

**OHIO BOARD OF TAX APPEALS**

Board of Education of the Brooklyn City )  
School District, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Cuyahoga County Board of Revision, )  
Cuyahoga County Auditor, and March/ )  
Hodge Cleveland Holding Co., LLC, )  
 )  
Appellees. )

CASE NO. 2008-A-5  
(REAL PROPERTY TAX)  
ORDER  
(Granting Motion to Quash)

APPEARANCES:

For the Appellant - Brindza, McIntyre & Seed LLP  
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Cleveland, Ohio 44114

For the County Appellees - William D. Mason  
Cuyahoga County Prosecuting Attorney  
Timothy J. Kollin  
Assistant Prosecuting Attorney  
Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

For the Appellee Property Owner - William J. Day  
Attorney at Law  
9100 South Hills Boulevard, Suite 300  
Broadview Heights, Ohio 44147

Entered April 22, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to quash subpoena filed by the board of education. The matter

was submitted to the Board of Tax Appeals upon the motion and memorandum in support of said motion as well as a response to said motion, filed by the property owner.

Specifically, the motion provides:

“Here comes Appellant, Brooklyn City School District Board of Education \*\*\* to move the Board for an Order quashing the subpoena served upon the School Board’s Treasurer, Marti Ferian, on or around April 14, 2009 by counsel for Appellee, March/Hodge Cleveland Holding Co., LLC \*\*\*.

“The subpoena served upon Mr. Ferian commands his attendance at an April 23, 2009 merit hearing and orders him to bring: ‘[a]ll books and records in [his] possession or accessible to [him] regarding the property at 9600 Brookpark Road in Brooklyn, Ohio aka Westside Jaguar/Volvo/Mazda/Land Rover car dealership.’ The only documents in Mr. Ferian’s possession responsive to the subpoena have been previously disclosed to March Holdge. Mr. Ferian does not possess any other information nor is he an expert or owner qualified to render an opinion of the property’s value. There exists no independent legal or otherwise legitimate basis to compel Mr. Ferian’s attendance at a merit hearing. The subpoena issued to Mr. Ferian imposes an undue burden as it has been rendered moot as a result of the production of the requested documents. The subpoena was proffered for no other reason than to harass, annoy and oppress Mr. Ferian. The School Board moves the Board to quash the subpoena under Ohio R. Civ. P. 45(C)(3)(d).”

The board of education’s memorandum in support further expands upon the foregoing motion, providing:

“March Hodge has an affirmative duty to prevent imposing an undue burden upon Mr. Ferian. Ohio R. Civ. P. 45(C)(3)(d). By requiring Mr. Ferian to appear at a hearing to produce documents already disclosed and to testify upon a matter of which he has no knowledge, March Hodge has subject[ed] Mr. Ferian to the precise burden the civil rules are intended to suppress. The subpoena has been mooted by

the prior production of documents upon March Hodge. Moreover, Mr. Ferian is not an expert appraiser or owner of the property qualified to render an opinion of value for the subject property. Mr. Ferian possesses no independent knowledge sufficient to qualify him as a witness in this matter. There exists no legal justification to compel Mr. Ferian's attendance at a merit hearing on April 23, 2009. The subpoena is unduly burdensome and was proffered for no other reason than to harass, annoy and oppress Mr. Ferian." Memorandum at 6.

In response, the property owner's counsel responded that Mr. Ferian's "testimony is critical to Appellee's case." Memorandum at 1. He went on to state that:

"Appellee is one of the largest taxpayers in the school district. It is vital to Appellee to question Treasurer Ferian about his role in the retention of Appraiser Dean Smith.

"Smith's Appraisal Report may or may not reflect Ferian's wishes. The only way to determine that is from Ferian's testimony. Smith's appraisal is three times that of Appellee's, which was accepted by, and was the holding of the Board of Revision. Whether Ferian influenced Smith can only be determined by having Ferian's testimony." Opposition Memorandum at 1.

The property owner's counsel goes on to provide a laundry list of the school board treasurer's duties, presumably to demonstrate a link between the treasurer's duties and real property valuation in the school district. He states, "[o]f course, the Board of Education's revenues are primarily from real estate taxes." Memorandum at 1. He concludes by stating that "Appellee is not asking for Ferian to give his appraisal nor offer an opinion of the property but only to testify as to his interaction with Smith, any suggestions he may have made to Smith, any request he may have made to Smith, and especially whether or not he told Smith an Appellant needs a value in excess of ten million dollars." Memorandum at 3. He concludes that "[a]ll that is sought in our case is

Mr. Ferian's knowledge of our specific property, his financial analysis skills as the School Board's Treasurer and whatever he may have told or suggested to Appraiser Smith regarding the School Board's desire for a high Appraisal Report." Opposition Memorandum at 6.

As we consider the parties' positions, we note that Civ.R. 45 (C)(3)(d) provides that a subpoena shall be quashed or modified if the subpoena "subjects a person to undue burden." We find the instant subpoena to be burdensome, and, as such, it shall be quashed. Mr. Ferian's counsel has represented that his client has no specific knowledge about the subject property's valuation and that all requested documents have been provided to the property owner's counsel. It is clear from the property owner's arguments, set forth in its memorandum in opposition to the subject motion, that the property owner seeks to require the school board treasurer's testimony at this board's hearing in order to elicit statements from him concerning any conversations that he may have had with the school board's appraiser and any directions and/or instructions he may have given the school board's appraiser concerning the preparation of his report and any conclusions thereunder. However, the school board's appraiser, Mr. Smith, will be testifying before this board at its hearing on April 23, 2009. Clearly, Mr. Smith is capable of testifying to the nature of his appraisal assignment, from whom it came, and whether he was specifically directed to complete his report in a certain manner or to arrive at a certain conclusion of value. In addition, regardless of any instructions given/not given to the BOE's appraiser by the treasurer, the credibility of the appraiser and the reliability of his report will be judged by this board according to recognized appraisal standards, including

considerations of the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute (“USPAP”).

Further, we must also acknowledge that if it is the property owner’s counsel’s intention to question the treasurer about the school board’s motivations behind the school board’s involvement with certain property valuation complaints, this board has considered similar issues in many cases, including *South Euclid-Lyndhurst City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Sept. 1, 2000), BTA Nos. 2000-K-385, et seq., unreported. Therein, we rejected a property owner’s attempts to discover information about a school board’s motivations to participate in real property valuation cases. See, also, e.g., *Brooklyn City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Aug. 5, 2008), BTA No. 2006-V-327, unreported; *J.C. Penney Properties, Inc. v. Franklin Cty. Bd. of Revision* (Interim Order, Jan. 19, 1982), BTA No. 1981-D-509, et seq., unreported.

Thus, based upon the foregoing, we find the BOE’s motion to quash subpoena is well taken and it is therefore granted.

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