

OHIO BOARD OF TAX APPEALS

Board of Education for the)
Maumee City Schools,)
)
Appellant,)
)
vs.)
)
Lucas County Board of Revision, the)
Lucas County Auditor, and)
B & E Ltd.,)
)
Appellees.)

CASE NO. 2007-M-1726
(REAL PROPERTY TAX)

ORDER

(Requiring Property Owner to Show Cause, Cancelling Merit Hearing)

APPEARANCES:

For the Appellant - Bd. of Edn.	Spengler Nathanson P.L.L. Michael W. Bragg 608 Madison Avenue, Suite 1000 Toledo, Ohio 43604
For the County - Appellees	Julia R. Bates Lucas County Prosecuting Attorney Carol L. Bruggeman Assistant Prosecuting Attorney One Government Center, Suite 500 Toledo, Ohio 43605
For the Appellee - Property Owner	Shumaker, Loop & Kendrick, LLP James D. Colner 41 South High Street, Suite 2400 Columbus, Ohio 43215

Entered February 3, 2009

This appeal is now considered sua sponte by the Board of Tax Appeals following a review of matters pending before it. A review of the record indicates that the decrease complaint which was the genesis of this appeal was filed with the Lucas County Board of Revision (“BOR”) on March 30, 2007 may not have vested jurisdiction with that body.

The statutory transcript, certified to the board by the Lucas County Auditor under his duties as the secretary of the BOR, includes a copy of the complaint which was the genesis of the present appeal. Line 1 of the complaint identifies the owner of the subject property as “B & E Ltd.” Line 2 identifies “Jennifer Warnock/Secretary of Owner” as the “complainant if not owner.” The statutory transcript certified to this board by the Lucas County Auditor, reflects “B & E LTD” as the owner of the subject property. The BOR rendered a decision on the complaint, reducing the value previously determined by the county auditor.

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.

This is not a case where counsel for the property owner has included his name as complainant. See *Bd. of Edn. for the Sylvania City Schools v. Lucas Cty. Bd. of Revision* (Interim Order, Apr. 22, 2008), BTA No. 2007-M-1771, unreported. In the present appeal, there is no indication whether Jennifer Warnock, the complainant, has standing to file with the BOR.

Based upon the foregoing, it is therefore the order of this board that the property owner show cause why this board should not order that the instant matter be remanded to the Lucas County Board of Revision with instructions to dismiss the original complaint. Specifically, said party should indicate whether the subject complainant owns property within Lucas 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 sufficiency of the original complaint to establish jurisdiction in the Lucas County Board of Revision shall file a written response to this order within fourteen days of its issuance. Additionally, the merit hearing scheduled on May 13, 2009 is cancelled pending resolution of this jurisdictional issue.

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