

OHIO BOARD OF TAX APPEALS

Sam’s Real Estate Business Trust,)
)
 Appellant,) CASE NO. 2007-T-1455
)
 vs.) (REAL PROPERTY TAX)
)
 Lorain County Board of Revision,) ORDER
 Lorain County Auditor, and)
 Sheffield-Sheffield Lake City School) (Compelling Discovery)
 District Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Siegel, Siegel, Johnson & Jennings Co., L.P.A.
 Nicholas M. J. Ray
 3001 Bethel Road, Suite 208
 Columbus, Ohio 43220

For the County Appellees - Dennis P. Will
 Lorain County Prosecuting Attorney
 J.G. Morrisson
 Assistant Prosecuting Attorney
 225 Court Street, 3rd Floor
 Elyria, Ohio 44035

For the Appellee Bd. of Edn. - Pepple & Waggoner, Ltd.
 Thomas C. Holmes
 5005 Rockside Road, Suite 260
 Cleveland, Ohio 44131-6808

Entered April 21, 2009

The Sheffield-Sheffield Lake City School District Board of Education moves this board to order Sam’s Real Estate Business Trust to answer interrogatories and to comply with its request for the production of documents. Sam’s has replied to the motion, asserting that it should be denied as untimely.

The record indicates that Sam's filed its notice of appeal with this board of November 13, 2007. However the board of revision failed to notify the BOE of the filing of the appeal until over a year later, when, on December 12, 2008, the county auditor sent a letter informing the BOE that an appeal had been filed from the actions of the Lorain County BOR.¹ S.T. at Ex. H. The BOE entered its appearance in this matter on December 26, 2008. Thereafter, on January 19, 2009, the BOE filed its discovery requests on Sam's. Sam's did not respond to the requests within the time specified by the BOE, nor did Sam's respond to the BOE's attempts to resolve the matter.

In response, Sam's asserts that the motion to compel must be denied because both the motion and the underlying discovery requests were filed after the BTA's discovery period closed. Ohio Adm. Code 5717-1-11 provides for discovery before the Board of Tax Appeals:

“(A) Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The “Ohio Rules of Civil Procedure,” effective July 1, 2008, shall be followed for discovery purposes to the extent they are not inconsistent with other board rules. The Ohio rules of Civil Procedure are generally available at a public library, legal library, or on the web at www.sconet.state.oh.us/rules/civil. Discovery shall be subject to the following limitations:

“(1) Discovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed as expeditiously as possible. *Discovery*

¹ R.C. 5717.01 provides that, upon the filing of its copy of the notice of appeal, the “county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals.”

should be completed not more than one hundred twenty days after the filing of the notice of appeal, which shall also be the last day for a party to seek involvement of the board in discovery matters. Upon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.” (Emphasis added.)

The appellant filed its notice of appeal on November 13, 2007. Thus, the 120-day period for a party to seek the board’s involvement in discovery matters expired on March 12, 2008, more than ten months prior the issuance of discovery. The motion to compel is untimely.

Under specific circumstances, the BTA has permitted discovery after expiration of the 120-day rule where the moving party has demonstrated good cause for the BTA’s intervention. See, e.g., *Medina Blanking, Inc. v. Medina Cty. Bd. of Revision* (Interim Order, Aug. 17, 2004), BTA Nos. 2003-T-1375, 1378, unreported, at 5 (“We have always held that the 120 day rule is not absolute. This board has the discretion to intervene in discovery disputes whenever good cause has been demonstrated for the need for such action.”). See, also, *Hypabyssal, Ltd. v. Summit Cty. Bd. of Revision* (Interim Order, Mar. 18, 1999), BTA No. 1998-A-487, unreported.

In the instant matter, this board concurs that the BOR’s thirteen-month delay in notifying the BOE of the filing of the notice of appeal constitutes good cause upon which this board may make an exception to its rules regarding the timely filing of a discovery motion. Still, while the BOR’s failure to comply with its statutory duty should not be used by the parties to shelter themselves from the free exchange of

information, the BTA nevertheless takes note that this board's intervention became necessary, in part, because of the BOE's failure to comply with the BTA's rules of practice. Namely, Ohio Adm. Code 5717-1-11(A) provides that a party may seek additional time for the completion of discovery or the filing of discovery motions. Had the BOE requested a reopening of the discovery period upon becoming aware of the appeal, the delay caused by Sam's belief that the discovery phase of the appeal had closed may have been averted.² While the board shall grant the motion to compel, it shall take the foregoing into consideration when determining the amount of time to be accorded to Sam's for its compliance.

The Board of Tax Appeals therefore orders Sam's Real Estate Business Trust to comply with the discovery requests previously served by the BOE within twenty-eight (28) days of the issuance of this order.

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² The discovery deadline, however, does not absolve Sam's of its responsibility to provide a response to the BOE's requests. In *Karrington of Kenwood, Ltd. v. Hamilton Cty. Bd. of Revision* (Interim Order, Aug. 24, 2001), BTA No. 2000-T-1512, unreported, the BTA stressed that "the discovery rules should never be used by a party to avoid the free exchange of information that may be beneficial to this Board's objective. While the time in which to seek this Board's intervention in discovery disputes is limited, neither the Civil Rules nor the Rules of this Board expressly restrict the duty of a party to respond to discovery, whenever served." *Id.* at 6.