

OHIO BOARD OF TAX APPEALS

Barry L. Brown,)	CASE NO. 2008-V-2198
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Lucas County Board of Revision and the Lucas County Auditor,)	(Requiring Appellant to Show Cause)
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Thomas J. Anderson Jr., pro se 8960 Geiser Road Holland, OH 43528
Notice of Appeal Filed By	- Barry L. Brown, pro se 118 East Third Street Perrysburg, OH 43551
For the County Appellees	- Julia R. Bates Lucas County Prosecuting Attorney Carol Bruggeman Assistant Prosecuting Attorney One Government Center Suite 500 Toledo, OH 43604

Entered March 3, 2009

This appeal is now considered, sua sponte, by the Board of Tax Appeals following a review of matters presently pending on the board’s docket.

Jurisdiction before the BTA

The statutory transcript (“S.T.”) certified by the Lucas County Auditor represents that a copy of the notice of appeal filed by appellant with this board had not been received by the BOR within the time prescribed by statute.

R.C. 5717.01 provides:

“An appeal from a decision of a county board of revision may

be taken to the board of tax appeals *within thirty days after notice of the decision of the county board of revision is mailed as provided in section 5715.20 of the Revised Code*. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals *and with the county board of revision*. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 [5703.05.6] of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing." (Emphasis added.)

The Ohio Supreme Court has consistently held that the requirements of R.C. 5717.01 are mandatory, and that compliance therewith is essential to vest jurisdiction in the Board of Tax Appeals. *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Failure to comply with an appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Mentor Exempted Village School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (1980), 61 Ohio St.2d 332; *Cleveland City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1973), 34 Ohio St.2d 231.

The record before this board indicates that the BOR issued its decision letter on October 6, 2008.¹ S.T. at E. It appears that the last day to file the notice of appeal fell on November 5, 2008. The notice of appeal was received by the BOR on

¹ The auditor's certification on DTE Form 3 incorrectly indicates the decision was mailed on October 7, 2008.

November 7, 2008.² Based on the initial representation of the auditor, it is the order of this board that the appellant show cause why this board should not dismiss the instant appeal.

Jurisdiction before the BOR

In its decision in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appeal denied (Apr. 11, 2001), the Cuyahoga County Court of Appeals found the amendments to R.C. 5715.13 and 5715.19, allowing specified non-attorneys to file valuation complaints before the board of revision, were unconstitutional violations of the separation of powers. The appellate court held:

“Pursuant to Section 2(B)(1)(g), Article IV of the Ohio Constitution, the Ohio Supreme Court shall have original jurisdiction of ‘admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.’ ‘The Supreme Court has consistently indicated that it alone has the inherent power to regulate, control and define the practice of law in Ohio.’ *Washington Cty. Dept. of Human Serv. v. Rutter* (1995), 100 Ohio App.3d 32, 36, citing to *State ex. rel. Green v. Brown* (1962), 173 Ohio St. 114, 18 O.O.2d 361, 180 N.E.2d 157, paragraph one and two of the syllabus; *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 10 O.O. 95, 12 N.E.2d 288, paragraph one of the syllabus. The Ohio Supreme Court has repeatedly held that the filing of a complaint before the Board of Revision constitutes the practice of law. *Sharon Village Ltd. v. Licking County Bd. of Revision* (1997), 78 Ohio St.3d 479 syllabus; *Lakeside Ave. L.P. v. Cuyahoga County Bd. of Revision* (1999), 85 Ohio St.3d 125, 126; *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, 158. Amended R.C. 5715.19(A) permits persons who are not attorneys or the owners of the property to file complaints before the Board of Revision on behalf of the owner and

² The notice of appeal filed with this board was sent via U.S. postal service certified mail, and postmarked November 5, 2008.

therefore permits non-attorneys to engage in what has been uniformly recognized as the practice of law.

“The General Assembly has no authority to authorize lay persons to engage in the practice of law in a representative capacity for another entity and the Ohio Supreme Court has taken no action to sanction such conduct. *Washington Cty. Dept. of Human Serv., supra* at 37; see, also, *Alliance v.[sic] Group, Inc. v. Rosenfield* (1996) 115 Ohio App.3d 380, 387 (the General Assembly may not usurp the constitutionally granted functions of the Supreme Court set forth in Section 5, Article IV of the Ohio Constitution). The amended version of R.C. 5715.19(A) does exactly that as it allows non-attorneys to practice law. Because the statute clearly violates the separation of powers between the judiciary and legislative branches, the amended statute is unconstitutional.”

Thereafter, in *City of Strongsville, Strongsville Board of Education and The Glidden Co. v. Cuyahoga Cty. Bd. of Revision* (Apr. 27, 2001), BTA Nos. 1997-M-300-301, 304-305, 310, 323, unreported, this board considered the jurisdictional sufficiency of several original complaints, which were prepared and filed by a non-attorney tax manager on behalf of the property owner, The Glidden Co. Finding persuasive authority in *C.R. Truman, supra*, this board acknowledged its earlier order where it determined that the complaints in question were prepared and filed by a non-attorney. Accordingly, this board held that the jurisdiction of the BOR to consider value was not properly established.

In the instant case, a review of the statutory transcript (“S.T.”) indicates that the original complaint was filed on behalf of the appellant “Tom Anderson Jr.” and signed by Mr. Barry L. Brown, who lists himself as the agent of the complainant.³

³ Mr. Brown further filed a notice of appeal before this board. On the appeal, Mr. Brown lists himself as “partner.” The property record card contained within the statutory transcript reflects that the subject property is not held in the name of any corporate entity; rather, the property is titled to “Thomas J. Anderson, Jr.” S.T. at C.

S.T. at Ex. A. The subject property is titled to “Thomas J. Anderson, Jr.” Id. at C. There is nothing in the record before the board to indicate that Mr. Brown is a licensed attorney in the state of Ohio, or is otherwise entitled to file the complaint on behalf of another individual.

Based upon both jurisdictional issues, it is the order of this board that the appellant show cause why this board should not dismiss the notice of appeal; and alternatively, remand the instant appeal to the Lucas County Board of Revision with instructions to dismiss. All parties who wish to be heard upon the question of the legal sufficiency of the complaint to establish jurisdiction in the Lucas County Board of Revision shall file a written response to this order within fourteen days of its issuance.

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