



This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to compel discovery and extend the discovery deadline filed by the appellants property owners.<sup>1</sup> The motion provides, in pertinent part:

“Now come the Appellants-Property Owners, USA Associates Ltd., an Ohio limited liability company, and KeyBank National Association dba KeyBank (Key Corp.), by and through undersigned counsel, Karen H. Bauernschmidt pursuant to Ohio Administrative Code §5717-1-11(A) and Ohio Civ. R. 37(A), and hereby move the Board of Tax Appeals to enter an Order Compelling the Board of Education to respond to the outstanding discovery requests issued by the Appellants in the above-referenced matter, and extend the discovery deadline forty-five (45) days.”

In their brief in support of said motion, the appellants indicated that they served upon the board of education interrogatories and requests for production of documents on November 20, 2008. Thereafter, by way of letter dated January 13, 2009 and phone call on January 22, 2009, the appellants requested that the board of education comply with their earlier discovery requests, since no responses had been received. The board of education failed to respond to the appellants' inquiries. Further, the board of education has failed to respond to this board regarding the instant motion to compel discovery and extend the discovery deadline.

Ohio Adm. Code 5717-1-11, which sets forth this board's rule for allowing discovery, provides in pertinent part:

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<sup>1</sup> The property owners filed their notice of appeal in this matter on October 14, 2008. The property owners' motion to compel and extend the discovery deadline was filed with this board on February 6, 2009. Pursuant to Ohio Adm. Code 5717-1-11(A)(1), “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.” Accordingly, the discovery period in this matter expired on or about February 11, 2009. Under Ohio Adm. Code 5717-1-11(A)(1), the property owners' motion was timely filed.

“(A) Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The ‘Ohio Rules of Civil Procedure’ shall be followed for discovery purposes to the extent they are not inconsistent with other board rules \*\*\*.”

Based upon our previous interpretations of the foregoing section, this board would normally expend considerable time and effort addressing each interrogatory and documentary request set forth in the appellants’ motion to compel to determine whether such items or information would be properly compelled. However, in this instance, given that the board of education has apparently failed to respond to the appellants’ informal discovery requests as well as their motion to compel, we will not undertake to provide such analysis. *Gerimi Co. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Jan. 4, 1995), BTA No. 1994-K-1030, unreported; *Independence Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Sept. 2, 1994), BTA No. 1994-A-106, unreported. There is no motion or claim before this board to the effect that the information sought by the appellants is patently undiscoverable or is irrelevant to the subject matter involved in this appeal. Therefore, this board finds that the appellants’ motion to compel discovery is well taken.

Accordingly, the motion to compel discovery is hereby granted. It is therefore the order of the Board of Tax Appeals that the board of education, *within fourteen days of the issuance of this order*, shall respond to the appellants’ discovery request by submitting the requested documents and providing the requested information.

Further, with regard to the appellants' motion to extend the discovery deadline, this board considered a similar request in *Berea City School District Board of Education v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 22, 2005), BTA Nos. 2005-M-1030, 1042, unreported. In considering the motion to extend the discovery deadline, we acknowledged that the board of education had already filed a motion to compel, and "[s]uch a motion involves the board in discovery until the motion has been fully considered." Thus, it is the board's position that once discovery has been compelled from a party, the board will continue to be a part of the ongoing process until the discovery has been properly provided or, in the alternative, until the motion to compel must be renewed if the party has failed to provide the compelled information. Accordingly, the motion to extend the discovery deadline is denied, as it is unnecessary for the board's continued participation in the instant discovery dispute.

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