

**OHIO BOARD OF TAX APPEALS**

RORC Enterprises, Inc.,	)	CASE NO. 2008-K-1730
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Muskingum County Board of Revision	)	
and the Muskingum County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

- |                             |   |  |
|-----------------------------|---|--|
| For the Appellant           | - | Kincaid, Taylor & Geyer<br>William J. Taylor<br>50 N. Fourth Street<br>P.O. Box 1030<br>Zanesville, OH 43702-1030  |
| For the County<br>Appellees | - | D. Michael Haddox<br>Muskingum County Prosecuting Attorney<br>James R. Gorry<br>Special Assistant Prosecuting Attorney<br>300 East Broad Street<br>Suite 300<br>Columbus, OH 43215 |

Entered April 28, 2009

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

On February 24, 2009, appellant was ordered to show cause why this appeal should not be dismissed as not having been filed within the period or in the manner required by statute. Specifically, R.C. 5717.01 sets forth certain jurisdictional prerequisites for having an appeal considered by this board, providing in part:

“An appeal from a decision of a county board of revision may be taken to the board of tax appeals *within thirty days after notice of the decision of the county board of revision is mailed as provided in section 5715.20 of the Revised Code.* \*\*\*\*\* Such appeal shall be taken by the filing of a notice of appeal, in person or by certified

mail, express mail, or authorized delivery service, with the board of tax appeals *and with the county board of revision.*” (Emphasis added.)

The Muskingum County Board of Revision (“BOR”) mailed notice of its decision to appellant on September 10, 2008.<sup>1</sup> While appellant filed its notice of appeal with this board on September 23, 2008, the Muskingum County Auditor, as secretary of the BOR, certified as part of the transcript that appellant failed to file its notice of appeal with that tribunal. Despite being cautioned of the Supreme Court’s holding in *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192, 194, that “the BTA’s docketing letters do not replace appellants’ duty to file their notice of appeal with the board [of revision],” appellant responded to this board’s order by referring to an October 21, 2008 letter from the auditor stating that “[w]e received notice on September 29, 2008 of an appeal to the Board of Tax Appeals.” S.T., Ex. I. However, the notice to which the auditor made reference was not to an appeal filed by appellant with the BOR, but instead to this board’s September 25, 2008 docketing letter which was received by the auditor on September 29, 2008. S.T., Ex. H.

In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the court noted expressly held:

“Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. \*\*\* R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal.” (Citations omitted.)

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<sup>1</sup> Although the BOR’s decision is dated September 3, 2008, the auditor has certified, consistent with certified mail receipts included within the transcript, that said decision was mailed on September 10, 2008.

See, also, *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 80 Ohio St.3d 621 (rejecting appellant's arguments of substantial compliance with R.C. 5717.01); *PFD Dev. PLL v. Auditor*, Greene App. No. 05-CA-0122, 306-Ohio-5129; *Hillwood Dev. Co. v. Summit Cty. Bd. of Revision* (May 16, 1990), Summit App. No. 14426, unreported.

Accordingly, it is the order of this board that the present appeal must be, and hereby is, dismissed.

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