

OHIO BOARD OF TAX APPEALS

Madeline Litteral, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Montgomery County Board of Revision )  
 and Montgomery County Auditor, ) (Requiring Appellant to Show Cause &  
 ) Ordering BOR to Supplement the Transcript)  
 )  
 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 Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Laura G. Mariani  
Assistant Prosecuting Attorney  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422

Entered April 7, 2009

The Board of Tax Appeals considers this matter following a review of its docket. The record in this matter establishes that this appeal is from an order of the Montgomery County Board of Revision, in which the BOR dismissed the underlying complaint. 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 transcript certified in this matter to the BTA by the Montgomery County Auditor indicates that the BOR complaint underlying this appeal appears to have been 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.<sup>1</sup> *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 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.<sup>2</sup>

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<sup>1</sup> 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).

<sup>2</sup> *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 find that the filing would constitute 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.

Accordingly, the Board of Tax Appeals orders that appellant show cause why this board should not affirm the BOR's dismissal of the complaint. All parties who wish to be heard upon the question of the legal sufficiency of the complaint shall file a written response to this order within fourteen (14) days of its issuance.

In addition, the transcript certified to this board does not contain a copy of the BOR's hearing record.<sup>3</sup> As such, the BOR is ordered to supplement the transcript with such information within fourteen (14) days of the issuance of this order.

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<sup>3</sup> The transcript suggests that a copy of appellant's notice of appeal was filed with the BOR after the expiration of the thirty-day appeal period. The appellant represented during a mediation conference with this board that the notice of appeal was timely filed because it was mailed, via USPS certified mail, to the BOR before the deadline. The transcript shows the BOR filing date as the date of receipt. However, we remind the BOR that, where the notice of appeal is mailed by certified mail, Ohio law requires the BOR to accord a constructive filing date of the certified mailing date. See R.C. 5717.01 ("If notice of appeal is filed by certified mail \*\*\* the date of the United States postmark placed on the sender's receipt by the postal service \*\*\* shall be treated as the date of filing."). The certified transcript does not contain a copy of the envelope in which the notice of appeal was received. The BTA directs the BOR to supplement the transcript with the envelope, if available. The BTA further directs the appellant to supply this board with a copy of the certified mail receipt, aka "green card," used in the mailing of the notice of appeal to the BOR. In both instances, the requested information shall be filed within fourteen days.