

OHIO BOARD OF TAX APPEALS

Board of Education of the)
Newark City Schools,)
)
Appellant,)
)
vs.)
)
Licking County Board of Revision,)
Licking County Auditor, and North)
Third Tower, Ltd.,)
)
Appellees.)

CASE NO. 2007-T-480
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich & Gillis Law Group, L.L.C.
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For the County Appellees - Kenneth W. Oswalt
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For North Third Tower, Ltd. - North Third Tower, Ltd.
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Entered April 21, 2009

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

The Board of Education of the Newark City Schools (“Newark”) appeals from a decision of the Licking County Board of Revision, in which the BOR determined the 2006 true value of permanent parcel number 054-203430-00.013 to be \$125,200. Newark asks this board to restore the auditor’s original value of \$208,300.

In support, Newark argues that the BOR erred in ruling upon the merits of the original complaint filed by North Third Tower, Ltd., asserting that North Third failed to meet one of the exceptions to the prohibition against a person filing more than one complaint on a parcel during the same triennial. The record before us establishes that North Third filed a complaint with the BOR on June 26, 2006, challenging the 2005 value of the subject parcel. Appellant's Ex. A. Newark represents that the BOR has yet to take action on this complaint. Subsequently, on January 29, 2007, North Third filed another complaint with the BOR, seeking a reduction in the 2006 value of the subject property. S.T. at Ex. A. North Third neither indicated that it had filed a prior complaint since the last reappraisal or triennial update¹ nor checked the item on the complaint form indicating that it was permitted to file because one of the enumerated exceptions applied. S.T. at Ex. A, line 14.

R.C. 5715.19(A)(2) provides that, where a complaint has been previously filed, the same "person, board, or officer" shall file no complaint in the same interim period on the same property unless certain statutorily enumerated allegations are made. See *Gammarino v. Hamilton Cty. Bd. of Revision* (1994), 71 Ohio St.3d 388. These allegations include that the property: (1) has been sold in an arm's-length transaction, (2) has lost value due to some casualty, (3) has had a substantial improvement added to the property, or (4) has had a change of at least fifteen percent in the property's occupancy that has led to a substantial economic impact thereon. R.C. 5715.19(A)(2)(a-d).

¹ Licking County's reappraisal occurred in 2005. The most recent triennial update occurred in 2008. See *Tax Commissioner's Directive to County Auditors as to the Date of Reappraisal* (Jan. 22, 2002), Entry No. 02-01-0042, unreported.

A second complaint needs to specify on its face which circumstance permits the filing of a second complaint. To meet this requirement the complaint form, DTE Form 1, lists the four exceptions at line 14 and asks the complainant to identify which exception applies. Where a complainant fails to specify the exception, the complaint must be dismissed. *Gammarino*, supra, at 390. See, also, *Columbia Toledo Corp. v. Lucas Cty. Bd. of Revision* (1996), 76 Ohio St.3d 361 (“The language of R.C. 5715.19(A)(2) is very simple and it is very clear -- there can be no second appeal in the same interim period *unless* one of the enumerated circumstances is alleged.”); *Developers Diversified v. Cuyahoga County Bd. of Revision* (1998), 84 Ohio St.3d 32 (“Thus, a complainant, to file a second complaint for the same interim period, must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2).”).

As North Third filed separate complaints on the 2005 and 2006 tax years, both years within the same triennial period, the 2006 complaint now before us is barred by operation of law because North Third failed to indicate one of the exceptions listed in R.C. 5715.19(A)(2).

We do note that there may be an issue regarding the jurisdictional sufficiency of the 2005 complaint. R.C. 5715.19(A)(1) requires that a complaint for the current tax year “shall be filed with the county auditor on or before the thirty-first day of March of the ensuing year[.]” North Third’s 2005 complaint was filed on June 26, 2006, nearly three month after the expiration of the deadline. However, the jurisdictional status of the 2005 complaint is not presently before us.² See *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision* (1998), 81 Ohio St.3d 683 (holding that the filing of

² But, see, *Bill v. Ottawa Cty. Bd. of Revision* (Nov. 5, 2004), BTA No. 2004-A-920, unreported, for a discussion about a BOR’s jurisdiction over a complaint filed after the March 31 deadline.

any complaint with a board of revision must be considered to be a filing for purposes of R.C. 5715.19(A)(2); a subsequent complaint filed within the same triennium was jurisdictionally barred when the initial complaint was dismissed as defective).

Finally, we note the parties' representation that the 2005 complaint is still pending with the BOR. While not an issue before this board, we remind the BOR that it has the duty to act upon this complaint. R.C. 5715.19. Thus, it must either act upon the merits or issue an order dismissing the complaint where it finds jurisdiction to be lacking.

In summary, we conclude that the complaint filed by North Third Tower Ltd. for the 2006 tax year was insufficient to invoke the jurisdiction of the BOR. Therefore, the Board of Tax Appeals remands this matter to the Licking County Board of Revision, with orders to (1) dismiss both North Third Tower's complaint and Newark's counter-complaint³ and (2) reinstate the auditor's values for the tax year in question.

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