

OHIO BOARD OF TAX APPEALS

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| Brunswick City School District Board of Education, |) | |
| |) | CASE NO. 2009-N-43 |
| |) | |
| Appellant, |) | (REAL PROPERTY TAX) |
| |) | |
| vs. |) | ORDER |
| |) | |
| Medina County Board of Revision, Medina County Auditor, and Norris Realty, |) | (Denying Motion to Dismiss) |
| |) | |
| |) | |
| Appellees. |) | |

APPEARANCES:

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| For the Appellant - | Brindza, McIntyre & Seed LLP David A. Rose 1111 Superior Avenue, Suite 1025 Cleveland, Ohio 44114 |
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| For the County Appellees - | Dean Holman Medina County Prosecutor Christine M. Brothag Assistant Prosecuting Attorney 72 Public Square Medina, Ohio 44256 |
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| For the Appellee Property Owner - | Ulmer Berne LLP Bill J. Gagliano Skylight Office Tower 1660 West 2 nd Street, Suite 1100 Cleveland, Ohio 44113 |
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Entered March 3, 2009

Appellee Norris Realty (“Norris”) moves us to dismiss the instant appeal based upon its argument that it did not receive proper notice of the filing of the underlying complaint, pursuant to R.C. 5715.19(B), and therefore the BOR did not have jurisdiction over the complaint. We now consider this matter based upon the

motions and memoranda submitted by the parties, and the statutory transcript certified to this board by the Medina County Auditor (“auditor”) as secretary of the Medina County Board of Revision (“BOR”).

The statutory transcript indicates that appellant timely filed a complaint with the BOR on March 27, 2008, challenging the 2007 taxable value of the subject property. Notice of the filing of the complaint was mailed to Norris on August 27, 2008. Subsequently, Norris filed a counter-complaint with the BOR on September 26, 2008. On November 18, 2008, a hearing was held before the BOR. In a decision letter dated December 8, 2008, the BOR elected to maintain the auditor’s value of the subject property. A notice of appeal was filed with this board on January 7, 2009.

In its motion and attached memorandum in support, Norris argues that, pursuant to R.C. 5715.19(B), because the auditor did not provide notice to Norris of the filing of the underlying complaint until over thirty days after the complaint was filed, the BOR did not have jurisdiction to consider the complaint. As noted above, the record reflects that the auditor mailed notice to Norris of the filing of the complaint on August 27, 2008. S.T., Exs. A, D.

R.C. 5715.19(B) provides, in pertinent part:

“Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner’s spouse, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice,

*** a property owner *** may file a complaint in support of or objecting to the amount of alleged overvaluation ***.”

In reviewing this matter, it is clear from the record that the auditor did not mail notice of the underlying complaint until after thirty days passed from March 31, 2008. However, the record reflects that once Norris received notice of the complaint’s filing, it properly filed a counter-complaint within thirty days after receipt of the notice, and fully participated in a hearing before the BOR.

In support of its contention that this matter should be dismissed, Norris cites *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591. *Cleveland Elec. Illum.* stands for the well settled proposition that in order for a complaint to be valid, it must include all information that goes to the core of procedural efficiency. *Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Dec. 18, 1998), BTA No. 1998-J-481, unreported, reversed on other grounds, (2000), 87 Ohio St.3d 363; *Ritz Carlton Hotel Partnership v. Cuyahoga Cty. Bd. of Revision* (May 11, 2001), BTA No. 1998-L-355, unreported. In reviewing *Cleveland Elec. Illum.* as it relates to this matter, we not see that the later notice given to Norris is information that goes to the core of procedural efficiency, nor do we see that *Cleveland Elec. Illum.* is apposite to the matter before us. The underlying complaint was timely filed with the BOR before March 31, 2008 pursuant to R.C. 5715.19, and does not contain any defects that would defeat the BOR’s jurisdiction. In *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of*

Revision (2001), 91 Ohio St.3d 308, the Supreme Court stated that “the critical inquiry for purposes of determining the vesting of jurisdiction in a board of revision is whether the record demonstrates the initiation of proceedings by the filing of a jurisdictionally valid complaint, *i.e.*, a complaint ‘prepared and filed’ either by the taxpayer acting in a pro se capacity or by an attorney authorized to practice law acting in the taxpayer’s behalf. See *C.I.A. Properties*, 89 Ohio St.3d 365, 731 N.E.2d at 683.” We reiterate that nothing in the underlying complaint shows such complaint to be jurisdictionally unsound.

We recognize that notice of the filing of the underlying complaint was sent after thirty days of its filing, but Norris received notice as the property owner, timely filed a counter-complaint after receiving notice, and was represented by counsel at a hearing before the BOR. See *Residenz, LLC v. Montgomery Cty. Bd. of Revision* (Interim Order, July 27, 2007), BTA No. 2006-A-2246, unreported, at fn. 1 (“[w]e acknowledge that based upon the record before us, it does not appear that the BOR acted within the time provision mandated by R.C. 5715.19(B) for giving notice to the board of education; the BOR letter should have been mailed by April 30, 2006, but was apparently not mailed until May 8, 2006. However, we find that the BOR’s dereliction did not in any way alter the amount of time in which the BOE had to respond to such notification by filing a counter-complaint, *i.e.*, the BOE still had thirty days from the date it received its notification to file its counter-complaint.”).

Also, even if Norris had not received any notice regarding the underlying complaint, it would have been entitled to intervene in further proceedings before this

board, and if the matter was still pending with the BOR, it would have the right to file a counter-complaint. *Buckeye Boxes, Inc. v. Franklin Cty. Bd. of Revision* (1992), 78 Ohio App.3d 634; *Kirk & Ackley Enterprises #2 v. Franklin Cty. Bd. of Revision* (Aug. 6, 2004), BTA No. 2002-R-2557, unreported; *Basset v. Franklin Cty. Bd. of Revision* (Interim Order, May 27, 2008), BTA No. 2007-A-994, unreported.

Based upon the above, we do not find that the BOR lacked jurisdiction to consider the underlying complaint. The record manifestly shows that Norris was not prejudiced by receiving notice after thirty days of the filing of the complaint. Further, this board has not found, nor does R.C. 5715.19(B) provide for, a dismissal of a BOR complaint nor subsequent appeal on the grounds asserted by Norris.

Accordingly, the board finds that jurisdiction is proper. Norris' motion to dismiss is denied, and the matter will proceed in accordance with the board's rules of practice and procedure.

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