

OHIO BOARD OF TAX APPEALS

Kandiah Perinpanathan,)
)
 Appellant,) (CASE NO. 2009-N-160
) (REAL PROPERTY TAX)
 vs.)
) (DECISION AND ORDER)
)
 Montgomery County Board of Revision,)
 Montgomery County Auditor, and Dayton)
 City S.D., Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Hedrick & Jordan Co. LPA
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Dayton, Ohio 45402

For the County Appellees - Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
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For the Bd. of Edn.¹ - David C. DiMuzio, Esq.
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Cincinnati, Ohio 45202

Entered April 21, 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 February 3, 2009. This board’s order stated that it might not have

¹ The record reflects that Mr. DiMuzio filed the original complaint with the Montgomery County Board of Revision (“BOR”) on behalf of the appellee board of education. However, no entry of appearance was filed with this board by Mr. DiMuzio, as required by this board’s Rules of Practice and Procedure. Ohio Adm. Code 5717-1-03. We remind parties that entries of appearance should be filed with this board in accordance with the board’s rules. Specifically, as it relates to the instant matter, Ohio Adm. Code 5717-1-03(B) states that “[a]ny party before the board of revision, who desires to participate in an appeal before the board of tax appeals as an appellee, shall enter an appearance with the board of tax appeals within thirty days of the mailing of notice of such appeal by the board of revision.”

jurisdiction over the appeal, as the record before the board indicated that appellant may not have filed his notice of appeal with this board or the BOR within the thirty-day requirement imposed by R.C. 5717.01.

This appeal was filed from a decision of the BOR, in which the BOR determined the taxable value of parcel no. E20010080012. The statutory transcript (“S.T.”), certified to this board by the Montgomery County Auditor as secretary of the BOR, shows that the BOR mailed its decision to appellant on October 15, 2008. S.T., Ex. F and DTE Form 3.² Appellant filed his notice of appeal with this board on January 15, 2009, over three months after the date of mailing by the BOR. Appellant stated in his notice of appeal that the BOR’s decision was mailed on October 15, 2008.

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 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

² Page 3 of the statutory transcript states “[t]hat on the 15 day of October 2008, a copy of the county board of revision’s decision was mailed to the [c]omplainant by registered or certified mail ([r]eturn [r]eceipt [r]equested[.]”

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.

In reviewing appellant's response to this board's order, we first consider appellant's contention that because the BOR has not yet issued an order in response to appellant's motion for reconsideration filed with the BOR, the time to file an appeal with this board has been tolled. The statutory transcript contains a letter from appellant to the BOR, dated October 27, 2008, which states, among other things, that "I wish to submit my appeal to reconsider the increase in the valuation of the building from \$162,780 to \$346,260." S.T., Ex. B.

In his response, appellant has not cited any authority to support his argument that the thirty-day filing period to submit appeals to this board, as mandated by R.C. 5717.01, should be extended because a county board of revision has not ruled upon a motion for reconsideration. We initially note that an administrative body, such as a county board of revision, may reconsider its decision until an appeal is taken or the time for taking an appeal expires. *Hal-Artz Lincoln-Mercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St.3d 20 (finding that an administrative agency may set aside or reconsider its decisions until actual institution of court appeal or until expiration of time for appeal, in absence of specific statutory limitations to the contrary). The same claim raised by appellant, i.e., whether a motion for reconsideration tolls an appeal

period, has been previously addressed by this board and the Supreme Court.³ In

Northlake Hills v. Collins (1976), 45 Ohio St.2d 13, the court held:

“There is no question raised by appellant that it did not receive actual notice of the Tax Commissioner’s dismissal of its petition for reassessment on February 12, 1975. Appellant contends, however, that the 30 day period for filing an appeal, as required by R.C. 5717.02, did not commence until a ruling was made on its request for reconsideration, and it is argued that such appeal period commenced with the letter of the Department of Taxation dated February 28, 1975.

“*Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1, 335 N.E.2d 705, recently reaffirmed the prior position of this court with respect to the necessity of compliance with the mandatory requirements of R.C. 5717.02, as to the filing of a notice of appeal, in order to invoke jurisdiction of the Board of Tax Appeals. See also *Zephyr Room v. Bowers* (1955), 164 Ohio St. 287. R.C. 5717.02 requires such notice of appeal to be filed ‘within thirty days after *** order by the commissioner has been given ***.’

“The board’s conclusion, after hearing, that such notice of appeal was not timely filed, effectively rejects appellant’s contention that the letter from the Department of Taxation of February 28, 1975, constitutes the final order from which an appeal can be taken. Such conclusion of the board is supported by the record, by the absence of any reconsideration provision in R.C. 5717.02, and by *Hileman v. Evatt* (1943), 142 Ohio St. 175, 50 N.E.2d 260, wherein an unjournalized letter from a division employee of the Tax Department was held not to have the effect of vacating the last action taken by the commissioner. The last formal act of the commissioner here was the journalized order dated February 4, 1975, which was received by appellant on February 12, 1975.

“For reason of the foregoing, the decision of the Board of Tax Appeals is affirmed.” *Id.* at 15.

³ As it relates to motions for reconsideration filed with this board, the board’s Rules of Practice and Procedure, specifically, Ohio Adm. Code 5717-1-12(D), state that “[t]he filing of a motion for reconsideration shall not enlarge the period of time upon which an appeal may be taken from this board nor shall the filing of such motion suspend or toll the statutory appeal period.”

See, also, *Bright Star Missionary Baptist Church v. Levin* (July 27, 2007), BTA No. 2007-V-175, unreported, at 3, fn. 1 (“Appellant’s motion for reconsideration with the Tax Commissioner did not toll the sixty-day filing requirement of R.C. 5717.02.”). Compare *Rapp v. Licking Cty. Bd. of Revision* (Interim Order, Nov. 21, 1997), BTA No. 1997-T-912, unreported (finding appellant had timely appealed from a decision of a county board of revision and that a letter indicating that the BOR would reconsider its decision was indeed intended to be a reconsideration and did not constitute a vacation of its prior decision).

In *Kauder v. Kauder* (1974), 38 Ohio St.2d 265, the Supreme Court held that a motion for reconsideration does not toll the time for an appeal, finding that App.R. 4(A) “provides the exclusive means by which the running of that time may be suspended.” The court in *Housing Advocates, Inc. v. Farmers Ins. Co. of Columbus* (May 18, 2006), Cuyahoga App. No. 86775, unreported, at ¶23, stated that “[i]t is well-settled that a motion for reconsideration cannot be used to extend the time for filing a notice of appeal. See *Kauder v. Kauder* (1974), 38 Ohio St.2d 265, 313 N.E.2d 797.” In *Coyne v. City of Lakewood* (Jan. 19, 1995), Cuyahoga App. No. 66540, unreported, the court held that:

“A motion for reconsideration of an administrative agency’s order *has no* effect on the time for taking an appeal. *Dargo v. Ohio Civil Rights Comm.* (Dec. 10, 1987), Cuyahoga App. No. 53119, unreported, page 5; *Russell v. Cincinnati Bell, Inc.* (July 31, 1985), Hamilton App. No. C-840668, unreported. ***. As a result, Coyne’s request for rehearing did not toll the time for taking an appeal.” (Emphasis added.)

Based on the above, we find no merit to appellant's contention that the thirty-day period to file an appeal with this board must be extended. The fact that the BOR has not issued an order relative to appellant's motion for reconsideration does not toll the time period set by R.C. 5717.01. The time period for filing an appeal with this board commenced upon the mailing of the BOR's decision to appellant. R.C. 5717.01.

With regard to appellant's claim of apparent fraud committed by the prior property owner, and his request for this board to grant jurisdiction so as to mitigate further losses, we note that the Board of Tax Appeals has no express or implied equity jurisdiction. *Columbus Southern Lumber v. Peck* (1953), 159 Ohio St. 564. As a creature of statute, we have only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt* (1944), 143 Ohio St. 547; *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259. As such, an appellant has no inherent right to a review before this board. Such a right is statutory, and strict compliance with the specific provisions governing the filing of a notice of appeal is therefore required in order to confer jurisdiction upon this board. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. Cf. *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, 110 Ohio St.3d 1242, 2006-Ohio-4091, reconsideration denied, 2006-Ohio-5351.

In conclusion, we are constrained to adhere to the requirement set forth in R.C. 5717.01 that a notice of appeal must be filed within thirty days after notice of the decision of the county board of revision is mailed as provided in R.C. 5715.20(A). Appellant did not file his notice of appeal until sixty-two days after November 14,

2008, which was the final date available to timely file an appeal with this board. Accordingly, as the Board of Tax Appeals does not have jurisdiction to consider the instant appeal since appellant did not file a notice of appeal within the time period mandated by R.C. 5717.01, 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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