

## OHIO BOARD OF TAX APPEALS

Franchise Realty Interstate Corporation,	)	CASE NO. 2008-B-1793
	)	
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	
Cuyahoga County Board of Revision,	)	ORDER
Cuyahoga County Auditor, and	)	
Lakewood Board of Education,	)	
	)	(Compelling Discovery and Denying
Appellees.	)	Motion to Extend Discovery Period)
	)	

APPEARANCES:

For the Appellant	-	Charles Bluestone, Esq. Attorney at Law 141 East Town St., Suite 100 Columbus, Ohio 43215
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy Kollin Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
For the Bd. of Edn.	-	Chester L. Sumpter & Associate, LLC Chester L. Sumpter Brian W. Bonham Caroline E. Smith 16927 Detroit Avenue, Suite 4 Lakewood, Ohio 44107

Entered February 17, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to extend the discovery deadline and motion to compel discovery filed by the Lakewood Board of Education (“BOE”). The matter was

submitted to the Board of Tax Appeals upon the motions and brief in support of said motions. No response from the appellant was filed herein.

Specifically, said motions request that this board compel discovery and extend the discovery deadline due to non-response of the appellant to the BOE's December 17, 2008 discovery requests.

The notice of appeal was filed on October 3, 2008. Based upon the date on the subject appeal was filed, the deadline for seeking assistance from this board on discovery matters in this instance was February 2, 2009.<sup>1</sup> The instant motions were filed on January 30, 2009.

Ohio Adm. Code 5717-1-11 (A)(1) provides that “[U]pon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.” Herein, the BOE seeks an extension of the discovery period for 60 days. In *Spalding Leasing Co. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Jan. 14, 2000), BTA No. 1999-K- 1460, 1475, unreported, a case in which a similar motion to extend discovery was sought, the board concluded:

“Although Ohio Adm. Code 5717-1-11(A)(1) contemplates that there may exist *extraordinary* circumstances wherein the deadline for completing discovery and seeking this Board's intervention in discovery matters may be extended, it requires the movant under such circumstances to demonstrate good cause. In this instance, good cause is found lacking. Merely because a party upon whom discovery has been served has not responded, does (sic) not justify an extension of discovery until some uncertain period in the future. \*\*\* If this Board were to routinely grant such motions, the exception to the general deadlines set forth in Ohio Adm. Code 5717-1-11 would consume the rule. Accordingly, the BOE's motion

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<sup>1</sup> January 31, 2009 falls on a Saturday.

to extend discovery is not well-taken and it is hereby denied.” Id. at 3. (Emphasis in original)

This board has ordered extensions of discovery periods when the parties to the appeal communicate a willingness to comply with discovery requests; in the present appeal there has been no suggestion that opposing counsel has responded in any manner or sought additional time. Therefore, the extension request is denied.

However, we find the BOE’s motion to compel to be with merit. Therefore, this board orders appellant to respond to the BOE’s discovery requests within 21 days from the date of this order.

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