

## OHIO BOARD OF TAX APPEALS

123 Broadway, LLC,	)	CASE NO. 2008-H-1993
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	ORDER
	)	
Cuyahoga County Board of Revision,	)	(Compelling Discovery)
Cuyahoga County Auditor, and the	)	
Bedford Board of Education,	)	
	)	
Appellees.	)	

### APPEARANCES:

For the Appellant Property Owner	-	Sleggs, Danzinger & Gill Robert K. Danzinger 820 W. Superior Avenue, Suite 400 Cleveland, Ohio 44113
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Eighth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee Board of Education	-	Kolick & Kondzer John P. Desimone 24500 Center Ridge Road, Suite 175 Westlake, Ohio 44145

Entered April 28, 2009

This matter is before the Board of Tax Appeals pursuant to a motion to compel discovery filed February 17, 2009 by appellee Bedford Board of Education (“BOE”). The BOE asks this board to order appellant 123 Broadway, LLC (“property owner”) to respond to appellee’s interrogatories and request for production of documents.

The board now considers this matter upon the BOE's motion. No response to the motion has been filed by the property owner within the time prescribed by Ohio Adm. Code 5717-1-12(B).

The record indicates that the instant appeal was filed by the property owner on October 20, 2008. The BOE timely initiated the discovery process on January 8, 2009 by serving the property owner's counsel with copies of appellee's interrogatories and request for production of documents. Motion at Exs.C-D. When discovery responses were not provided, the BOE attempted to resolve this matter extra-judicially prior to filing its motion. *Id.*

This board is initially troubled by the appellant's failure to respond and inability to point to evidence of any communication that could demonstrate an effort was made to resolve this matter extra-judicially prior to the filing of the motion to compel. The board directs the parties to Ohio Adm. Code 5717-1-11(A)(2), which provides:

“The board expects all counsel to provide for orderly, mutual discovery, freely exchanging discoverable information and documents. *Counsel shall make all reasonable efforts to resolve discovery disputes by extra-judicial means, without intervention by the assigned attorney examiner.* To the extent counsel may not resolve such disputes, then they may seek intervention of the attorney examiner to supervise discovery.” (Emphasis added.)

After two letters from the BOE's counsel requesting responses to discovery requests, the record indicates no communication or response from appellant's counsel before or after the filing of the pending motion on February 17, 2009.

The board should not have to routinely involve itself in discovery disputes. The board emphasizes that its rules and the Civil Rules instruct parties how to respond to discovery requests. These rules impose a “duty to resolve” discovery disputes. See Civ.R. 37(E). Parties are not to ignore discovery requests and force the other side to seek the intervention of this board.

The BOE’s counsel attempted to resolve this matter, as evidenced by his correspondence. Since appellant’s counsel has not responded, this board must conclude he made no effort to resolve the dispute and simply ignored the letters of the BOE’s counsel. The board finds that the BOE’s counsel made “a reasonable effort to resolve the matter” before filing his motion to compel.

Based on a review of the motion, memorandum in support, and supporting exhibits attached thereto, this board finds the property owner has failed to respond to the discovery requests within the time prescribed by this board’s Rules of Practice and Procedure. Ohio Adm. Code 5717-1-11(A)(3). It is ordered that within fourteen (14) days of the issuance of this order appellant shall answer the interrogatories propounded by the BOE and shall supply copies of requested documents to counsel for the BOE in compliance with Ohio Administrative Code 5717 and the Ohio Rules of Civil Procedure.

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