

This cause and matter came on to be considered by the Board of Tax Appeals (“BTA”) upon appellant’s motion to remand with instructions to the BOR to dismiss the property owner’s original complaint. This matter has been submitted to us upon such motion and brief in support, the response brief of the property owner, and the statutory transcript filed herein under date of February 13, 2009 by the Lucas County Auditor.

Specifically, the BOE’s motion to dismiss provides, in pertinent part:

“The Board of Education for Sylvania City Schools (“School District”) would hereby request a remand of this Appeal to the Lucas County Board of Revision with instructions to dismiss the underlying Complaint because the complainant listed in response to question 2 of the DTE Form 1 lists a party other than the owner of the property as the complainant. The Complaint which initiated this case with the Lucas County Board of Revision...lists Michaelmas Manor as the owner of the property. In response to question 2, the Complaint lists Vistula Management Company as the complainant.”

Therein, appellant directs our attention to *Bd. of Edn. for Sylvania City Schools v. Lucas Cty. Bd. of Revision* (June 22, 2007), BTA No. 2006-M-1707, unreported, in support. *Id.* at 2.

A review of the statutory transcript shows that “Michaelmas Manor, an Ohio LP” (“Michaelmas”) was entered onto line 1 of the complaint listing the owner of the subject property. “Vistula Management Company” (“Vistula”) was entered onto line 2 of the subject complaint indicating the name of the complainant. Line 5 stated the relationship of the complainant to the property owner as “[m]anagement [c]ompany.” *Id.*

In its February 13, 2009 reply brief, counsel for the appellees property owner and complainant cited to several BTA cases and noted that “there was a definite ‘easing’ of the law with regard to who can file real estate tax appeals on behalf of an owner with the rendering of the Ohio Supreme Court’s decision in *Dayton Supply & Tool Company v. Montgomery Cty. Bd. of Revision* (2006), 111 Ohio St.3d 367, 2006-Ohio-5852.” Id. at 3. Counsel argued that “[i]n that decision, the Court permitted the filing of an appeal by a ‘corporate officer’ as long as the officer did not make any legal arguments, examine witnesses or undertake any other tasks that can only be handled by an attorney at law. The Court’s rationale was based on the action taken by the General Assembly in amending R.C. 5715.19. The Court noted that one of its concerns in its’ [sic] earlier decision of *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, was that the taxpayer ‘would have no recourse if the third-party agent negligently prepared or filed the complaint’. Consequently, the Court noted that it was essential that the third-party agents filing tax appeals for owners have ‘a real relationship with the taxpayer’.” Id. at 3-4. Counsel then detailed Vistula’s “heightened level of responsibility to the owner.” Id. at 8-9.

We disagree. This is not a case where a representative of the property owner, Vistula, has prepared and filed a complaint in a representative capacity. See *Sharon Village*, supra. The court in *Sharon Village* concluded that the preparation and submission of a complaint for filing were acts which could only be completed by an individual property owner or an attorney. In *Dayton Supply*, supra, the court ameliorated *Sharon Village*’s strict holding and concluded that a corporate officer does not engage in the unauthorized practice of law by preparing and filing a complaint

with a 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.

In the present appeal, however, Vistula did not identify itself as a representative of the owner, but identified itself as an independent complainant, different from the owner. In this capacity, it must have independent statutory authority to file a complaint. In such cases, this board must assure that the record contains such independent standing.

R.C. 5715.19(A)(1) provides:

“Any person owning taxable real property in the county * * * may file [an original] complaint * * *.”

R.C. 5715.13 further 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 therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.”

In *Soc. Natl Bank v. Wood Cty. Bd. of Revision*, 81 Ohio St.3d 401, 1998-Ohio-436, the Supreme Court held that a former owner lacked standing to bring a valuation complaint before the BOR. The court addressed the relationship between R.C. 5715.19(A)(1) and R.C. 5715.13:

“* * * [W]e believe that our decision in *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, 658 N.E.2d 267, requires that consideration of this matter start with R.C. 5715.19. In *Middleton* we stated, ‘R.C. 5715.19 is a general statute

providing *who may complain* about various actions taken by the auditor.’ [Emphasis added.] *Id.* at 227, 658 N.E.2d at 268. A review of the pertinent language of R.C. 5715.19(A)(1), which lists the persons and entities that have standing to file a complaint, shows only one classification for which Society might qualify as a complainant, and that is, ‘[a]ny person owning taxable real property in the county.’

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“If Society had proven that it was a ‘person owning taxable real property in the county,’ then a consideration of the elements of R.C. 5715.13 would have become relevant. However, Society failed to show that it met the threshold standing requirement of R.C. 5715.19(A)(1), and, consequently, failed to invoke the jurisdiction of the BOR. Therefore, we need not consider whether Society met the requirements of R.C. 5715.13.” *Id.* at 403-404.

See, also, *Village Condominiums Owners Assn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 223, 2005-Ohio-4631.

Although the Supreme Court thus envisioned a two-prong test in *Soc. Natl. Bank*, *supra*, to determine whether Vistula had standing to file the underlying complaint, legislative changes to R.C. 5715.13 may have eliminated the necessity of the two-pronged test.

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 ‘[C]omplainants 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.

It is uncontroverted that Vistula was not the owner of the subject property. There is no evidence that it owned taxable property in the county at the time it prepared and filed the complaint.

Upon careful review of the record before us, we conclude that the board of revision erred when it determined it had jurisdiction to consider the complaint filed by Vistula. Accordingly, this matter is remanded to the Lucas County Board of Revision with instructions to dismiss the underlying complaint, the practical effect of which will be to reinstate the values originally determined by the auditor.

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