

OHIO BOARD OF TAX APPEALS

Perry Local School District)
Board of Education,)
)
Appellant,)
)
vs.)
)
Stark County Board of Revision,)
Stark County Auditor, and Faircrest)
Corporation,)
)
Appellees.)

CASE NO. 2007-T-1503
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Means, Bichimer, Burkholder & Baker Co., L.P.A.
Robert M. Morrow
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Columbus, Ohio 43221-3502

For the County Appellees - John D. Ferrero, Jr.
Stark County Prosecuting Attorney
David M. Bridenstine
Assistant Prosecuting Attorney
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For Faircrest Corp. - Timothy J. Jeffries
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Canton, Ohio 44702-1543

Entered April 28, 2009

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

Appellant, Perry Local School District Board of Education (“Perry”),
moves us to remand this matter to the Stark County BOR, with orders to dismiss the

underlying complaint. Perry specifies that the complaint fails to identify the proper owner of the subject property, thereby failing to invoke the BOR's jurisdiction. The BTA now considers this matter upon the motion, the memoranda filed by the parties, and the statutory transcript certified to this board by the county auditor.

This matter came before the BOR pursuant to an original complaint filed by George N. Swallow, requesting a decrease in the 2006 valuation of permanent parcel number 43-18824. The complaint was filed on February 21, 2007. On Line 1 of the complaint form, "George N. Swallow" is listed as the owner of the subject. Line 2 of the complaint, which asks for the identification of the complainant if not the owner, is blank. S.T. at Ex. A. Perry filed a counter-complaint pursuant to R.C. 5715.19(B).¹

Mr. Swallow appeared at the BOR hearing and offered his testimony in support of his requested decrease in value. Perry also appeared at the hearing, asking the BOR to dismiss Mr. Swallow's complaint for the reason that Mr. Swallow failed to identify the legal owner of the parcel on the complaint. Subsequently, the BOR voted to value the subject property at \$4,000,000 for tax year 2006, a reduction from the auditor's original value of \$4,880,000. The BOR's decision did not expressly address Perry's challenge to the BOR's jurisdiction.

On appeal, Perry argues that the BOR did not have jurisdiction to consider the complaint because the complaint fails to identify the actual owner of the subject property. A copy of the property record card for the subject is included in the

¹ Although the record supports the filing of a counter-complaint by Perry, the county auditor failed to certify a copy of the complaint to this board. See R.C. 5717.01.

statutory transcript. The card indicates that the legal owner of the subject property is the “Faircrest Corporation.” S.T. at Ex. C. In its response to Perry’s motion, Faircrest argues that Mr. Swallow, as Faircrest’s president, was an agent authorized to file a complaint on the corporation’s behalf.

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

“Any person owning taxable real property in the county or in a taxing district with territory in the county *** [or] if the person is a trust, a trustee of the trust *** may file such a complaint regarding any such determination affecting any real property in the county ***.”

A valid complaint filed pursuant to R.C. 5715.19 must include all information that goes to the core of procedural efficiency. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591; *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142; *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10. In this context, we have previously discussed the need for a complainant to correctly identify an owner of a property when valuation of that property is being challenged. *Trotwood-Madison City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported; *Triple V’s Holding v. Cuyahoga Cty. Bd. of Revision* (Apr. 24, 2000), 1997-K-1701, unreported. We have concluded that the need to identify an owner runs to the core jurisdiction of a county board of revision. The clear import of this requirement is to ensure that in those instances in which someone other than an owner files a complaint, an owner receives those notices attendant to the filing. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, at 365, for a

discussion of the various notices required to be given to an owner. We have also previously held that this core requirement is met where at least one of the owners is named on the complaint form; a complainant need not name all owners. *City of Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 1998-L-138, unreported; *Bd. of Edn. of the Delaware City Schools v. Delaware Cty. Bd. of Revision* (Feb. 5, 1999), BTA No. 1997-L-871, unreported. With this in mind, we note that, in *Public Square Tower One v. Cuyahoga Cty. Bd. of Revision* (1986), 34 Ohio App.3d 49, at 52, the court held that “[t]he most rational interpretation of the statute and form governing complaints is that ‘owner’ means the owner when the complaint is filed.”

“However, we have never adopted a ‘bright line’ test as to what constitutes a properly identified owner on a complaint, and have avoided raising jurisdictional barriers in instances of minor differences in an owner’s actual name versus the name listed on a complaint.” *Paul Grammas Family L.P. v. Clermont Cty. Bd. of Revision* (Interim Order, Feb. 27, 2004), BTA No. 2003-T-905, unreported, at 6. Thus, in *Cleveland Bluffs Dev. LLC v. Cuyahoga Cty. Bd. of Revision* (Dec. 19, 2003), BTA Nos. 2002-V-1632, 1766, 1767, unreported, we found that a listing of the owner’s name that omitted the word “Bluffs” did not constitute a jurisdictional defect.

Nevertheless, the matter before us discloses more than a minor difference in name. The record establishes that the legal owner of the subject parcel at the time the complaint was filed was the Faircrest Corporation. However, the Faircrest Corporation is not identified anywhere on the face of the complaint. Nor can Faircrest

rely upon Mr. Swallow's status as Faircrest's president as sufficient for compliance with the need to identify an owner. His status as an officer may grant him the authority to file a complaint on the corporation's behalf; however, the question of Mr. Swallow's standing is not now before us.² The question is whether he failed to meet a core jurisdictional requirement by not listing the actual owner of the subject parcel. To the extent Mr. Swallow may have an ownership interest in the corporation, we further note that a shareholder in a corporation, an entity created by statutory law, only owns an interest in the corporation, which is deemed to be personal property under R.C. 1701.24(A) and not a direct ownership interest in the corporation property. See *Toledo Public Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Apr. 3, 1998), BTA No. 1997-P-1299, unreported.

Based upon the foregoing, we find that the complainant failed to name an owner of the subject property on the tax year 2006 complaint. The Board of Tax Appeals vacates the BOR's decision and remands this matter to the Stark County Board of Revision, with orders to (1) dismiss the subject complaint and counter-

² See *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852 (holding that a corporate officer does not engage in the unauthorized practice of law by preparing and filing a complaint with a board of revision, and by presenting the claimed value of the property before the board of revision on behalf of his or her corporation, as long as the officer does not make legal arguments, examine witnesses, or undertake any other tasks that can be performed only by an attorney). We note that, although Mr. Swallow signed the complaint as "president," he does not indicate the entity of which he is an officer. This is particularly important, given that Mr. Swallow appears to be an officer of another corporate entity known as George N. Swallow, Inc. S.T. at Ex. A.

complaint,³ and to (2) reinstate the values determined by the Stark County Auditor.

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³ See *C.I.A. Properties v. Cuyahoga Cty. Bd. of Revision*, 89 Ohio St.3d 363, 2000-Ohio-192; *Hewlett Packard Co. v. Cuyahoga Cty. Bd. of Revision* (June 9, 1995), BTA Nos. 1994-D-899 and 1994-D-900, unreported (holding that, where a complaint is dismissed for lack of jurisdiction, the corresponding counter-complaint must also be dismissed).