

OHIO BOARD OF TAX APPEALS

Board of Education for Sylvania City)
Schools,)
)
)
)
Appellant,)
)
vs.)
)
)
Lucas County Board of Revision, Lucas)
County Auditor, Savage Building)
Investors LLC, and Nick Camp,)
)
Appellees.)

CASE NO. 2007-B-1169
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Spengler Nathanson PLL
Michael W. Bragg
Four SeaGate, Suite 400
Toledo, Ohio 43604-2622

For the County
Appellees - Julia R. Bates
Lucas County Prosecuting Attorney
Carol Bruggeman
Assistant Prosecuting Attorney
700 Adams
Toledo, Ohio 43624-1680

For the Appellee
Property Owner - Lyden, Liebenthal & Chappell, Ltd.
and Nick Camp Erik G. Chappell, Esq.
Julie A. Douglas
5565 Airport Highway, Suite 101
Toledo, Ohio 43615

Entered May 12, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon appellant's motion to remand with instructions to the BOR to dismiss

the property owner's original complaint. 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:

“The Board of Education for Sylvania City Schools (“School District”) would hereby request a remand of this Appeal to the Lucas County Board of Revision with instructions to dismiss the underlying Complaint because the complainant listed in response to question 2 of the DTE Form 1 lists a party other than the owner of the property as the complainant. The Complaint which initiated this case with the Lucas County Board of Revision...lists Savage Building Investors, LLC as the owner of the property. In response to question 2, the Complaint lists Nick Camp as the complainant.”

Therein, appellant directs our attention to *Bd. of Edn. for Sylvania City Schools v. Lucas Cty. Bd. of Revision* (June 22, 2007), BTA No. 2006-M-1707, unreported, in support. *Id.* at 2.

A review of the statutory transcript shows that “Savage Building Investors, LLC” (“SBI”) was entered onto line 1 of the complaint listing the owner of the subject property. “Nick Camp-CFO, Savage Associates, Inc.” was entered onto line 2 of the subject complaint indicating the name of the complainant. Line 5 stated the relationship of the complainant to the property owner as “Financial representative to owner and CFO of largest tenant.” *Id.*

In its February 17, 2009 brief, counsel for SBI and Nick Camp argues that “[u]nlike in BTA No. 2006-M-1707, the [c]omplaint in the instant appeal was signed by a licensed attorney. *** Thus, [a]ppellants [sic] argument that [a]ppellee,

Nick Camp, is without standing to file the [c]omplaint is entirely irrelevant.”
(Emphasis in original) *Id.* at 3.

We disagree. Under line 3 of the subject complaint, the “[c]omplainant’s agent” is listed as “Patricia Lyden [of] Lyden, Liebenthal & Chappell, Ltd” and Ms. Lyden signed the complaint as “[c]omplainant or agent” at the bottom. S.T. Thus, the subject attorney represented the complainant and not the owner.

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 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.

See, also, *Village Condominiums Owners Assn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 223, 2005-Ohio-4631.

Although the Supreme Court thus envisioned a two-prong test in *Soc. Natl. Bank*, supra, to determine whether Mr. Camp 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.

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

It is uncontroverted that Mr. Camp was not the owner of the subject property. Nor is there evidence before us that Mr. Camp owned taxable property in the county at the time the subject complaint was filed.

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 Mr. Camp. Accordingly, this matter is remanded to the Lucas County Board of Revision with instructions to dismiss the underlying complaint, the practical effect of which will be to reinstate the values originally determined by the auditor.

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