

OHIO BOARD OF TAX APPEALS

Orange City School District Board of Education,)	CASE NOS. 2008-M-813, 814
)	
Appellant,)	(REAL PROPERTY TAX)
)	
)	ORDER
)	
vs.)	(Denying Motion to Compel)
)	
Cuyahoga County Board of Revision, the Cuyahoga County Auditor, and Marotta-Glazer Realty Co.,)	
)	
Appellees,)	
)	

APPEARANCES:

For the Bd. of Edn.	-	Kadish Hinkel & Weibel Kevin Hinkel 1717 East Ninth Street, Suite 2112 Cleveland, Ohio 44114
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Property Owner	-	Kenneth J. Fisher Co., L.P.A. Kenneth J. Fisher 2100 Terminal Tower 50 Public Square Cleveland, Ohio 44113

Entered January 27, 2009

This matter is before the Board of Tax Appeals pursuant to a motion to compel discovery filed by counsel for the Orange City School District Board of Education

(“BOE”). The BOE asks this board to order the property owner, Marotta-Glazer Realty Co., to respond to interrogatories and to comply with its request for the production of documents.

Ohio Adm. Code 5717-1-11 provides the manner in which discovery is conducted before the board. Specifically, Ohio Adm. Code 5717-1-11(A)(1) provides that discovery should be completed within 120 days of the filing of the notice of appeal, which “shall also be the last day for a party to seek involvement of the board in discovery matters.”

This board has interpreted the language in Ohio Adm. Code 5717-1-11 to deny filings of motions to compel discovery when such motions have been filed outside of the 120-day period identified by the rule. *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Interim Order, Dec. 9, 2008), BTA No. 2008-H-947, unreported; *LTC Properties, Inc. v. Licking Cty. Bd. of Revision* (Interim Order, Dec. 9, 2008), BTA No. 2008-H-1010, unreported; *Bd. of Edn. of the Kettering-Moraine City School Dist. v. Montgomery Cty. Bd. of Revision* (Interim Order, Apr. 28, 2000); BTA No. 1999-T-1660, unreported; *Siegel v. Cuyahoga Cty. Bd. of Revision* (Interim Order, July 3, 1997), BTA No. 1997-K-45, unreported; *Nordonia Hills Bd. of Edn. v. Summit Cty. Bd. of Revision* (Interim Order, Dec. 18, 1998), BTA No. 1997-T-1286, unreported.

While the board acknowledges that the BOE did not delay in the issuance of discovery and mailed its motion to compel within the 120-day period, nevertheless, the motion was not filed with this board until after the expiration of the period and there has

been no explanation for the filing outside the prescribed time. Therefore, this board cannot find that good cause exists for the delay.

Therefore, the board must find that the motion to compel was not timely filed. However, it is important to remind the parties of the sanctions which may be imposed by choosing simply to ignore a discovery request or an order of a tribunal requiring the exchange of information. See, e.g., *Jones v. Murphy* (1984), 12 Ohio St.3d 84 (holding that even absent an order compelling discovery, expert testimony may be excluded as a sanction for an intentional violation of Civ. R. 26(E)(1)(b)); *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83 (holding that trial court did not abuse its discretion when it excluded a surprise expert witness even though the failure to disclose the identity of such witness may have resulted from neglect, a change in trial strategy or inadvertence); *Warren Local Schools Bd. of Edn. v. Washington Cty. Bd. of Revision* (June 3, 1994), BTA No. 1992-H-1000, unreported (excluding testimony and written appraisal report of an appraiser who was not identified in supplemental answers to interrogatories as an expert expected to be called at hearing); *Westover Village LTD v. Hamilton Cty. Bd. of Revision* (Interim Order, Nov. 24, 1995), BTA No. 1995-M-345, unreported (precluding a party who failed to respond to discovery from presenting any evidence at hearing regarding the subject property and reserving for later consideration the imposition of monetary sanctions).

The motion to compel discovery is denied. The hearing will be scheduled in the ordinary course of the board's business.

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