

OHIO BOARD OF TAX APPEALS

Waymond Garland,)
)
 Appellant,) (CASE NO. 2009-H-947
) (REAL PROPERTY TAX)
)
 vs.) ORDER
)
 Montgomery County Board of Revision) (Requiring Appellant to Show Cause
 and the Montgomery County Auditor,) and Requesting Auditor to Expedite
) Filing Statutory Transcript)
 Appellees.)

APPEARANCES:

- For the Appellant Property Owner - Waymond Garland, pro se
606 Heather Steet
Englewood, Ohio 45322

- For the County Appellees - Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
Nolan Thomas
Assistant Prosecuting Attorney
P.O. Box 972
301 W. Third Street
Dayton, Ohio 45422

Entered June 23, 2009

This appeal is now considered, sua sponte, by the Board of Tax Appeals following a review of the notice of appeal filed herein by the above-named appellant, from a decision of the Montgomery County Board of Revision (“BOR”). In said decision, the board of revision dismissed appellant’s complaint for failure to prosecute.

Specifically, this board must determine whether the BOR appropriately dismissed appellant’s complaint. In *LCL Income Properties v. Hamilton Cty. Bd. of Revision* (1995), 71 Ohio St.3d 652, the Supreme Court held that the failure of a property owner to appear at a board of revision hearing is proper grounds for the dismissal of the owner’s complaint. *LCL* was an affirmation of the court’s earlier

ruling in *Swetland v. Evatt* (1941), 139 Ohio St. 6, in which it held at paragraph nine of the syllabus:

“A county board of revision *** is a quasi-judicial body, and where a taxpayer files a complaint against the assessed value of his real property and thereafter fails to attend a hearing of which he has had notice and no evidence in support of such complaint is offered by or on behalf of the taxpayer, a county board of revision is justified in fixing the valuation complained of in the amount assessed by the county auditor.”

The court in *LCL* also described the action of dismissing a complaint before a board of revision as a “sanction” for non-prosecution. See *Kalmbach Wagner Swine Research Farm v. Wyandot Cty. Bd. of Revision* (1998), 81 Ohio St.3d 319. However, while this board has acknowledged the authority of a board of revision to dismiss a complaint for failure to prosecute, both the Supreme Court and this board have determined that this authority is not without limitation. See, e.g., *Snavelly v. Erie Cty. Bd. of Revision* (1997), 78 Ohio St.3d 500; *Dixon v. Hamilton Cty. Bd. of Revision* (July 16, 2004), BTA No. 2003-T-805, unreported. See, also, *Bd. of Edn. of Dublin City Schools v. Union Cty. Bd. of Revision* (Jan. 9, 2004), BTA No. 2003-G-1059, unreported. Cf. *Eastern Sky Ministries v. Lucas Cty. Bd. of Revision* (Interim Order, Jan. 30, 2004), BTA No. 2003-M-968, unreported.

It is therefore the order of this board that the appellant show cause why this board should not affirm the BOR’s decision to dismiss appellant’s original complaint for failure to prosecute. All parties who wish to be heard on the question of the propriety of the BOR’s dismissal of appellant’s complaint shall file a written response to this order within fourteen days of its issuance.

It is further ordered that the auditor shall expedite the submission of the BOR's statutory transcript within fourteen days of the issuance of this order.

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