

OHIO BOARD OF TAX APPEALS

CSE Canton, LLC,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Stark County Board of Revision,)
 Stark County Auditor, and Canton)
 City School District Board of)
 Education,¹)
)
 Appellees.)

APPEARANCES:

For the Appellant - Wayne E. Petkovic, Esq.
840 Brittany Drive
Delaware, Ohio 43015

For the County Appellees - John D. Ferrero
Stark County Prosecuting Attorney
110 Central Plaza South, Suite 510
Canton, Ohio 44702

For the Bd. of Edn. - Means, Bichimer, Burkholder & Baker
Robert M. Morrow
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Columbus, Ohio 43221

Entered April 14, 2009

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

This appeal is being considered following an order to show cause issued by this board on January 27, 2009. In said order, this board stated that it may not have jurisdiction over the appeal, as appellant, CSE Canton, LLC, may have filed its notice

¹ While an entry of appearance was not filed by the Canton City School District Board of Education (“BOE”) pursuant to Ohio Adm. Code 5717-1-03, the BOE is included as a party in this matter, as it filed the original increase complaint before the BOR.

of appeal more than thirty days after the Stark County Board of Revision (“BOR”) mailed its decision to appellant. Appellant has not filed a response to this board’s order.

The record in this matter indicates that appellant filed a notice of appeal with the Board of Tax Appeals on January 13, 2009.² However, a review of the statutory transcript (“S.T.”), certified to this board by the Stark County Auditor, indicates that the BOR’s decision letter was mailed to appellant on September 17, 2008. S.T., DTE Form 3 and Ex. E. Appellant’s notice of appeal was therefore filed with this board almost four months after the mailing of the BOR’s decision. In an attachment to the notice of appeal, appellant’s counsel stated that the BOR did not notify counsel of a hearing taking place in this matter, despite his filing an entry of appearance with the BOR, and that a copy of the BOR’s decision was “not certified to the Tax Commissioner as mandated by Revised Code section 5715.20.” The BOR decision letter states that it is a “certified notice to property owner or his agent” that relates “to the real property on the Stark County tax list in the name of: Canton City Schools (CSE Canton LLC).” S.T., Ex. E.

In determining whether we have jurisdiction to consider this matter, this board must be cognizant of the jurisdictional requirements to appeal from a decision of a county board of revision, as set forth in R.C. 5717.01. R.C. 5717.01 provides, in pertinent part:

“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

² The statutory transcript indicates that a copy of the notice of appeal was filed with the BOR on January 14, 2009, also almost four months after the BOR’s decision was mailed.

is mailed as provided in division (A) of section 5715.20 of the Revised Code. *** 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. ***” (Emphasis added.)

When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. The statutory requirements set forth in R.C. 5717.01 for filing a notice of appeal from a decision of a county board of revision are mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision* (1980), 61 Ohio St.2d 332. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board. In the instant matter, and, as noted above, appellant’s notice of appeal was filed with this board approximately four months after notice of the BOR’s decision was mailed to appellant, well after the thirty-day filing requirement imposed by R.C. 5717.01.

With regard to appellant’s suggestion that a county board of revision must certify a copy of its decision to the Tax Commissioner pursuant to R.C. 5715.20, we note that R.C. 5715.20 no longer requires a county board of revision to certify its order to the Tax Commissioner, unless so ordered by the commissioner.³ R.C. 5715.20 provides as follows:

“(A) Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code, it shall certify its action by certified mail to the person in whose name the property is listed or sought to be listed and to the complainant if the complainant is not the person in whose name the property is listed or sought to be listed. A person’s time to file an appeal under section

³ This statutory change to R.C. 5715.20 was effective March 14, 2003.

5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section. The tax commissioner's time to file an appeal under section 5717.01 of the Revised Code commences with the last mailing to a person required to be mailed notice of the decision as provided in this division.

“(B) The tax commissioner may order the county auditor to send to the commissioner the decisions of the board of revision rendered on complaints filed under section 5715.19 of the Revised Code in the manner and for the time period that the commissioner prescribes. Nothing in this division extends the commissioner's time to file an appeal under section 5717.01.”

Therefore, we find no merit to appellant's assertion that R.C. 5715.20 requires that a county board of revision certify a copy of its decision to the commissioner.

We further find that appellant was given sufficient notice of the BOR's decision, although appellant's counsel was apparently not notified. The statutory transcript reflects that the BOR sent notice of its decision to appellant on September 17, 2008. S.T., Exs. E, F. This board recently addressed this issue in *2815 Partners, LLC v. Cuyahoga Cty. Bd. of Revision* (Dec. 9, 2008), BTA No. 2007-T-1567, unreported, wherein it held:

“[E]ven if we were to assume that the BOR had counsel's address for purposes of certifying its decision, the BOR's certification directly to the property owner, rather than to its attorney, was sufficient notice under R.C. 5715.20 to initiate the appeal period. *Muirfield Assn. Inc. v. Delaware Cty. Bd. of Revision* (Aug. 9, 1991), BTA No. 1990-J-1259, unreported; *Midtown Industrial Warehouse, Inc. v. Cuyahoga Cty. Bd. of Revision* (Mar. 9, 2001), BTA No. 2000-B-668, unreported; *Eastern Sky Ministries v. Monroe Cty. Bd. of Revision* (Sept. 3, 2004), BTA No. 2000-T-559, unreported; *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 1, 2008), BTA No.

2007-T-398, unreported; *Sexton 1987 Hillside L.P. v. Montgomery Cty. Bd. of Revision* (July 15, 2008), BTA No. 2007-V-1056, unreported.

“Appellant cites no authority for the requirement that the thirty-day appeal time does not begin to run until the BOR certifies a copy of its decision to the property owner’s attorney, as the complainant’s agent. However, in the majority of cases cited above, the complainants relied upon Civ. R. 5(B), which provides that, where a party is represented by an attorney of record in the proceedings, ‘service shall be made upon the attorney unless service upon the party is ordered by the court.’ It has been observed that the ‘reasoning for the requirement that an attorney of record be served is that a party represented by counsel usually speaks through his counsel. Counsel is in a better position to understand the legal import of any documents required to be served on his or her client and the nature of the action to be taken.’ *Swander Ditch Landowner’s Assn. v. Joint Bd. of Huron & Seneca Cty. Commrs.* (1990), 51 Ohio St.3d 131, 134.

“Nevertheless, where the civil rules are ‘clearly inapplicable,’ they should not be applied to special statutory proceedings. Civ. R. 1(C)(7). In *Ramsdell v. Ohio Civil Rights Comm.* (1990), 56 Ohio St.3d 24, the court concluded that where a statute dictates the time in which an appeal may be filed, the civil rules cannot be relied upon to extend the appeal time. The court stated that it has ‘always considered it to be fundamental that when the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute.’ *Id.* at 27, citing *Zier v. Bur. Of Unemployment Comp.* (1949), 151 Ohio St. 123. Thus, Civ. R. 5(B) has been found to apply only to administrative proceedings in which the statutory scheme for an appeal to a court fails to expressly state the type of notice that is required to be provided to a potential appellant. *Parkbrook Dev. Corp. v. Cuyahoga Cty. Bd. of Revision* (Nov. 3, 1994), Cuyahoga App. No. 67033, unreported, at 10; *Osborne v. Lake Cty. Bd. of Revision* (Jan. 31, 1992), Lake App. No. 91-L-076, unreported, appeal denied (1992) 64 Ohio St.3d 1413.

“***

“*Osborne*, supra, is especially germane to the issue now before us. *Osborne* concerned a decision issued by a county board of revision that had been sent by certified mail to the complainant property owner but not to the attorney who represented the owner before the BOR. The owner cited Civ. R. 5(B) in support of his contention that his appeal time did not begin to run until the owner’s attorney received a copy of the BOR’s decision. However, the court found Civ. R. 5(B) to be inapplicable because R.C. 5715.20 specified that notice be provided to the property owner, as the complainant. ***.” Id. at 2-3.

See *Sycamore Community School Dist. v. Hamilton Cty. Bd. of Revision* (Dec. 5, 1997), BTA No. 1997-P-590, unreported (holding that the county board of revision’s failure to notify counsel for a complainant regarding a hearing before the board of revision did not amount to error, when there is no statute that expressly requires the board of revision to further notify counsel).

Here, appellant did not respond to this board’s show cause order, nor did appellant provide us with persuasive authority indicating that the thirty-day appeal period does not begin to run until the BOR gives notice of its decision to the property owner’s counsel. *2815 Partners* and *Osborne*, supra.

Based on the above, we are constrained to adhere to the requirement set forth in R.C. 5717.01 that a notice of appeal must be filed with this board within thirty days after notice of the decision of the county board of revision is mailed as provided in R.C. 5715.20(A). Accordingly, as the Board of Tax Appeals does not have jurisdiction to consider the instant appeal, it is the decision and order of the Board of Tax Appeals that the instant appeal must be, and hereby is, dismissed.

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