

David Leach	)	CASE NOS. 96-M-1650 through
(C.A.R.E. Co.), )	)	96-M-1667, 96-M-1680, 96-M-1686
	)	through 96-M-1688, 96-M-1692,
	)	96-M-1696, 96-M-1697, 96-M-1703
Appellant,	)	through 96-M-1706, 96-M-1709,
	)	96-M-1710 through 96-M-1737,
	)	96-M-1739 and 96-M-1740
)	
vs.	)	(REAL PROPERTY TAX)
)	
Hamilton County Board)	
of Revision and the	)	ORDER
Hamilton County Auditor,)	
	)	(Overruling Motions
Appellees.	)	to Dismiss)
)	

APPEARANCES:

For the Appellant-	David Leach, <u>Pro Se</u>
	505 Tafel Street
	Cincinnati, OH 45255

For the County-	Joseph T. Deters
Appellees	Hamilton County Prosecuting
	Attorney
	By: Thomas J. Scheve
	Assistant Prosecuting Attorney
	125 East Court Street, Suite 300
	Cincinnati, OH 45202

Entered June 13, 1997

These causes and matters come to be considered by the Board of Tax Appeals upon 60 purported notices of appeal filed herein on December 5, 1996 by the above-named appellant from decisions of the Hamilton County Board of Revision (BOR).

On February 26, 1997, this Board docketed motions to dismiss on each of the above captioned appeals. By motion, counsel for appellees asserts that this Board is without jurisdiction to consider the underlying merits of each appeal and, by memoranda in support of his motions, asserts that appellant failed to adequately

complete DTE Form 1, the complaint filed with the Hamilton County BOR.

These matters were submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notices of appeal, the Statutory Transcripts certified by the Hamilton County BOR, the motions to dismiss and memoranda in support thereof. An evidentiary hearing on companion cases was held and at that time the Board permitted testimony to be taken relative to the underlying issues herein. However, as the claims made by counsel for the appellees are premised upon the wording of the complaints filed in each matter and each complaint was provided this Board through the filed Statutory Transcripts, additional evidence was not submitted. Appellant was given the opportunity to offer legal argument.

R.C. 5717.13 provides the procedural requirements upon which appellees base their claim. That section provides:

"The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made."

As part of his duties, the Tax Commissioner prepares and distributes forms relating to the tax laws of this state. R.C. 5703.05. As is pertinent herein, the Tax Commissioner has prescribed DTE Form 1, entitled "Complaint on the Assessment of Real Property". By properly completing DTE Form 1, a complainant should provide all information required by R.C. 5715.13.

Appellant presented facially completed complaints to the Hamilton County BOR and that body held hearings and found value on each complaint. Being dissatisfied with the BOR's value findings, appellant has appealed to this Board.

Appellees now claim that the complaints originally filed with the BOR failed to satisfy the jurisdictional requirements of R.C. 5715.13. Appellees focus upon Line 8 of each complaint (where the complainant is required to state justification for the claimed decrease). The reason given for the requested decrease in taxable value is "inflated value". Appellees claim that such a response does not satisfy the requirement of "showing the facts upon which it is claimed such decrease should be made" outlined by R.C. 5715.13.

The issue of the sufficiency of the justification offered under Line 8 of a complaint is not one of first impression. The seminal case dealing with the sufficiency of a complaint before a board of revision is Stanjim v. Bd. of Revision (1975), 38 Ohio St. 2d 233. In that case, a complainant filed 38 complaints using an earlier version of the form. In each of those complaints, when asked for "pertinent facts" regarding the requested decrease, the complainant wrote "All other pertinent data substantiating this complaint of over valuation will be presented at requested hearing."

In finding that answer insufficient to vest jurisdiction on in a board of revision, the Ohio Supreme Court held:
" *** when a decrease in property valuation is sought, a party must state the valuation complained and must aver facts under oath to support his requested decrease. *** full

compliance with R.C. 5715.19 and 5715.13 is necessary before a county board of revision is empowered to act on the merits of a claim."

Thus, the Supreme Court held, failure to comply with the requirements of R.C. 5715.19 is a jurisdictional defect, effectively denying a complainant the right to have its claims heard on the merits. See, also Griffith v. Bd. of Revision (1975), 44 Ohio St. 2d 225.

Following Stanjim, the Supreme Court had an opportunity to consider whether an additional form required by a county board of revision within a certain time period after the filing of a complaint, but filed outside that time period, divested the board of revision of jurisdiction. Nucorp Inc. v. Bd. of Revision (1980), 64 Ohio St. 2d 20. In holding that such an additional requirement was not jurisdictional, the Court stated:

"While this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also been unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits."

Through Nucorp, the Supreme Court limited the sanction of dismissal to only those cases where the applicant failed to comply with legislative or constitutional jurisdictional requirements. Later, the Cuyahoga County Court of Appeals held that although R.C. 5715.13 indicated that the complaint should be verified under oath, it was not jurisdictionally required. Trebmal Const., Inc. v. Cuyahoga Cty. Bd. of Revision (1986), 29 Ohio App. 3d 312.

Given this backdrop, this Board considered the sufficiency of answers provided to complaint questions in Friendly's v. Franklin Cty. Bd. of Revision (Feb. 18, 1994), B.T.A. Case No. 92-K-1399, aff'd (Sep. 20, 1994), Franklin App. No. 94APH03-347. Therein, the complainant's declaration on the face of the complaint was "recent sale(s) of comparable properties. Physical, economic, functional depreciation or obsolescence. Economic valuation based on gross or net income." We found that declaration distinguishable from the complainant's promise of further information in Stanjim.

We further stated:

"We do not wish to condone or encourage improper conduct on the part of those who appear before county boards of revision. Nor do we condone the filing of complaints which are mere fishing expeditions, the complainants hoping ultimately to find a basis for a reduction in value. However, we will not approve of jurisdictional barriers, not otherwise expressly mandated, which would preclude a determination being made upon complaints claiming an overvaluation. This Board, as well as county boards of revision, must recognize that many complaints are filed by lay persons, who should not be deprived of their right to review based upon a hypertechnical interpretation of the applicable statutes. Provided that there exists substantial compliance with statutory requirements, county boards of revision should proceed to find value of the property at issue." at 17.

See, also Bank One of Columbus v. Franklin Cty. Bd. of Revision (Mar. 4, 1994), B.T.A. Case No. 93-M-203, unreported, aff'd (Oct. 25, 1994), Franklin App. No. 94APH04-465, unreported; Capoccia v. Franklin Cty. Bd. of Revision (Mar. 4, 1994), B.T.A. Case No. 93-K-177, unreported, aff'd Nov. 10, 1994), Franklin App. No. 94APH04-464, unreported; CCI Investments v. Franklin Cty. Bd. of Revision

(Feb. 18, 1994), B.T.A. Case No.91-J-1502, unreported; BOA Limited
v. Franklin Cty. Bd. of Revision (Jun. 30, 1994), B.T.A. Case. No.
92-J-1089, unreported.

In a recent appeal, The Ohio Edison Co., et al. v. Lake
Cty. Bd. of Revision (Dec. 8, 1995), B.T.A. Case No. 95-K-840, et
seq., unreported, appealed Jan. 5, 1996, Ohio Sup. Ct. Nos. 96-040
et seq., this Board affirmed a board of revision's dismissal of a
complaint filed before it upon two grounds. One of the two grounds
was failure to provide facts upon which the claimed decrease was
based, the same issue currently before this Board. That case is
distinguishable from the present matter. In that case, in
completing Line 8 of DTE Form 1, which asks for justification for
the requested decrease, the complainant wrote "to be determined".
In finding such an answer insufficient, this Board compared the
complaint then before the Board to earlier cases in which we found
answers presented in line 8 of a complaint to be sufficient. While
finding jurisdiction improper in that appeal, our review of the
earlier cases reveals that this Board has attempted to comply with
the Supreme Court's directive in NuCorp, supra, to refrain from
finding unreasonable jurisdictional barriers when a complainant
seeks to have the value of real property considered.

For example, in Bank One of Columbus, supra, this Board
rejected the Franklin County Board of Revision's dismissal of a
complaint which indicated on Line 8 that "Auditors (sic) value does
not represent true market value of this property". We find little
distinction between the acceptable response that the auditor has
improperly valued an individual property and the appellant's

response that the property values assessed by the Hamilton County Auditor were "inflated". In fact, we find such justifications similar. Therefore, based upon our earlier holdings, we find that the complaints presently before this Board were sufficient to vest jurisdiction in accordance with R.C. 5715.13.

A second potential infirmity was raised by this Board at hearing. Upon review of the individual cases before this Board, it appears that three complaints, specifically the complaints in Case Nos. 96-M-1667, 96-M-1680, and 96-M-1722, were notarized by an employee of the Hamilton County Auditor's Office but unsigned by the complainant. Given the large number of individual complaints filed by the appellant before the Hamilton County BOR, and Mr. Leach's description of events on the day he actually went to the BOR to file the complaints, this Board finds that appellant's failure to sign the complaints filed with the BOR was merely a ministerial error which does not deprive the BOR of jurisdiction. See Colonial Storage Management v. Franklin Cty. Bd. of Revision (Jul. 11, 1996), Franklin App. No. 96APHO2-218, unreported.

Upon consideration of the entire record herein, we find and determine that the Hamilton County Board of Revision had jurisdiction over the considered complaints and correctly found value. Therefore, we find appellees' motions not to be well taken and are overruled. As the parties entered into a stipulation waiving hearing on these matters but requesting a briefing schedule, briefs may be submitted as follows:

Appellant's Brief shall be due July 18, 1997.

Appellees' Brief shall be due August 14, 1997.

Reply brief (if any) shall be due August 28, 1997 ohiosearchkeybta.