

**OHIO BOARD OF TAX APPEALS**

Dr. Carol Moses-Robinson,	)	CASE NO. 2008-T-660
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Cuyahoga County Board of Revision	)	
and Cuyahoga County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant – Dr. Carol Moses-Robinson, pro se  
7430 S. Paxton Avenue  
Chicago, Ill 60649

For the County Appellees - William D. Mason  
Cuyahoga County Prosecuting Attorney  
Timothy J. Kollin  
Assistant Prosecuting Attorney  
Courts Tower, 8th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

Entered June 2, 2009

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

The Board of Tax Appeals previously issued an order requiring appellant to show cause why it should not affirm the Cuyahoga County Board of Revision’s dismissal of her 2007 tax year complaint.<sup>1</sup> The BOR concluded that the complaint

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<sup>1</sup> The order also required the BOR to supplement the record by certifying to the BTA “the previous complaint, hearing record, or other pertinent information upon which the BOR based its determination that the subject complaint was an impermissible filing.” The BOR has not complied with the order.

failed to invoke the subject matter jurisdiction of the BOR in that it constituted an impermissible second complaint filed in the same interim period. See R.C. 5715.19(A)(2). S.T. at Ex.C.

The transcript indicates that the appellant had filed a decrease complaint on the subject property for tax year 2007. That complaint indicated that the property had lost value due to a casualty. S.T. Ex. A. It does not appear that the BOR granted the appellant an opportunity to present evidence at a hearing regarding her complaint.<sup>2</sup> Rather, the BOR dismissed the complaint, having “found subject Complaint above has already been decided.” S.T. at Ex.C. Specifically, the appellant had filed a complaint for tax year 2006.<sup>3</sup>

R.C. 5715.19(A)(2) provides that, where a complaint has been previously filed, the same “person, board, or officer” shall file no complaint in the same interim period on the same property unless certain statutorily enumerated allegations are made. See *Gammarino v. Hamilton Cty. Bd. of Revision* (1994), 71 Ohio St.3d 388. See, also, *Columbia Toledo Corp. v. Lucas Cty. Bd. of Revision* (1996), 76 Ohio St.3d 361, 363 (“The language of R.C. 5715.19(A)(2) is very simple and it is very clear - there can be no second appeal in the same interim period *unless*

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<sup>2</sup> The transcript does not contain notice for a BOR hearing, a hearing record, hearing minutes or notes, or other indications that a hearing took place. We note, too, that the transcript contains what appears to be a worksheet used by the BOR. Although it notes that the complaint was dismissed as a “2<sup>nd</sup> filing in triennium,” the area where the BOR hearing date is to be noted has been left blank. S.T. The property record card for the subject property is contained in the record. The card indicates that a complaint was filed for the 2006 tax year. S.T.

<sup>3</sup> Cuyahoga County’s most recent sexennial reappraisal occurred in 2006. See *Tax Commissioner’s Directive to County Auditors as to the Date of Reappraisal* (Jan. 22, 2002), Entry No. 02-01-0042, unreported.

one of the enumerated circumstances is alleged.”). These allegations include that the property: (1) has been sold in an arm’s-length transaction, (2) has lost value due to some casualty, (3) has had a substantial improvement added to the property, or (4) has had a change of at least fifteen percent in the property’s occupancy that has led to a substantial economic impact thereon. R.C. 5715.19(A)(2)(a)-(d). To meet this requirement the complaint form, DTE Form 1, lists the four exceptions at line 14 and asks the complainant to identify which exception applies. In the matter before us, the appellant checked the box on line 14 alleging that the subject property lost value due to some casualty. S.T. at Ex A.

Although, as a threshold issue, a second complaint needs to specify which circumstance permits the filing of a second complaint, that is not the end of the BOR’s inquiry. It is also necessary for the complainant to demonstrate that one of the four circumstances has actually occurred since the filing of the last complaint. *Developers Diversified v. Cuyahoga County Bd. of Revision* (1998), 84 Ohio St.3d 32 (“Thus, a complainant, to file a second complaint for the same interim period, must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2).”). See, also, *Kogelman v. Cuyahoga Cty. Bd. of Revision* (Oct. 19, 2001), BTA No. 2000-N-1895, unreported, and *David W. Swetland Building Co., Ltd. v. Cuyahoga Cty. Bd. of Revision* (Oct. 29, 2004), BTA Nos. 2004-J-276, 277, unreported.

Thus, having made the allegation of a loss in value due to casualty, the appellant then had the obligation to establish that the casualty exception existed. *Developers Diversified*, supra. The BOR should have then convened a hearing to

permit the appellant an opportunity to establish the circumstances allowed by R.C. 5715.19(A)(2). *Michel v. Erie Cty. Bd. of Revision* (Mar. 3 2006), BTA No. 2005-T-454, unreported. The record does not disclose that such a hearing took place. We reiterate that the BOR also failed to respond to our request to certify additional information pertaining to such a hearing. See fn. 1, *supra*. We must therefore conclude that the BOR failed to afford appellant a hearing and dismissed the complaint summarily.

In *Michel*, *supra*, we determined that the appropriate remedy was to remand the complaint to the BOR, with orders to afford the complainant an opportunity to verify the existence one of the R.C. 5715.19(A)(2)(a)-(d) exceptions. If the BOR found that the complainant had established one of the exceptions, the BOR was to proceed to consider evidence of the subject property's value. *Id.* at 6. This remedy was crafted, in part, because the record contained little detail as to the nature of the claimed casualty, timing of the casualty, and as to whether the casualty had been considered with the prior year's complaint.<sup>4</sup>

The instant matter differs from *Michel* in that the appellant has detailed a series of causalities that may impact the value of the subject property. She indicates that the property has been severely vandalized on several occasions, that the property's

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<sup>4</sup> See *Millstone Development, Ltd. v. Franklin Cty. Bd. of Revision*, Franklin App. No. 03AP-202, 2004-Ohio-1140, and *Planet Invest. Corp. v. Franklin Cty. Bd. of Revision* (Interim Order, Jan. 28, 2005), BTA Nos. 2004-A-1205, 1206, unreported (holding that a person may not file a second complaint in the same triennium where the BOR had considered the same evidence for the previous tax year).

electrical wiring and plumbing have been ripped out, and that the property's fixtures have been stolen. Given the BOR's failure to respond to this board's order to supplement, we must conclude that there is nothing in the record that would compel us to conclude that the BOR has previously considered the impact of these casualties upon value. In addition, the record indicates that at least some of the vandalism and theft occurred in 2007 – after the period considered in the prior 2006 complaint. In short, we find that the appellant has satisfied R.C. 5715.19(A)(2)(a)-(d).

Based upon all of the foregoing, the Board of Tax Appeals vacates the BOR's dismissal of the subject 2007 complaint. We remand this matter to the Cuyahoga County Board of Revision for hearing and consideration of the complaint upon its merits.

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