

OHIO BOARD OF TAX APPEALS

Richmiles, LLC,)
)
 Appellant,) CASE NO. 2008-T-2490
)
 vs.) (REAL PROPERTY TAX)
)
) ORDER
 Cuyahoga County Board of Revision,)
 Cuyahoga County Auditor, and) (Denying Motion to Compel)
 Warrensville Heights Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Siegel, Siegel, Johnson & Jennings Co., L.P.A.
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For the Appellee Bd. of Edn. - Kolick & Kondzer
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Entered May 19, 2009

The Board of Education moves this board to order appellant, Richmiles, LLC, to answer interrogatories and to comply with its request for the inspection of documents. Richmiles has not responded to the motion. Ohio Adm. Code 5717-1-12(B).

Ohio Adm. Code 5717-1-11 provides for discovery before the Board of

Tax Appeals:

“(A) Discovery shall be subject to the following limitations:

“(1) Discovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed as expeditiously as possible. *Discovery should be completed not more than one hundred twenty days after 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.* Upon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.” (Emphasis added.)

The appellant filed its notice of appeal on December 16, 2008. Thus, the 120-day period for a party to seek the board’s involvement in discovery matters expired on April 15, 2009. Ohio Adm. Code 5717-1-11(A)(1). The BOE filed its motion to compel on April 20, 2009.¹ Thus, the motion to compel is untimely.

Under specific circumstances, the BTA has permitted discovery after expiration of the 120-day rule where the moving party has demonstrated good cause for the BTA’s intervention. See, e.g., *Medina Blanking, Inc. v. Medina Cty. Bd. of Revision* (Interim Order, Aug. 17, 2004), BTA Nos. 2003-T-1375, 1378, unreported, at 5 (“We have always held that the 120 day rule is not absolute. This board has the discretion to intervene in discovery disputes whenever good cause has been

¹ Although a cover letter placed with the motion to compel indicates that the motion was being transmitted to the BTA “VIA FACSIMILE AND FIRST CLASS MAIL,” the board has no record of receiving the motion by facsimile. See Ohio Adm. Code 5717-1-22(C) (“The sending party bears the risk of transmitting a document by facsimile to the board.”). The BTA received the motion by first class mail on April 20, 2009.

demonstrated for the need for such action.”). See, also, *Hypabyssal, Ltd. v. Summit Cty. Bd. of Revision* (Interim Order, Mar. 18, 1999), BTA No. 1998-A-487, unreported. Here, the board can find no good cause which would require it to make an exception to its rules regarding the timely filing of a discovery motion.

While this decision may seem inequitable, given appellant’s failure to respond to discovery, the parties must also remember that “[i]t is the responsibility of all parties to actively and timely pursue authorized discovery so as to provide all parties adequate time in which to seek the involvement of this board, if needed, within the 120-day period. All parties are expected to be mindful of the board’s rule requiring timely and voluntary exchange of discovery materials, as well as the 120-day discovery completion period.” *Bedford Retirement Village LLC v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Feb. 29, 2000), BTA Nos. 1999-D-369, 370, unreported, at 4.

Although the board will not compel discovery in this matter, the board reminds all that a party who receives discovery should not rely upon the discovery deadlines as a means of escaping its duty to respond:

“*** [W]e wish to take this opportunity to remind the parties that the purpose of this Board, as with any tribunal, is to determine the facts based upon a review of the record. The discovery rules are an essential tool in that fact-finding process. See *Goff v. The Kroger Co.* (S.D. Ohio 1988), 4121 F.R.D. 61. The discovery rules are not designed to place an onerous burden upon the parties. When followed, the rules provide a means by which the exchange of information can be carried out in a cooperative and professional manner. The rules also protect each party from abuses, which unfortunately do occur. Nevertheless, the discovery rules should never be used by a party to

avoid the free exchange of information that may be beneficial to this Board's objective. While the time in which to seek this Board's intervention in discovery disputes is limited, neither the Civil Rules nor the Rules of this Board expressly restrict the duty of a party to respond to discovery, whenever served. We hope the interests of cooperation and fair play would motivate Karrington, even now, to voluntarily exchange the requested information." *Karrington of Kenwood, Ltd. v. Hamilton Cty. Bd. of Revision* (Interim Order, Aug. 24, 2001), BTA No. 2000-T-1512, unreported, at 6.

The BTA further stated in *Karrington* that, even in instances where the discovery period may be closed, this board maintains the authority to curtail any abuse of the discovery process and to impose sanctions, sua sponte, for violations of the applicable discovery rules. See Ohio Adm. Code 5717-1-14. See, also, *Nakoff v. Fairview Gen. Hosp.* (1996), 75 Ohio St.3d 254; *Salem Med. Arts & Dev. v. Columbiana Cty. Bd. of Revision* (1998), 82 Ohio St.3d 193 (a party need not have filed a motion seeking to compel discovery before Civ.R.37(D) sanctions can be issued). Cf. *BRE/City Center LLC v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Aug. 10, 2001), BTA No. 2000-T-320, et al., unreported (imposing sanctions for failure to comply with discovery).

The board further reminds the appellant that today's decision does not absolve it of its duty under this board's rules to timely identify all witnesses and exchange all documents and any appraisal reports prior to hearing. See Ohio Adm. Code 5717-1-11 and 5717-1-15. Failure to do so may lead to the imposition of sanctions.

Based upon the foregoing, the BOE's motion is denied.

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