

OHIO BOARD OF TAX APPEALS

Madeline Litteral,)
)
 Appellant,) (CASE NO. 2008-T-1077
) (REAL PROPERTY TAX)
 vs.) (DECISION AND ORDER
)
 Montgomery County Board of Revision)
 and Montgomery County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Madeline Litteral, pro se
321 Laurelann Drive
Kettering, Ohio 45429

Copy to - Rodney Litteral
731 West Central Avenue
Carlisle, Ohio 45005

For the County Mathias H. Heck, Jr.
Appellees - Montgomery County Prosecuting Attorney
Laura G. Mariani
Assistant Prosecuting Attorney
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422

Entered May 12, 2009

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

On April 7, 2009, this board issued an order requiring the appellant to show cause why the BOR's dismissal of the underlying complaint should not be affirmed. The BOR concluded that the complaint failed to invoke the subject matter jurisdiction of the BOR in that it was filed on the owner's behalf by someone not authorized to do so. The appellant has not responded to the board's order.

The transcript certified in this matter to the BTA by the Montgomery County Auditor establishes that the BOR complaint underlying this appeal was filed by “Rod Litteral,” who identifies himself on the complaint form as the property owner’s “Broker/Agent.” S.T. at Ex. A. It appears that Mr. Litteral may have also held himself out as the owner’s son. It does not appear from the record that Mr. Litteral is an attorney who is licensed to practice law in the state of Ohio.

In *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, the court held that “[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law.” *Id.* at the syllabus. The court determined that, to invoke the jurisdiction of the BOR, a complainant had to comply with the requirements of R.C. 5715.13 and 5715.19. Because the requirements are jurisdictional, “the failure to fully and properly complete the complaint will result in dismissal of the action.” *Id.* at 481.

In order to determine whether a valid complaint has been filed, the “critical inquiry” is to determine that the complaint has been “*** ‘prepared and filed’ either by the taxpayer acting in a pro se capacity or by an attorney authorized to practice law acting in the taxpayer’s behalf.” *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), 91 Ohio St.3d 308, 314. Cf. *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852 (holding 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).

As a result, the BTA has previously determined that a person is not authorized to file a BOR complaint on a parcel owned exclusively by his or her parent.¹ *Voudouris v. Lucas Cty. Bd. of Revision* (Oct. 5, 2007), BTA No. 2006-H-1807, unreported (a complaint filed by a non-attorney son filing on behalf of his father, purportedly under a power of attorney, is insufficient to invoke the jurisdiction of a county board of revision). Cf. *Fravel v. Stark Cty. Bd. of Revision* (2000), 88 Ohio St.3d 574, citing *Disciplinary Counsel v. Coleman* (2000), 88 Ohio St.3d 155. In addition, this board has indicated that a broker-agent's filing of a complaint on behalf of a property owner fails to invoke the jurisdiction of the BOR. *Richards v. Montgomery Cty. Bd. of Revision* (Sept. 16, 2008), BTA No. 2008-A-1078, unreported.²

¹ As a consequence of *Sharon Village*, the General Assembly amended R.C. 5715.13 and 5715.19 to authorize certain non-attorneys to file a BOR complaint. Among those listed was an owner's spouse. However, in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appealed denied (2001), 91 Ohio St.3d 1489, the court found the amendments to R.C. 5715.13 and 5715.19 to be unconstitutional violations of the separation of powers. Subsequently, in *Bd. of Edn. of the Whitehall City School Dist. v. Franklin Cty. Bd. of Revision*, Franklin App. Nos. 01AP-878 and 01AP-879, 2002 Ohio 1256, the 10th Appellate District reached an identical conclusion, finding that "**** amended R.C. 5715.19(A) is unconstitutional beyond a reasonable doubt insofar as it permits persons that are not attorneys or owners of the property to file a complaint before a board of revision on behalf of an owner." Id. at 14. Cf. *Iberia Cabinet Mfg. Co. v. Walston*, 121 Ohio Misc.2d 121, 2002-Ohio-7450 (complaint filed by a person not authorized to do so found to be a nullity).

² *Richards*, supra, was ultimately dismissed for the appellants' failure to timely file the notice of appeal. However, the BTA indicated that, had it reached the question of whether a non-attorney broker-agent could file on behalf of an owner, it would have found that the filing constituted the unauthorized practice of law. As such, a complaint filed by a broker-agent would be insufficient to invoke the jurisdiction of a BOR. Id. at 4. The BTA notes that the "broker-agent" involved in *Richards*, supra, was a "Rod Litteral," whose address of record was the same as that listed for Rodney Litteral in this appeal.

Upon review, we find that the Rod Litteral's filing of a complaint on behalf of the owner of the subject property failed to invoke the jurisdiction of the BOR. Accordingly, the Board of Tax Appeals affirms the Montgomery County Board of Revision's dismissal of the underlying complaint.

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