

**OHIO BOARD OF TAX APPEALS**

Board of Education of the )  
Columbus City Schools, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
 )  
Franklin County Board of Revision, )  
the Franklin County Auditor, and )  
Dokari Invesments, LLC, )  
 )  
Appellees. )

CASE NO. 2008-T-585, 586  
(REAL PROPERTY TAX)  
ORDER  
(Requiring Appellant to Show Cause)

**APPEARANCES:**

For the Appellant-	Rich & Gillis Law Group, LLC Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County- Appellees	Ron O'Brien Franklin County Prosecuting Attorney Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20th Floor Columbus, Ohio 43215
For the Appellee - Property Owner	Griffith Law Offices Charles R. Griffith 522 N. State Street Westerville, Ohio 43082

Entered February 24, 2009

The above-captioned appeals are now considered, sua sponte, by the Board of Tax Appeals following a review of matters presently pending on the board's docket. On December 30, 2008, this board issued an order compelling the property owner to respond to certain interrogatories and requests for production of documents. On January 27, 2009, the appellant, Board of Education of the Columbus City Schools

("BOE"), filed a motion for sanctions for the failure to comply with the board's order. On February 12, 2009, the appellee property owner, Dokari Investments, filed a memorandum contra to the motion for sanctions. A review of the entire record, however, reveals a potential jurisdictional issue which must be resolved prior to further action in these appeals.

The notices of appeal<sup>1</sup> in this matter were filed on May 16, 2008. The Franklin County Board of Revision's ("BOR") determination was dated December 12, 2007, and according to the auditor's certification as indicated by the statutory transcript, mailed to all parties on that date. S.T., Certification. R.C. 5715.20 requires decisions of a board of revision to be delivered by certified mail to a complainant "if the complainant is not the person in whose name the property is listed or sought to be listed." The record reflects a countercomplaint filed by the BOE. Therefore, the BOE qualified as a complainant in the matter before the BOR. However, the BOE's notice of appeal in the present matter was filed well after the 30-day period prescribed by statute. The BOE, through its memorandum in support of jurisdiction, claims that it may cure its failure to file a notice of appeal within the time requirements prescribed by R.C. 5717.02 by waiving certified notice of the BOR's decision.

In support of its claim, the BOE cites *Colonial Village, Ltd. v.*

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<sup>1</sup> Two notices of appeal were filed. The notice of appeal docketed as BTA No. 2008-T-585, lists the tax year as "2006-07." The notice of appeal docketed as 2008-T-586 lists the tax year as "2006." The notice of appeal in No. 2008-T-585 includes the following statement on the face of the appeal, "The decision letters are dated 12/12/2007, however these letters were not sent to the Appellant until 4/25/08. Please see Memorandum in

*Washington Cty. Bd. of Revision*, 114 Ohio St.3d 493, 2007-Ohio-4641. In *Colonial Village*, the court found that the appellant's failure to raise the manner in which it received the BOR's decision by constituted a waiver of the R.C. 5715.20 requirement placed upon boards of revision to send decisions by certified mail. In that appeal, the claim made by the appellant was that the notice of appeal was premature, as proper service had not been effected. A finding of premature filing could have required a dismissal of the appeal and a requirement that the board of revision re-serve its determination in accordance with R.C. 5715.20. See *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033.

In the present appeal, the BOE argues that it may "cure" the BOR's failure BOR to serve its decision by certified mail by waiving proper service. The BOE does not, however, address whether the Board of Tax Appeals has the authority to take action on notices of appeal that do not meet the requirements set forth in R.C. 5717.02. The BOE also does not address whether the board is required to dismiss the matter with instructions to the BOR to properly certify its decision. See, e.g., *First Federal Sav. & Loan Assn. of Wooster v. Wayne Cty. Bd. of Revision* (Oct. 11, 2002), BTA No. 2000-K-999, unreported

Additionally, the statutory transcript certified by the Franklin County Auditor indicates that its decision may have been served on the BOE by certified mail. A copy of a United States Postal Service ("USPS") notification indicates that receipt

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Support of Jurisdiction attached hereto." The notice of appeal docketed in 2008-T-586 does not have the statement attached. However, the memorandum in support of jurisdiction identifies both appeals.

no.7006345000022014127 was delivered on December 13, 2007. Handwritten on the notification is the name "Rich." The Board is unable to link the certified mail receipt with an individual BOR decision. An attachment to the BOE's memorandum in support of jurisdiction is described as a copy of the BOR's mailing log. The log does not identify the number 06-001161 as included in the mailing with the USPS identification number listed above. However, the attachment to the BOR's memorandum is not a part of the record upon which this board may ultimately make a finding of lawful jurisdiction. See *Fairchild Corp. v. Tracy* (Dec. 20, 1996), BTA No. 1995-T-137, unreported.

Should the parties wish to supplement the record with information regarding certified mailing, a hearing will be scheduled. A request for hearing should be included in any memorandum regarding jurisdiction. Any party who wishes to be heard on whether the board has jurisdiction to hear these appeals shall file a response within fourteen (14) days of the issuance of this order.

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