

OHIO BOARD OF TAX APPEALS

419 Investments, Ltd.,)	
)	CASE NO. 2007-B-1131
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Erie County Board of Revision, Erie)	(Show Cause)
County Auditor, and Perkins Local School)	
District Board of Education,)	
)	
Appellees.)	

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 James R. Gorry 300 E. Broad St., Suite 300 Columbus, Ohio 43215
For the Appellee Bd. of Edn.	-	Britton Smith Peters & Kalail Susan R. Hartung, Esq. 3 Summit Park Dr., Suite 400 Cleveland, Ohio 44131-2582

Entered January 20, 2009

This appeal is now considered by the Board of Tax Appeals following a review of matters pending before it.

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, 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.” Id. The statutory transcript certified to this board by the Erie County Auditor, reflects “419 Investment, 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.

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.” 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.’” *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.*”

Based upon the foregoing, it is therefore the order of this board that counsel for appellant and complainant, Hoty Enterprises, Inc. show cause why this board should not order that the instant matter be remanded to the Erie County Board of Revision with instructions to dismiss the original complaint. Specifically, said counsel should indicate whether the subject complainant owns property within Erie County, or otherwise properly qualifies as a complainant pursuant to the provisions of R.C. 5715.19(A)(1). All parties who wish to be heard upon the question of the legal

¹ “This statute also authorizes others to file a complaint ***.”

sufficiency of the original complaint to establish jurisdiction in the Erie County Board of Revision shall file a written response to this order within fourteen days of its issuance.

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