

The Board of Tax Appeals is considering the above-referenced appeal following the receipt of a motion to dismiss filed by the appellee school board. More precisely, the board of education seeks an order from this board, remanding the instant appeal to the Clermont County Board of Revision (“BOR”) with instructions to dismiss the complaint filed by IDC Ohio Holdings, LLC, (“IDC”) but involving property owned by Nizam Hack and Deokie Hack, Co-Trustees of the Hack Family Trust dated August 4, 2000 (“Trustees”). This motion is considered upon the motion and brief in support and the statutory transcript certified to this board by the BOR.

R.C. 5715.13 outlines who has standing to file a decrease complaint and provides that “[t]he 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.” Furthermore, with regard to who may file a complaint, R.C. 5715.19 provides that “[a]ny person owning taxable real property in the county or in a taxing district with territory in the county” may file a complaint or “a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person’s real property is located.”

The statutory transcript certified to this board by the BOR reflects that pursuant to R.C. 5715.19, an original complaint for tax year 2007 was filed on March 30, 2008, regarding property owned by the Trustees. S.T. On the original complaint,

the Trustees appear to be properly¹ listed as the owners of the subject property on Line 1 of the complaint. Id. On Line 2 of the complaint, “IDC” is listed as the complainant, if not the owner. Line 3, for the complainant’s agent, indicates an attorney’s name and Line 5, for the complainant’s relationship to property if not owner, indicates “Prior Owner/Current Lessee.” Id. The complaint was signed by the attorney. A counter-complaint, which is not under consideration herein, was also filed by the appellee board of education. Thereafter, the BOR issued its decision, dated June 18, 2008, wherein the BOR made no change to the subject’s valuation for tax year 2007. S.T. Unsatisfied with the valuation determination rendered by the BOR, the property owners appealed the BOR’s decision to this board.

Specifically, the Supreme Court has held 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.” *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, 227. The court determined that “[s]ince R.C. 5715.19 is a general statute providing who may complain about various actions taken by the auditor, R.C. 5715.13, a special statute which restricts a board of revision’s power to reduce property values, controls the filing of complaints seeking decreases in a property’s value.” Id. Accordingly, pursuant to R.C. 5715.13, in a case in which a decrease in property valuation is sought, a complainant must be “a party affected thereby” or a person who is authorized to file

¹ The property record card provided by the county reflects the Trustees as the owner of the subject property. S.T.

a complaint pursuant to R.C. 5715.19. See, also, *Soc. Natl. Bank v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 401.

Thereafter, due to changes made to R.C. 5715.13, 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 ‘Complainants 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.

Most recently, however, the Supreme Court in *Village Condominiums Owners Assn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 223, 2005-Ohio-4631, revisited *Soc. Natl. Bank*, supra, wherein it held that “[t]he two statutes of primary importance when considering the standing of a party to file a complaint for a decrease in valuation with a board of revision are R.C. 5715.19 and 5715.13.” It went on to indicate that “a complainant must first demonstrate that pursuant to R.C.

5715.19(A)(1), he or she is a ‘person owning taxable real property in the county.’² *Soc. Natl. Bank*, 81 Ohio St.3d at 404 ***. If the complainant satisfies this ‘threshold standing requirement,’ a court will then consider whether he or she meets the requirements of R.C. 5715.13, which 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 ***.’ *Id.*”

Based upon the foregoing, it is therefore the order of this board that the appellants show cause why this board should not order that the instant matter be remanded to the Clermont County Board of Revision with instructions to dismiss the original complaint. Specifically, it must be determined whether IDC owns property within Clermont County, or otherwise properly qualifies as a complainant pursuant to the provisions of R.C. 5715.19(A)(1). All parties who wish to be heard upon the question of the legal sufficiency of the original complaint to establish jurisdiction in the Clermont County Board of Revision shall file a written response to this order within fourteen days of its issuance.

ohiosearchkeybta

² “This statute also authorizes others to file a complaint ***.”