

OHIO BOARD OF TAX APPEALS

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| Board of Education for Toledo Public Schools, |) | CASE NO. 2008-Z-1680 |
| |) | |
| |) | (REAL PROPERTY TAX) |
| Appellant, |) | |
| |) | ORDER |
| vs. |) | |
| |) | (Scheduling Hearing on the Motion to Dismiss and on the Merits) |
| Lucas County Board of Revision, |) | |
| Lucas County Auditor, and |) | |
| Buckland-Stalter Trailer Court, LLC, |) | |
| |) | |
| Appellees. |) | |

APPEARANCES:

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| For the Appellant Bd. of Edn. | - Spengler Nathanson PLL Michael W. Bragg Four SeaGate, Suite 400 Toledo, Ohio 43604 |
| For the County Appellees | - Julia R. Bates Lucas County Prosecuting Attorney Carol Bruggeman Assistant Prosecuting Attorney One Government Center, Suite 500 Toledo, Ohio 43604 |
| For the Appellee Property Owner ¹ | - James J. Petlow Attorney at Law 520 Madison Avenue Toledo, Ohio 43604 |

Entered June 23, 2009

The Board of Tax Appeals is considering the above-referenced appeal following the receipt of a “motion to dismiss” filed by the appellant, Board of

¹ On behalf of the property owner, Mr. Petlow filed with this board appellee’s memorandum in opposition to appellant’s motion to dismiss. Said filing will also be construed as an entry of appearance by Mr. Petlow on behalf of the appellee property owner under Ohio Adm. Code 5717-1-03.

Education for Toledo Public Schools (“BOE”). In said motion, the BOE seeks a remand of this appeal to the Lucas County Board of Revision (“BOR”), with instructions to dismiss the underlying complaint, which was the origin of this appeal. The BOE claims that the complaint should have been dismissed by the BOR because the complainant lacked the requisite standing to bring the complaint and as such, the complaint did not vest jurisdiction with that body. The appellee property owner, Buckland-Stalter Trailer Court, LLC, filed with this board a memorandum in opposition to the BOE’s motion.

A review of the record reveals that the complaint identified the owner of the property on Line 1 as “Buckland Stalter Trailer Court.” S.T. at 7. The parties do not dispute that Buckland-Stalter Trailer Court, LLC is the titleholder of the subject property. S.T. at 1, 9; Appellee’s Memorandum in Opposition to Appellant’s Motion to Dismiss at 1. See *Tri-Cam Properties, LLC v. Lake Cty. Bd. of Revision* (Interim Order, Apr. 6, 2007), BTA No. 2006-V-1268, unreported (concluding that jurisdiction was properly vested with the county board of revision where the complaint listed Tri-Cam Properties on Line 1 and Tri-Cam Properties, LLC was the property owner). Line 2 of the complaint, however, identified Rowdy Stalter as the “complainant.” S.T. at 7.

As the BOE notes in its motion, in *Soc. Nat. Bank v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 401, the Ohio Supreme Court addressed who may file a complaint challenging the valuation of real property. The court in that case set forth a two-pronged test based on R.C. 5715.13 and R.C. 5715.19. The court held that a

complainant must first own taxable real property within the county to satisfy the requirements of R.C. 5715.19. Once R.C. 5715.19 is satisfied, the court held that consideration of whether the complainant is “a party affected” by the value decrease is appropriate. R.C. 5715.13.² The court held, “[w]hen a person files a complaint against the property of another, the burden is on that person to prove that he or she has standing.” *Soc. Nat. Bank*, at 403.

The question before this board, then, is does the complainant, Rowdy Stalter, meet the requirements of R.C. 5715.19. If he does meet the requirements of R.C. 5715.19, then the complaint properly vested jurisdiction in the BOR. If, however, Mr. Stalter is not authorized to file a complaint on the property owned by Buckland-Stalter Trailer Court, LLC, then the BOE is correct and the jurisdiction of the BOR was not properly invoked.

A review of the written transcript of the hearing before the BOR, which is included in the statutory transcript certified to this board by the county auditor, yielded no references to any discussion or testimony regarding whether Mr. Stalter owned real property in Lucas County. In the property owner’s response to the BOE’s motion to dismiss, counsel for the property owner indicated that Mr. Stalter owned property in Lucas County at the time that the complaint was filed with the BOR and therefore, satisfied the requirements of R.C. 5715.19. Appellee’s Memorandum in

² This board has noted in the past that amendments made to R.C. 5715.13 allowing a “person who is authorized to file a complaint under R.C. 5715.19” to file a decrease application calls into question the second prong of the *Soc. Nat. Bank* test. *Lewell, LLC v. Montgomery Cty. Bd. of Revision* (Jan. 16, 2004), BTA No. 2002-V-1613, unreported.

Opposition to Appellant's Motion to Dismiss at 2, 6.³ This board, however, cannot accord evidentiary weight to the representations of counsel for the property owner in the memorandum in opposition. See *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 299 ("statements of counsel are not evidence"); *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, at ¶13.

This board must determine whether the complaint properly invoked the jurisdiction of the BOR in the instant matter. Therefore, it is the order of this board that a hearing be convened at which time (1) evidence may be presented as to whether Mr. Stalter owned property in the county at the time the complaint was filed with the BOR, and as a result, had standing to file the complaint and (2) evidence may be presented as to the value of the subject property as of the tax lien date at issue herein. Said hearing will be held on July 10, 2009 beginning at 9:00 am at the offices of the Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215.

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³ In its memorandum in opposition to the BOE's motion, the property owner requests that this board dismiss the instant appeal but does not provide any arguments in support of such request. To the extent such request constituted a motion to dismiss, said motion is hereby denied.