a county board of revision may act on their claims.” *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, 227. The court determined that “[s]ince R.C. 5715.19 is a general statute providing who may complain about various actions taken by the auditor, R.C. 5715.13, a special statute which restricts a board of revision’s power to reduce property values, controls the filing of complaints seeking decreases in a property’s value.” *Id.* Accordingly, pursuant to R.C. 5715.13, in a case in which a decrease in property valuation is sought, a complainant must be “a party affected thereby” or a person who is authorized to file a complaint pursuant to R.C. 5715.19. See, also, *Soc. Natl. Bank v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 401.

Thereafter, due to changes made to R.C. 5715.13, in *Lewell, LLC v. Montgomery Cty. Bd. of Revision* (Jan. 16, 2004), BTA No. 2002-V-1613, unreported, this board held:

“In *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, 227, the Ohio Supreme Court construed R.C. 5715.13, holding that a non-owner cannot file a decrease complaint and that ‘Complainants must fully comply with R.C. 5715.19 and 5715.13 before a county board of revision may act on their claims.’ However, subsequent to *Middleton*, the legislature amended R.C. 5715.13, effective March 30, 1999, by expanding upon who may file decrease complaints, adding to the ‘party affected thereby’ requirement by including the additional language of ‘or who is authorized to file a complaint under section 5715.19 of the Revised Code ***.’ Therefore, given the disjunctive ‘or,’ a party filing a decrease complaint need not be a party affected thereby. A complainant need only be a party authorized to file complaints by R.C. 5715.19.” *Id.* at 3.

See, also, *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, June 11, 2004), BTA Nos. 2003-M-1092, 1093, unreported.

Most recently, however, the Supreme Court in *Village Condominiums Owners Assn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 223, 2005-Ohio-4631, revisited *Soc. Natl. Bank*, supra, wherein it held that “[t]he two statutes of primary importance when considering the standing of a party to file a complaint for a decrease in valuation with a board of revision are R.C. 5715.19 and 5715.13.” Id. at ¶6. It went on to indicate that “a complainant must first demonstrate that pursuant to R.C. 5715.19(A)(1), he or she is a ‘person owning taxable real property in the county.’² *Soc. Natl. Bank*, 81 Ohio St.3d at 404 ***. If the complainant satisfies this ‘threshold standing requirement,’ a court will then consider whether he or she meets the requirements of R.C. 5715.13, which 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 ***.’ Id.” Id. at ¶6.

Based upon the foregoing, and with no response from Mr. Greg Brewer indicating otherwise, we must presume that the original complaint filed by Mr. Brewer with the Licking County Board of Revision did not vest the BOR with jurisdiction. It is therefore the order of this board that the instant matter be remanded to the Licking County Board of Revision with instructions to dismiss the original complaint filed by

² “This statute also authorizes others to file a complaint ***.”

Mr. Brewer and reinstate the value originally assigned the subject property by the Licking County Auditor.

However, we note that even if we had been able to determine that the BOR had properly exercised jurisdiction over the subject complaint, we find no basis in the record for the action taken by the BOR in reducing the subject's valuation, and, as such, we would have returned the subject's valuation, as of January 1, 2006, to that which the auditor had previously determined.

Specifically, as support for the value he sought before the BOR, Mr. Greg Brewer offered a limited appraisal of the subject authored by Debi Wilcox, MAI, a state-certified, general real estate appraiser, who opined to a value for the subject property of \$113,000. S.T. As we review the report, we first note that the appraisal was completed for financing purposes. S.T. at Ex. D, p. 7. Appraisals done for financing purposes have generally been rejected by this board because "they are not necessarily a complete and thorough evaluation of the property." *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported, at 7.

In addition, we note that the appraiser concluded to a value for the subject as of June 1, 2006, approximately five months beyond the tax lien date under consideration. Based upon the "as of" date that was utilized, the accuracy of the findings within the report becomes questionable since the date upon which all conclusions are based is some five months later than the actual date in question. The instant valuation determination must be premised on evidence relevant to the tax lien date in question. See *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118

Ohio St.3d 343, 2008-Ohio-2565; *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552.

Finally, the appraiser did not appear before the BOR or this board to authenticate the appraisal that was submitted, testify regarding her professional credentials and the methodologies utilized in deriving her valuation conclusions, or be cross-examined/questioned by the opposing party or members of the BOR or this board's examiner. As we noted in *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported, a view expressed by this board on numerous other occasions:

“Generally, documentary evidence which is received at hearing needs to be identified and authenticated by a witness who testifies under oath and is subject to examination by both the opposing party and an attorney examiner of this board. Furthermore, that witness' qualifications and credibility may be assessed during such examination. However, in this case, such safeguards are noticeably absent since the individuals who prepared the appraisals did not appear at hearing. Given our inability to assess the appraisers' qualifications and credibility and the failure to have the documents authenticated, we find that each report constitutes hearsay upon which this board may not rely in reaching a decision.” Id. at 3-4.

See, also, *Specca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported; *Bd. of Edn. of the Northridge Local Schools v. Montgomery Cty. Bd. of Revision* (Jan. 28, 2005), BTA No. 2004-B-35, unreported, settled on appeal, Sup. Ct. No. 2005-0390, 08/16/2005 Case Announcements, 2005-Ohio-4216; *Fisher v. Morrow Cty. Bd. of Revision* (Feb. 15, 2008), BTA No. 2006-V-717, unreported;

Giallombardo v. Montgomery Cty. Bd. of Revision (May 7, 2004), BTA No. 2003-V-875, unreported; *Shanker v. Franklin Cty. Bd. of Revision* (July 19, 2002), BTA No. 2002-J-82, unreported. These cases reflect the proposition that “[a]n expert’s opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion.” *Freshwater*, supra, at 30.

Accordingly, based upon the foregoing, we would have found that the property owner had failed to demonstrate that the value which he sought had a basis in the market, as of the tax lien date in question. See *Cleveland Bd. of Edn.*, supra, at 337; *Springfield Local Bd. of Edn.*, supra, at 495; *Mentor Exempted Village Bd. of Edn.*, supra, at 319. Further, we would have also determined that there was no stated basis or support in the record for the reduction granted by the BOR, and without “sufficient” evidence before it, the BOR should have retained the auditor’s determination of value, as supported by the cost approach, as set forth on the property record cards. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 567. But, see, *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-5237.

Therefore, based upon the foregoing, this matter is hereby remanded to the Licking County Board of Revision with orders to dismiss the underlying complaint and reinstate the subject property’s valuation as previously established by the Auditor of Licking County for tax year 2006.

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