

OHIO BOARD OF TAX APPEALS

Ridge Bowman LLC,)	
)	
Appellant,)	CASE NO. 2008-A-2086
)	
vs.)	(REAL PROPERTY TAX)
)	
)	ORDER
Lorain County Board of Revision, Lorain)	
County Auditor, and Sheffield-Sheffield)	
Lake City School District Board of)	(Denying Motion to Compel
Education,)	Discovery and Ordering Board
)	of Revision to File Statutory
Appellees.)	Transcript)
)	

APPEARANCES:

- | | | |
|---------------------------------|---|--|
| For the Appellant | - | Siegel Siegel Johnson & Jennings Co., LPA
Jay Siegel
25700 Science Park Drive, Suite 210
Cleveland, Ohio 44122 |
| For the County
Appellees | - | Dennis P. Will
Lorain County Prosecuting Attorney
J.G. Morrison
Assistant Prosecuting Attorney
225 Court Street, 3 rd 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 28, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to compel discovery filed by the appellee board of education. The motion provides, in pertinent part:

“Pursuant to O.A.C. §5717-1-11 and Civil Rule 37, Appellee Sheffield-Sheffield Lake City School District Board of Education *** hereby respectfully moves the Ohio Board of Tax Appeals *** for an order compelling Appellant Ridge Bowman, LLC *** to completely respond to Appellee’s First Set of Interrogatories and Requests for Production of Documents, and for an order requiring Appellant to pay Appellee’s attorney’s fees and costs incurred in securing Appellant’s compliance with its discovery obligations. ***”

The matter was submitted to the Board of Tax Appeals upon the motion and the attachments thereto. No response to the motion from the appellant property owner was received by this board.

The subject notice of appeal was filed with this board on October 31, 2008. Further, the BOE set forth in its motion that “[o]n December 2, 2008, Appellee propounded its First Set of Interrogatories and Requests for Production of Documents upon Appellant.” Motion at 2. Further, the BOE indicated that it sought compliance with its original discovery request, in writing, to the property owner, by letter dated January 6, 2009. The property owner responded to the BOE’s reminder letter seeking additional time in which to respond to discovery. The BOE agreed to give the property owner until February 8, 2009, to respond and when no such discovery responses were received, the BOE sent another reminder letter, dated February 17, 2009, seeking compliance with its discovery requests. Motion at 2. Thereafter, on or about March 1, 2009, the property owner provided responses to the BOE; however, it

is the BOE's position that the responses are incomplete. The BOE sent another letter to the property owner, dated March 3, 2009, seeking supplementation of the property owner's discovery responses, to which the property owner did not respond. Motion at 3.

Ohio Adm. Code 5717-1-11(A)(1) sets forth the time constraints placed upon parties seeking to engage in discovery in matters before the board. Specifically, the section provides:

“(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 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.”

Based upon the foregoing, the board finds that the BOE has not sought the involvement of this board in a timely fashion. Specifically, the instant notice of appeal was filed on October 31, 2008. Accordingly, the close of the discovery period would have been on or about February 28, 2009.¹ After responses to its discovery requests became due on December 30, 2008 and February 8, 2009, the BOE had ample time prior to March 2, 2009, to both seek compliance with its discovery requests and file the necessary motion with this board. In fact, the BOE, on February 17, 2009, in

¹ Since the close of the discovery period fell on a Saturday, the period for filing a motion with this board was extended to March 2, 2009. We note that there is nothing in the record to indicate that any party sought an extension of the discovery period.

one of its letters sent to the property owner seeking compliance with its discovery, warned the property owner that if it did not receive the discovery responses by February 27, 2009, it would file a motion to compel. Yet, the motion to compel was not filed until April 8, 2009, well over one month later.

While we agree that the BOE has displayed patience in working with the property owner, it has done so to its own detriment. We appreciate the BOE's efforts to resolve this issue without board intervention, but parties must also be cognizant of the deadlines imposed and responsibilities placed upon them by this board's rules of practice and procedure. It was clear prior to March 2, 2009, after the property owner had already missed three deadlines for providing responses, that there were problems. Therefore, the BOE should have proactively protected its interests and filed the motion to compel, that it had previously warned it would file, in a timely fashion. Because it did not take the opportunity it had to do so, this board is constrained to find that the BOE has not demonstrated good cause² for the delay in seeking an order to compel discovery from this board. Therefore, the BOE's motion to compel must be and hereby is denied. See *Bd. of Edn. of the Kettering-Moraine City School Dist. v.*

² While this board has granted motions to compel that were not filed in a timely manner, we do not find that the instant facts are reflective of the discovery disputes previously before this board where we ultimately refused to allow parties to raise procedural barriers as a means of impeding discovery. See, e.g., *Meijer, Inc. v. Greene Cty. Bd. of Revision* (Interim Order, Feb. 7, 1997), BTA No. 1994-T-519, unreported, wherein the property owner refused to comply with the voluntary discovery procedures set forth in Ohio Adm. Code Chapter 5717 and Civ R. 26; *Great Northern Shopping Center v. Cuyahoga Cty. Bd. of Revision* (Mar. 3, 1995), BTA Nos. 1994-M-397, et seq., unreported, wherein the property owner responded to discovery requests with "mainly *** objections to the interrogatories and document production requests" and denial of "having made any decisions relating to witnesses to be presented at hearing." *Id.* at 4. In other words, no substantive information was forthcoming from the property owners.

Montgomery Cty. Bd. of Revision (Interim Order, Apr. 28, 2000), BTA No. 1999-T-1660, unreported.

However, the parties should be cognizant of the position taken by this board in other cases where we stated:

“Although we will not compel discovery in this matter, we remind all that a party who received discovery should not rely upon the discovery deadlines as a means of escaping its duty to respond:

“*** We wish to take this opportunity to remind the parties that the purpose of this Board, as with any tribunal, is to determine the facts based upon a review of the record. The discovery rules are an essential tool in that fact-finding process. See *Goff v. The Kroger Co.* (S.D. Ohio 1988), 4121 F.R.D. 61. The discovery rules are not designed to place an onerous burden upon the parties. When followed, the rules provide a means by which the exchange of information can be carried out in a cooperative and professional manner. The rules also protect each party from abuses, which unfortunately do occur. Nevertheless, 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. We hope the interests of cooperation and fair play would motive Karrington, even now, to voluntarily exchange the requested information.” *Karrington of Kenwood, Ltd. v. Hamilton Cty. Bd. of Revision* (Interim Order, Aug. 24, 2001), BTA No. 2000-T-1512, unreported, at 6.

“We further stated in *Karrington* that, even in instances where the discovery period may be closed, this board maintains the authority to curtail any abuse of the discovery process and to impose sanctions, sua sponte, for violations of the applicable discovery rules. See [Ohio Adm. Code 5717-1-14](#). See, also, [Nakoff v. Fairview Gen. Hosp.](#) (1996), 75 Ohio St.3d 254; [Salem Med. Arts & Dev.](#)

v. Columbiana Cty. Bd. of Revision (1998), 82 Ohio St.3d 193 (a party need not have filed a motion seeking to compel discovery before Civ.R. 37(D) sanctions can be issued.) Cf. *BRE/City Ctr. LLC v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Aug. 10, 2001), BTA No. 2000-T-320, et al., unreported (imposing sanctions for failure to comply with discovery).” *Wal-Mart Real Estate Business Trust v. Darke Cty. Bd. of Revision* (Interim Order, Dec. 1, 2006), BTA No. 2006-R-773, unreported at 3-4.

Further, pursuant to the provisions of Ohio Adm. Code 5717-1-09(B), the county board of revision is hereby *directed* to promptly certify its transcript of the proceedings below to this board.

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