

OHIO BOARD OF TAX APPEALS

419 Investments, Ltd.,)
)
)
 Appellant,)
)
 vs.)
)
 Erie County Board of Revision, Erie)
 County Auditor, and Perkins Local School)
 District Board of Education,)
)
 Appellees.)

CASE NO. 2007-B-1131
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant
and Complainant
Hoty Enterprises, Inc. - Kula Hoty Lynch, Esq.
4918 Milan Road
Sandusky, Ohio 44870

For the County
Appellees - Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Ave., Suite 319
Columbus, Ohio 43215
and
Rich & Gillis Law Group, LLC
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For the Appellee
Bd. of Edn. - Britton Smith Peters & Kalail
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Cleveland, Ohio 44131-2582

Entered May 19, 2009

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

This appeal is now being considered upon an order requiring appellant and complainant to show cause as to why this board should not remand the present appeal to the Erie County Board of Revision (“BOR”) with instructions to dismiss the underlying complaint. (Interim Order, January 20, 2009), BTA No. 2007-B-1131, at 3.

Appellant and complainant's counsel filed a reply herein under date of January 29, 2009.

A review of the record in this appeal indicates that an original decrease complaint was filed with the Erie County Board of Revision ("BOR") on March 27, 2007 requesting a decrease in the real property tax valuation of the subject property for tax year 2006. S.T., Ex. 2. In the complaint, the complainant named "419 Investment,¹ Ltd." on Line 1 as the owner of the property and Line 2, which asks for the complainant if not the owner, named "Hoty Enterprises, Inc." Under line 5, which asked for "[c]omplainant's relationship to property if not owner," it listed "Manager." Id. The statutory transcript certified to this board by the Erie County Auditor reflects "419 Investments, Ltd." as the owner of the subject property. S.T., Ex. 2. The BOR rendered a decision on the complaint, retaining the value previously determined by the county auditor. S.T., Ex. 4.

In its brief, counsel for appellant and complainant argues that Hoty Enterprises, Inc. filed the original complaint with the BOR in its capacity as a manager and real estate broker for the property owner, 419 Investments, Ltd. It states that R.C. 5715.19(A)(1) allows such a real estate broker to file the subject complaint. Id. at 1. We disagree. In this regard, we note that as a consequence of *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, the General Assembly amended R.C. 5715.13 and 5715.19 to authorize certain non-attorneys to file a BOR complaint. Among those listed was "a real estate broker licensed under Chapter 4735." Id. However, in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27,

2000), Cuyahoga App. No. 76713, unreported, discretionary appealed denied (2001), 91 Ohio St.3d 1489, the court found the amendments to R.C. 5715.13 and 5715.19 to be unconstitutional violations of the separation of powers doctrine. Subsequently, in *Bd. of Edn. of the Whitehall City School Dist. v. Franklin Cty. Bd. of Revision*, supra, the 10th Appellate District reached an identical conclusion, finding that “*** amended R.C. 5715.19(A) is unconstitutional beyond a reasonable doubt insofar as it permits persons that are not attorneys or owners of the property to file a complaint before a board of revision on behalf of an owner.” Id. at 14. Cf. *Iberia Cabinet Mfg. Co. v. Walston*, 121 Ohio Misc.2d 121, 2002-Ohio-7450 (complaint filed by a person not authorized to do so found to be a nullity). Although placing some limitations on these decisions by implication, the court’s decision in *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852, did not invalidate the holdings in *C.R. Truman* and *Whitehall*, supra.

Thus, counsel’s contention that Hoty’s status as a real estate broker qualifies it as a proper complainant in the case before us is without merit.

R.C. 5715.19(A)(1) provides:

“Any person owning taxable real property in the county * * * may file [an original] complaint * * *.”

R.C. 5715.13 further 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

¹ We note the owner appears to be “419 Investments, Ltd.” S.T.

by oath, showing the facts upon which it is claimed such decrease should be made.”

In *Soc. Natl Bank v. Wood Cty. Bd. of Revision*, 81 Ohio St.3d 401, 1998-Ohio-436, the Supreme Court held that a former owner lacked standing to bring a valuation complaint before the BOR. The court addressed the relationship between R.C. 5715.19(A)(1) and R.C. 5715.13:

“* * * [W]e believe that our decision in *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, 658 N.E.2d 267, requires that consideration of this matter start with R.C. 5715.19. In *Middleton* we stated, ‘R.C. 5715.19 is a general statute providing *who may complain* about various actions taken by the auditor.’ [Emphasis added.] *Id.* at 227, 658 N.E.2d at 268. A review of the pertinent language of R.C. 5715.19(A)(1), which lists the persons and entities that have standing to file a complaint, shows only one classification for which Society might qualify as a complainant, and that is, ‘[a]ny person owning taxable real property in the county.’

“***

“If Society had proven that it was a ‘person owning taxable real property in the county,’ then a consideration of the elements of R.C. 5715.13 would have become relevant. However, Society failed to show that it met the threshold standing requirement of R.C. 5715.19(A)(1), and, consequently, failed to invoke the jurisdiction of the BOR. Therefore, we need not consider whether Society met the requirements of R.C. 5715.13.” *Id.* at 403-404.

Although the Supreme Court thus envisioned a two-prong test in *Soc. Natl. Bank*, *supra*, to determine whether Hoty had standing to file the underlying complaint, legislative changes to R.C. 5715.13 may have eliminated the necessity of the two-pronged test.

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 ‘[C]omplainants 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.

It is uncontroverted that Hoty was not the owner of the subject property, nor does it claim to own taxable property in the county at the time it prepared and filed the complaint. Therefore, to have standing to file the subject complaint, Hoty must either provide evidence that it is the owner of other property within the county, which it has not, or provide some other basis for jurisdiction.

There is no evidence before us that Hoty owns property in the county. Thus, the only category under which Hoty could file is as “the party affected by a decrease in valuation.” We again turn to case law considering the language “party affected by a decrease in valuation” found in R.C. 5715.13. In *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, the Ohio Supreme Court held that “a party affected” is one upon whom the decrease will produce a material influence or effect. The court recognized that an owner is always affected by a decrease in

valuation. However, Hoty was not the owner of the property at the time of the filing of the complaint.

Therefore, this board cannot find that Hoty meets any of the classes of persons who may file under R.C. 5715.19(A)(1) or R.C. 5715.13. It is not the owner of the property, there is no evidence before us showing that it owned other property in the county, and it has not shown itself to be a party affected by the decrease in valuation. Thus, neither statute provides jurisdictional grounds for filing the complaint.

Upon careful review of the record before us, we conclude that the board of revision erred when it determined it had jurisdiction to consider the complaint filed by Hoty. Accordingly, this matter is remanded to the Erie County Board of Revision with instructions to dismiss the underlying complaint.

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