

OHIO BOARD OF TAX APPEALS

CadleRock Joint Venture, L.P.,)	
)	CASE NO. 2008-A-2242
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	ORDER
Montgomery County Board of Revision)	
and Montgomery County Auditor,)	(Requiring Appellant to Show Cause)
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Greg Cadle, pro se CadleRock Joint Venture, L.P. 100 North Center Street Newton Falls, Ohio 44444
For the County Appellees	-	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Laura G. Mariani Assistant Prosecuting Attorney 301 West Third Street P.O. Box 972 Dayton, Ohio 45422
Copy to	-	Jesus Church 1420 East 4 th Street Dayton, Ohio 45402

Entered January 27, 2009

This appeal is now considered by the Board of Tax Appeals, sua sponte, following the filing of the instant appeal. Appellant has attempted to appeal from a decision of the Montgomery County Board of Revision in which that board determined the taxable value of the subject property for tax year 2007.

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.”

The statutory transcript certified to this board by the BOR reflects that pursuant to R.C. 5715.19, an original complaint for tax year 2007 was filed on March 31, 2008, regarding property owned by Jesus Church. S.T., Ex. A. On the original complaint, the church is properly¹ listed as the owner of the subject property on Line 1 of the complaint. Id. On Line 2 of the complaint, “CadleRock Joint Venture, L.P.” is listed as the complainant, if not the owner. Line 3, for the complainant’s agent, lists “Greg Cadle” and Line 5, for the complainant’s relationship to property if not owner, indicates “1st mortgage holder.” Id. The complaint was signed by Mr. Cadle, who listed his title as “account officer.” No counter-complaint was filed.

¹ The certified property record card included in the statutory transcript reflects “Jesus Church” as the owner of the subject property. S.T., Ex. C.

On July 23, 2008, the BOR rendered its decision wherein it made no change to the subject property's value for tax year 2007. S.T., Ex. E. Unsatisfied with the valuation determination rendered by the BOR, CadleRock Joint Venture, L.P. ("CadleRock") appealed the BOR's decision to this board.

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 Municipal School District Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, June 11, 2004), BTA Nos. 2003-M-1092, 1093, unreported.

Most recently, however, the Supreme Court in *Village Condominiums Owners Assn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 223, 2005-Ohio-4631, revisited *Soc. Natl. Bank*, supra, wherein it held that “[t]he two statutes of primary importance when considering the standing of a party to file a complaint for a decrease in valuation with a board of revision are R.C. 5715.19 and 5715.13.” It went on to indicate that “a complainant must first demonstrate that pursuant to R.C. 5715.19(A)(1), he or she is a ‘person owning taxable real property in the county.’” *Soc. Natl. Bank*, 81 Ohio St.3d at 404 ***. If the complainant satisfies this ‘threshold standing requirement,’ a court will then consider whether he or she meets the requirements of R.C. 5715.13, which provides, “The 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 ***.’ Id.”

² “This statute also authorizes others to file a complaint ***.”

Based upon the foregoing, it is therefore the order of this board that CadleRock Joint Venture, L.P. show cause why this board should not order that the instant matter be remanded to the Montgomery County Board of Revision with instructions to dismiss the original complaint. Specifically, CadleRock should indicate whether it owns property within Montgomery County, or otherwise properly qualifies as a complainant pursuant to the provisions of R.C. 5715.19(A)(1).

Further, if it is established that CadleRock is a proper complainant, we must determine whether Greg Cadle properly signed the subject complaint on its behalf. There is reference in the record to Mr. Cadle as “account officer,” but no indication as to what type of entity Cadlerock is and what Mr. Cadle’s specific relationship to or capacity with CadleRock is. S.T., Ex. A, G. Further, neither the complaint nor the remainder of the record suggests that Mr. Cadle is an attorney authorized to make such filing or that an attorney prepared and filed the complaint in question.

In its decision in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appeal denied (Apr. 11, 2001), the Cuyahoga County Court of Appeals found the amendments to R.C. 5715.13 and 5715.19, allowing specified non-attorneys to file valuation complaints before the board of revision, were unconstitutional violations of the separation of powers. The appellate court held:

“*** The Ohio Supreme Court has repeatedly held that the filing of a complaint before the Board of Revision constitutes the practice of law. *Sharon Village Ltd. v. Licking County Bd. of Revision* (1997), 78 Ohio St.3d 479

syllabus; *Lakeside Ave. L.P. v. Cuyahoga County Bd. of Revision* (1999), 85 Ohio St.3d 125, 126; *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, 158. Amended R.C. 5715.19(A) permits persons who are not attorneys or the owners of the property to file complaints before the Board of Revision on behalf of the owner and therefore permits non-attorneys to engage in what has been uniformly recognized as the practice of law.

“The General Assembly has no authority to authorize lay persons to engage in the practice of law in a representative capacity for another entity and the Ohio Supreme Court has taken no action to sanction such conduct. *Washington Cty. Dept. of Human Serv., supra* at 37; see, also, *Alliance v. [sic] Group, Inc. v. Rosenfield* (1996) 115 Ohio App.3d 380, 387 (the General Assembly may not usurp the constitutionally granted functions of the Supreme Court set forth in Section 5, Article IV of the Ohio Constitution). The amended version of R.C. 5715.19(A) does exactly that as it allows non-attorneys to practice law. Because the statute clearly violates the separation of powers between the judiciary and legislative branches, the amended statute is unconstitutional.”

Thereafter, in *City of Strongsville, Strongsville Bd. of Edn. and The Glidden Co. v. Cuyahoga Cty. Bd. of Revision* (Apr. 27, 2001), BTA Nos. 1997-M-300-301, 304-305, 310, 323, unreported, this board considered the jurisdictional sufficiency of several original complaints, which were prepared and filed by a non-attorney tax manager on behalf of the property owner, The Glidden Co. Finding persuasive authority in *C.R. Truman, supra*, we acknowledged our earlier order where we determined that the complaints in question were prepared and filed by a non-attorney. Accordingly, we held that jurisdiction of the BOR to consider value was not properly established. Compare *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), 91 Ohio St.3d 308, paragraph one of the syllabus (“An attorney

who signs an R.C. 5715.19 valuation complaint in his or her capacity as an attorney-at-law and files it, or directs its filing, in accord with R.C. Chapter 5715, has thereby ‘prepared and filed’ that complaint for purposes of determining whether jurisdiction has vested in a county board of revision, as contemplated by *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, 678 N.E. 2d 932.”).

However, later, in *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852, the Supreme Court reversed a decision of this board in which we remanded a case to the board of revision with instructions to dismiss the underlying complaint and retain the auditor’s value because “a corporate officer *** had engaged in the unauthorized practice of law by preparing and filing a complaint with the board of revision on the corporation’s behalf, and therefore, the board of revision lacked jurisdiction to consider the complaint.” *Id.* at ¶1. The court in *Dayton Supply* held that “public-interest factors justify an exception to the rule in the instant case. Specifically, corporate officers have a fiduciary duty to the corporation such that accountability and loyalty are not an issue in permitting them to act on behalf of the corporation. Further, assuming that no legal issues are involved or arise in the case before the BOR, hiring an attorney is not necessary, a situation that makes filing a complaint by a corporation more convenient and less expensive.” *Id.* at ¶30. The court concluded that “pursuant to R.C. 5715.19, a corporate officer does not engage in the unauthorized practice of law by preparing and filing a complaint with the 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.” Id. at ¶32.

This board has extended the holding in *Dayton Supply* to permit the filing of a decrease complaint with a county board of revision by a member of a limited liability company and a trustee on behalf of a trust. See *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Interim Order, Mar. 2, 2007), BTA No. 2006-A-1173, unreported; *Chandras/Ravishanker v. Cuyahoga Cty. Bd. of Revision* (May 18, 2007), BTA No. 2006-A-1265, unreported. Compare *Bd. of Edn. for the Springfield Local Schools v. Lucas Cty. Bd. of Revision* (July 27, 2007), BTA No. 2006-R-1731, unreported (distinguishing *Dayton Supply*, supra, and concluding that a complaint filed by a non-attorney appraiser was insufficient to invoke the jurisdiction of a county board of revision).

It is therefore also the order of this board that if CadleRock is a proper complainant, Greg Cadle show cause why this board should not remand the instant matter to the Montgomery County Board of Revision with orders to dismiss the original complaint that it filed, as Mr. Cadle has not been identified as an attorney at law or other person authorized to file such complaint on behalf of Cadlerock.

All parties who wish to be heard upon the question of the legal sufficiency of the original complaint to establish jurisdiction in the Montgomery County Board of Revision shall file a written response to this order within fourteen days of its issuance.

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