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| Beachwood City School District |) | |
| Board of Education, |) | CASE NO. 96-M-24 |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| Cuyahoga County Board of |) | |
| Revision, Cuyahoga County |) | |
| Auditor and Robert I. |) | |
| Broida, Trustee, |) | |
| |) | |
| Appellees, |) | |
| |) | |
| Robert I. Broida, Trustee, |) | |
| |) | CASE NO. 96-M-350 |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | (REAL PROPERTY TAX) |
| Cuyahoga County Board of |) | |
| Revision, Cuyahoga County |) | ORDER |
| Auditor and Beachwood City |) | |
| School District Board |) | (Retaining Jurisdiction) |
| of Education, |) | |
| |) | |
| Appellees. |) | |

APPEARANCES:

- For the Appellant/
Appellee Board
of Education - Daniel M. McIntyre
Buckingham, Doolittle &
Burroughs
1375 E. Ninth Street
Cleveland, Ohio 44114-1724

- For the Appellee/
Appellant Property
Owner - Jeffrey G. Wyner
Conway, Marken, Wyner,
Kurant & Kern Co., L.P.A.
30195 Chagrin Blvd. Suite 300
Cleveland, Ohio 44124

- For the County
Appellees - Stephanie Tubbs Jones
Cuyahoga County Prosecuting
Attorney
By: Gregory Rowinski
Assistant Prosecuting Attorney
Courts Tower - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Entered November 28, 1997.

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

The above-captioned appeals are now considered by the Board of Tax Appeals following the issuance of a sua sponte Order on August 8, 1997. In that Order, the Board identified the holding in Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479, as potentially dispositive of its jurisdiction of this appeal and requested response from the parties. Both the Beachwood City School District Board of Education (BOE) and the property owner responded through counsel. The property owner has further presented the affidavit of Mr. Lawrence Coven. No response has been filed by the county appellees. As these two appeals have been filed respecting the same property, the matters are hereby consolidated for disposition.

Upon consideration of the Statutory Transcript and the affidavit of Mr. Lawrence Coven, the Board finds there to be sufficient uncontroverted facts upon which this decision may be rendered. The property owner is Robert I. Broida, Trustee.¹ Mr. Lawrence Coven is the property manager of the subject property and also has been granted the right to act in the owner's stead pursuant to a durable power of attorney executed October 31, 1989. (S.T. Exh. "C") He also acted as property manager for other properties over which complaints were filed in B.T.A. Cases Numbered 97-M-218 and 97-M-219, also decided this date. He is neither a tax reduction specialist

¹The legal effect of the use of "trustee" following the name of the grantee in a conveyance, as prescribed by R.C. 5301.03 is not pertinent to our decision in this matter.

nor an attorney. Mr. Coven is a real estate professional whose day to day business is the management of this and other properties owned by a small group of related investors. The complaints in each of the related appeals were prepared by the attorneys for the respective property owners. Mr. Coven signed the declaration in the complaints, thereby averring to the truth of the statements contained within. His affirmation was taken by Jeffrey G. Wyner as a Notary Public. Mr. Wyner is one of the attorneys identified upon line 3 of the complaint as the complainant's attorneys. Mr. Coven neither prepared the complaints nor represented the respective property owners at the subsequent BOR hearings.

The property owner was represented by the named attorneys before the BOR, who presented the expert testimony and written report of a real estate appraiser. Considering the evidence before it, the BOR granted a reduction in value. The BOE subsequently appealed that decision to this Board. This matter (and the two companion cases) were then settled by the parties and a stipulation was filed with Board. However, Sharon Village, supra, was decided in the interim and, when reviewing its docket, the Board issued its Show Cause Order.

In advancing its claim that the BOR properly considered the underlying complaint, the property owner makes a number of interdependent arguments. First, the property owner claims that, in signing the complaint, its representative merely acknowledged the truth of the facts stated therein. The property owner claims that Mr. Coven neither prepared nor filed

the complaint. The property owner argues that the signing of a complaint prepared by an attorney regarding properties managed by Mr. Coven is not the practice of law.

It is asserted that Mr. Coven signed the complaint as the owner (by virtue of the power of attorney) to attest to allegations of valuation within his knowledge and beyond the scope of his attorneys' expertise. Quoting from the brief, page 8, "[T]he factual information contributed by Mr. Coven is not 'knowledge not possessed by layman'. Rather it is knowledge not possessed by attorneys!"

Next, the property owner claims that Sharon Village should not be read to hold that only attorneys may file valuation complaints. In advancing this claim, the property owner relies upon the language of R.C. 5715.13 which provides that a taxpayer "or his agent" may file decrease complaints, as well as case law which at least suggests that persons other than the owner or an attorney may file. See Gammarino v. Hamilton Cty. Bd. of Revision (1997), 80 Ohio St.3d 32. The property owner argues that the true holding of Sharon Village is that persons without a working relationship with an owner are acting in a legal capacity when holding themselves out as representatives.

We must adhere to the rule of law expressed in the syllabus of Sharon Village, supra, "[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitutes the practice of law." We also apply the interpretation given to R.C. 5715.13 by the Supreme Court in

Sharon Village, that the term "agent" used in this section includes "the affected party's attorney and, in the case of a corporation², a regularly connected agent who is an attorney authorized by the corporation and possessing sufficient knowledge to verify the facts averred in the complaint." Id. p. 483. (Emphasis Added)

We have held that a complaint on behalf of Ameritech, a corporation, which was prepared by retained counsel and executed by a non-attorney tax manager, did not confer jurisdiction upon a board of revision. Bd. of Edn. of the Worthington City School v. Franklin Cty. Bd. of Revision (Aug. 8, 1997), B.T.A. No. 96-D-1218, unreported, appeal as of right pending, Sup. Ct. No. 97-1880. See also, Western and Southern Life Insurance Co. v. Hamilton Cty. Bd. of Revision (Aug. 15, 1997), B.T.A. No. 95-P-1257, unreported; Astro-Containers, Inc. v. Hamilton Cty. Bd. of Revision (Sept. 19, 1997), B.T.A. No. 96-T-157, unreported; Federal Reserve Bank of Cleveland v. Hamilton Cty. Bd. of Revision (Sept. 12, 1997), B.T.A. No. 96-M-1009, et seq., unreported (complaints of corporate property

²We emphasize the language referring to corporations as it becomes critical to our decision herein. Arguments have been put forth in both Bd. of Edn. of the Worthington City School District v. Franklin Cty. Bd. of Revision, (Aug. 8, 1997), B.T.A. No. 96-D-1218, unreported, appeal as of right pending, Sup. Ct. No. 97-1880, and the present appeal that counsel prepared and filed complaints averred to by representatives of the property owner with knowledge of the facts. However, in the earlier appeal, the property was titled to a corporation. This Board interprets the Court's language in Sharon Village to indicate its judgement that only attorneys may act in a representative capacity on behalf of corporations. We do not believe the same is true of individual property owners.

owners which were prepared by non-attorney tax agents dismissed); CP Investments Ltd. v. Cuyahoga Cty. Bd. of Revision (Sept. 19, 1997), B.T.A. No. 97-T-297, unreported (complaint prepared by an uncompensated non-attorney real estate agent dismissed); Daystar Properties, Inc. v. Hamilton Cty. Bd. of Revision (Sept. 26, 1997), B.T.A. No. 96-T-1550, unreported (complaint prepared by non-attorney employee of property management firm responsible for subject property dismissed); Mirge Corp. d/b/a/ Electrical Mechanics v. Hamilton Cty. Bd. of Revision (Oct. 24, 1997), B.T.A. No. 97-P-1026, unreported (complaint prepared by non-attorney officer of the corporation dismissed); The Dorcas W. Burns Trust v. Ashtabula Cty. Bd. of Revision (Sept. 12, 1997), B.T.A. Case No. 97-K-710, unreported (complaint prepared by non-attorney trustee dismissed); Jeff Franklin (As Agent for Nancy Kan, Owner) v. Franklin Cty. Bd. of Revision (Oct. 3, 1997), B.T.A. No. 97-K-797, unreported (complaint prepared and filed by non-attorney agent of individual owner dismissed).

Counsel for the property owner directs our attention to our earlier decision in National Gypsum Company v. Lorain Cty. Bd. of Revision (Mar. 15, 1996), B.T.A. No. 95-M-1061, unreported, in which we held that a corporate director of taxes, although a non-attorney, could properly prepare a complaint under R.C. 5715.13, distinguishing Krier v. Franklin Cty. Bd. of Revision (1994), 100 Ohio App.3d 344. Our view of the law on this issue has been revised by the Supreme Court in Sharon Village, supra. National Gypsum no longer has

precedential value upon the validity of a complaint prepared and signed by a non-attorney corporate director of taxes.

Counsel for the BOE urges us to dismiss the instant complaint upon the authority of Sharon Village, supra, and the litany of appeals which we have referenced applying Sharon Village.

Upon a careful reading of Sharon Village, we are persuaded that the appeal before us is distinguishable and dismissal of this complaint is not mandated. The owner in the instant appeal is an individual trustee, not a corporation. The act required by law is the preparation of a complaint by an attorney, and in this case, the complaint was so prepared. It was verified by the property manager acting, in this instance, under a long standing power of attorney, who had knowledge of the facts, and who could aver to the value which was claimed for the subject property. The vice with which the Court was concerned in Sharon Village, supra, the unauthorized practice of law and solicitation engaged in by tax appraisal consultants, is not present in the instant appeal. Finally, the property owner's attorney appeared before the BOR and presented appraisal evidence from an independent expert witness engaged for such purpose. The BOR heard the complaint on the merits and granted a significant reduction in value, which has been challenged in the instant appeal by the BOE. The parties had agreed to a value for the subject property which would have terminated this appeal, assuming jurisdiction had not been challenged.

Upon our consideration of all the circumstances and the applicable law, we find that jurisdiction of a board of revision under R.C. 5715.13 has been established, where an attorney on behalf of an individual trustee property owner prepared a legally sufficient complaint which was duly verified by a property manager regularly engaged in the management of the subject property, and the complaint was timely filed. Therefore the legal issues raised by our Show Cause Order have been satisfied in appellant's favor.

The captioned appeals will be returned to the regular docket for further proceedings. ohiosearchkeybta