

**OHIO BOARD OF TAX APPEALS**

Plaza 45, Ltd., )  
 )  
 Appellant, ) CASE NOS. 2008-Z-2410  
 ) 2008-Z-2411  
 )  
 vs. ) (REAL PROPERTY TAX)  
 )  
 Cuyahoga County Board of Revision, ) ORDER  
 Cuyahoga County Auditor, and )  
 Independence Local School District )  
 Board of Education, ) (Denying Motion to Compel Discovery  
 ) and Ordering Board of Revision to File  
 ) Statutory Transcript)  
 Appellees. )

**APPEARANCES:**

For the Appellant  
Property Owner

- Kadish, Hinkel & Weibel  
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For the County  
Appellees

- William D. Mason  
Cuyahoga County Prosecuting Attorney  
Timothy J. Kollin  
Assistant Prosecuting Attorney  
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For Appellee  
Bd. of Edn.

- Brindza McIntyre & Seed LLP  
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Entered April 14, 2009

These matters are before the Board of Tax Appeals pursuant to a motion to compel discovery filed by appellant property owner, Plaza 45, Ltd. The appellant asks this board to order appellee Independence Local School District Board of

Education (“BOE”) to respond to the appellant’s interrogatories and request for production of documents.

Ohio Adm. Code 5717-1-11 sets forth this board’s rules concerning discovery providing, in part:

“(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,’ effective July 1, 2008, shall be followed for discovery purposes to the extent they are not inconsistent with other board rules. \*\*\*. Discovery shall be subject to the following limitations:

“(1) Discovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed as expeditiously as possible. *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.* Upon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.

“(2) The board expects all counsel to provide for orderly, mutual discovery, freely exchanging discoverable information and documents. Counsel shall make all reasonable efforts to resolve discovery disputes by extra-judicial means, without intervention by the assigned attorney examiner. To the extent counsel may not resolve such disputes, then they may seek intervention of the attorney examiner to supervise discovery.” (Emphasis added.)

This board has interpreted the language in Ohio Adm. Code 5717-1-11 to deny filings of motions to compel discovery when such motions have been filed outside of the 120-day period identified by the above rule. *Bd. of Edn. of the Kettering-Moraine City School Dist. v. Montgomery Cty. Bd. of Revision* (Interim

Order, Apr. 28, 2000), BTA No. 1999-T-1660, unreported; *Siegel v. Cuyahoga Cty. Bd. of Revision* (Interim Order, July 3, 1997), BTA No. 1997-K-45, unreported; *Nordonia Hills Bd. of Edn. v. Summit Cty. Bd. of Revision* (Interim Order, Dec. 18, 1998), BTA No. 1997-T-1286, unreported.

In the instant matters, the notices of appeal were filed with this board on December 4, 2008 and the discovery period ended 120 days thereafter on April 3, 2009. Although the appellant's discovery requests were issued on February 17, 2009, the motion to compel discovery was filed on April 8, 2009, which is beyond the 120-day period for a party to seek involvement of the board in discovery matters. Therefore, the board overrules the appellant's motion to compel.

However, it is important to remind the BOE of the sanctions that may be imposed by choosing simply to ignore a discovery request or an order of a tribunal requiring the exchange of information. See, e.g., *Jones v. Murphy* (1984), 12 Ohio St.3d 84 (holding that even absent an order compelling discovery, expert testimony may be excluded as a sanction for an intentional violation of Civ. R. 26(E)(1)(b)); *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83 (holding that trial court did not abuse its discretion when it excluded a surprise expert witness even though the failure to disclose the identity of such witness may have resulted from neglect, a change in trial strategy or inadvertence); *Warren Local Schools Bd. of Edn. v. Washington Cty. Bd. of Revision* (June 3, 1994), BTA No. 1992-H-1000, unreported (excluding testimony and written appraisal report of an appraiser who was not identified in supplemental answers to interrogatories as an expert expected to be called

at hearing); *Westover Village LTD v. Hamilton Cty. Bd. of Revision* (Interim Order, Nov. 24, 1995), BTA No. 1995-M-345, unreported (precluding a party who failed to respond to discovery from presenting any evidence at hearing regarding the subject property and reserving for later consideration the imposition of monetary sanctions).

Based on the foregoing, the appellant property owner's motion to compel discovery is hereby denied. It is further the order of this board that *within fourteen (14) days of the issuance of this order* the Cuyahoga County Board of Revision prepare and file with this board the statutory transcript as required by Ohio Adm. Code 5717-1-09(B).

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