

**OHIO BOARD OF TAX APPEALS**

Sandra O. Gunlock Trust, )  
 )  
 Appellant, ) (CASE NO. 2008-T-1272  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) DECISION AND ORDER  
 )  
 Montgomery County Board of )  
 Revision and Montgomery County )  
 Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Bill Gunlock  
5048 Oak Manor Ct.  
Dayton, Ohio 45429

For the County Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Nolan Thomas  
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.

The county appellees have filed a motion with this board, in which they ask this board to dismiss the instant appeal for a failure to raise the subject-matter

jurisdiction of the Montgomery County Board of Revision. The appellant has not responded to the motion.<sup>1</sup>

The county argues that the complaint filed with the BOR in this matter was filed on behalf of the property owner, a trust, by an individual who is neither licensed to practice law in the state of Ohio nor a person who has the authority to file a complaint under R.C. 5715.19. The record establishes that this matter came before the BOR pursuant to an original complaint filed on behalf of the Sandra O. Gunlock Trust, requesting a decrease in the 2007 valuation of the subject property. On line 1 of the complaint form, “Sandra O. Gunlock Tr” is listed as the owner of the subject. “William L. Gunlock” is listed on line 3 of the complaint, which asks for the identification of the complainant’s agent. At the bottom of the form, Mr. Gunlock has signed the complaint as “Husband.” S.T. at Ex. A. Mr. Gunlock appeared at the BOR hearing, at which time he identified himself as Sandra Gunlock’s spouse and as an appraiser of real property. S.T. at Ex. D.

The county bases its motion upon the Ohio Supreme Court’s decision in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, in which it 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 syllabus.<sup>2</sup> The court further held that, where a non-attorney had engaged in these preliminary acts on

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<sup>1</sup> Ohio Adm. Code 5717-1-12(B) provides that, upon the filing of a motion, any party may file a memorandum contra within fourteen days after service of the motion.

<sup>2</sup> In reaching this conclusion, the court determined that county boards of revision are quasi-judicial bodies and that ineffective efforts before such tribunals can have severe consequences, including the potential loss of right to challenge value for up to three years and the possibility that values may be established contrary to those requested through a complaint, with little or no recourse available if ineffective assistance is provided by a non-attorney.

another's behalf, the complaint was ineffective and subject to dismissal. Although the consequences were indeed harsh, the court established, through this decision and those that followed, a clear standard for determining the jurisdictional sufficiency of complaints filed with county boards of revision. See, e.g., *King Dev. Co. v. Franklin County Bd. of Revision* (1997), 78 Ohio St.3d 483; *Gammarino v. Hamilton Cty. Bd. of Revision* (1997), 80 Ohio St.3d 32; *Lakeside Ave. L.P. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 125 (concluding a limited partner may not file a complaint with a county board of revision seeking a decrease in value on behalf of the limited partnership which owns the property); *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156 (officers of neither private corporations nor boards of education can "prepare and file complaints" with a county board of revision); *Fravel v. Stark Cty. Bd. of Revision* (2000), 88 Ohio St.3d 574 ("a non-attorney operating under a power of attorney engages in the unauthorized practice of law when he prepares and files a complaint with a board of revision on behalf of a taxpayer"). See, also, *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, unreported (holding that a member of a limited liability company is likewise precluded from filing a real property valuation complaint on property owned by the limited liability company); *Bd. of Edn. for the Toledo Public Schools v. Lucas Cty. Bd. of Revision* (Apr. 3, 1998), BTA No. 1997-P-1299, unreported. See, also, *Disciplinary Counsel v. Kafele*, 108 Ohio St.3d 283, 2006-Ohio-904 (although not involving a complaint filed with a county board of revision, the court held that a non-

attorney member of a limited liability company who attempts to prepare legal documents on its behalf engages in the unauthorized practice of law).

Then, in *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852, the Supreme Court distinguished *Sharon Village*, supra, and limited the holding of *Worthington City School Dist.*, supra. The court held “that it is no longer necessary for a corporation to hire an attorney to file a complaint with the BOR unless legal issues exist or arise in the case.” *Dayton Supply*, supra, at ¶29. The court specified that “public-interest factors justify an exception to the rule in the instant case. Specifically, corporate officers have a fiduciary duty to the corporation such that accountability and loyalty are not an issue in permitting them to act on behalf of the corporation. Further, assuming that no legal issues are involved or arise in the case before the BOR, hiring an attorney is not necessary, a situation that makes filing a complaint by a corporation more convenient and less expensive.” Id. at ¶30. The court concluded that “pursuant to R.C. 5715.19, a corporate officer does not engage in the unauthorized practice of law by preparing and filing a complaint with the 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.” Id. at ¶32.

We have since extended the holding in *Dayton Supply* to permit the filing of a decrease complaint with a county board of revision by a trustee on behalf of a trust. In *Chandras/Ravishanker v. Cuyahoga Cty. Bd. of Revision* (May 18, 2007),

BTA No. 2006-A-1265, unreported, we recognized that a trustee has a fiduciary duty to both protect and administer a trust. As such, the trustee has the authority to file a complaint seeking a reduction in the value of trust property for real property taxation purposes. In the case now before us, however, Mr. Gunlock has not identified himself as the trustee of the Sandra O. Gunlock Trust, which owns the subject property. In the absence of this fiduciary interest, we must look to see whether Mr. Gunlock otherwise qualifies as a person authorized to file a complaint.

Mr. Gunlock signed the complaint as the husband of Sandra O. Gunlock, and further noted this status in his testimony before the BOR. Although the record is not clear, it appears that Sandra O. Gunlock may be a beneficiary of the trust. In *Tedrick v. Stark Cty. Bd. of Revision* (Interim Order, June 24, 2008), BTA No. 2007-M-1506, unreported, we determined that a person could file a complaint on property owned by his or her spouse:

“In *Dayton Supply*, the court looked to the relationship between the agent and the property owner to elicit whether a fiduciary duty of ‘accountability and loyalty’ existed. Such is the case between a husband and wife. R.C. 3103.05 (“A husband or wife may enter into any engagement or transaction with the other, or with any other person, which either might if unmarried; *subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other.*” Emphasis added.) Thus, the board finds that a complaint executed and signed by a non-attorney husband/wife when the property which is the subject of the complaint is owned by the spouse is executed with the requisite fiduciary interests. Thus, such a complaint will vest jurisdiction with a board of revision.” *Id.* at 5.

The complaint now before us, however, is unlike that considered in *Tedrick*, supra. There, legal title was held by the complainant's spouse. Here, title of the subject property is held by a trust, a separate legal entity, to which Mr. Gunlock held no fiduciary interest. See *The Dorcas Burns Trust v. Ashtabula Cty. Bd. of Revision* (Sep. 12, 1997), BTA No. 1997-K-710, unreported, quoting *Mahoning Cty. Bar Assn. v. Alexander* (1997), 79 Ohio St.3d 1220, at 1221. While it is possible that Sandra O. Gunlock may be a beneficiary of the trust, Mr. Gunlock's fiduciary relationship to his wife does not extend to the legal entity, i.e., the trust, that actually owns the subject property. Cf. *Pence Family Trust v. Delaware Cty. Bd. of Revision* (Mar. 15, 2002), BTA 2000-T-946, unreported (holding that a trust set up as an estate planning tool for a husband and wife cannot be considered an "alter ego" for those individuals).

Finally, we observe that Mr. Gunlock identified himself at the BOR hearing as an appraiser of real property. While this status may not be relied upon for purposes of invoking jurisdiction, given that he was not identified as an appraiser on the complaint, we do note that we have previously distinguished *Dayton Supply*, supra, and concluded that a complaint filed by a non-attorney appraiser was insufficient to invoke the jurisdiction of a county board of revision. *Bd. of Edn. for the Springfield Local Schools v. Lucas Cty. Bd. of Revision* (July 27, 2007), BTA No. 2006-R-1731, unreported.

In summary, we find that the filing of a complaint by the husband of a beneficiary to a trust that owns the real property in issue fails to invoke the jurisdiction

of the BOR. The Board of Tax Appeals therefore remands this matter to the Montgomery County Board of Revision with instructions to dismiss the subject complaint and to reinstate the values determined by the Montgomery County Auditor for tax year 2007.

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