

OHIO BOARD OF TAX APPEALS

CSE Canton, LLC,)	
)	CASE NO. 2009-N-109
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Stark County Board of Revision)	(Requiring Appellant to Show
and Stark County Auditor,)	Cause and the Board of Revision
)	to Expedite Statutory Transcript)
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

Entered January 27, 2009

A review of the record in this matter indicates that appellant, CSE Canton, LLC filed a notice of appeal with the Board of Tax Appeals on January 13, 2009. This appeal was filed from a decision of the Stark County Board of Revision (“BOR”), in which the BOR determined the taxable value of permanent parcel no. 0211065.

Specifically, this board must determine whether it has jurisdiction to consider the instant matter. Based upon the limited record before us, it appears that the BOR mailed its decision to appellant on September 17, 2008. Appellant filed its

notice of appeal with this board, by certified mail, on January 13, 2009, 118 days after the apparent date of mailing by the BOR. In the notice of appeal, counsel for appellant states that the BOR did not mail a copy of its decision to counsel. Further, in a memorandum attached to the notice of appeal, counsel states that the BOR did not notify him of a hearing taking place in this matter, despite his filing of 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 attached to appellant's notice of appeal 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)."

R.C. 5717.01 provides the jurisdictional requirements to appeal from a decision of a county board of revision to this board. It reads, 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 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.)

The requirements of R.C. 5717.01 are specific and mandatory in nature. 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.

With regard to appellant's contention that R.C. 5715.20 mandates that a county board of revision certify a copy of its decision to the commissioner, it appears such contention is inaccurate, as R.C. 5715.20 provides the following:

“(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 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.”

Following amendments by the Ohio General Assembly, effective March 14, 2003, 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.

Further, as it relates to appellant's statement on the notice of appeal that the BOR decision was not mailed to counsel, this board, in *2815 Partners, LLC v. Cuyahoga Cty. Bd. of Revision* (Dec. 9, 2008), BTA No. 2007-T-1567, unreported,

recently revisited the issue of a county board of revision failing to send a copy of its decision to property owner's counsel. In that matter, counsel for the property owner represented the owner at the proceedings before the BOR, and filed the owner's counter-complaint. This board, in dismissing the property owner's appeal, stated:

“[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. ***.” *2815 Partners*, supra, at 2-3.

Additionally, in *Sycamore Com. School Dist. v. Hamilton Cty. Bd. of Revision* (Dec. 5, 1997), BTA No. 1997-P-590, unreported, this board held 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.

Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board. It is therefore the order of this board that appellant show cause why this board should not dismiss the instant appeal for the apparent failure to file such notice of appeal within thirty days of the BOR mailing its decision.

Any party wishing to be heard upon the legal sufficiency of the filing to establish jurisdiction with this board shall file a written response within fourteen (14) days of the issuance of this order. Further, this board requests that the county board of revision provide the statutory transcript relating to this filing within fourteen (14) days of the issuance of this order.

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