

National Church Residence)	CASE NO. 96-S-787
of Chillicothe,))	
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Ross County Board)	(Compelling Discovery, in
of Revision and Ross)	part & Denying Motion
County Auditor,))	for Protective Order)
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Todd W. Sleggs Attorney at Law Third Floor 1015 Euclid Avenue Cleveland, Ohio 44115
For the County Appellees	-	Scott Nusbaum Ross County Prosecuting Attorney By: James Gorry Teaford, Rich & Wheeler 20 East Broad Street Columbus, Ohio 43215

Entered February 7, 1997

This cause and matter is now considered by the Board of Tax Appeals upon a "Motion to Compel Discovery" filed under date of December 19, 1996, by counsel for the county. The county's motion seeks an order from this Board compelling National Church Residence of Chillicothe ("NCR") to provide responses to interrogatories and document requests. On January 8, 1997, counsel for NCR filed a memorandum in response to the county's motion and a Motion for Protective Order. Thereafter, under date of January 15, 1997, the county filed its reply memorandum. Both motions, as well as the memoranda filed by the parties, will be considered herein.

The county's motion provides as follows:

"Now comes Appellee, Ross County Auditor, and moves this Board for an order compelling Appellant to produce documents for inspection and copying and to answer interrogatories pursuant to this Board's Rules.

"Appellee County Auditor previously served upon Appellant a request for the production of documents and answer to interrogatories, and an [sic] letter attempting to informally resolve the dispute in compliance with this Board's rules. The discovery seeks information as [sic] the relationship between Appellant's appraiser, Ronald Davis, and his business associate, Douglas Parobek, a contingent-fee tax agent who employed Davis to do the appraisal in this matter. Appellant objected to the relevance of the information. * * * "

Ohio Adm. Code 5717-1-11, which sets forth this Board's rule for allowing discovery, provides in pertinent part:

"(A) Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The 'Ohio Rules of Civil Procedure' shall be followed for discovery purposes * * *."

Civ. R. 26 elaborates upon the general provisions governing discovery, with Civ. R. 26(B) providing in pertinent part:

"(B) Scope of discovery. Unless otherwise ordered by the court in accordance with these rules, the scope of discovery is as follows:

"(1) In General. Parties may obtain discovery regarding any matter * * * which is relevant to the subject matter involved in the pending action, * * * It is not ground for objection that the information sought will be

inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Accordingly, this Board will be guided by the general rule that the material to be disclosed by an order compelling discovery must reasonably appear to be relevant to the subject matter of the pending action.

The county's first three interrogatories read as follows:

"(1) State the name and address of the individual connected with Appellant who first discussed the matter of filing the complaint in this case with Douglas Parobek and/or Ambassador Research:"

"(2) State how the individual referred to in Interrogatory No. 1 first learned of Douglas Parobek and/or Ambassador Research:"

"(3) State the name and address of the individual with Appellant who authorized Douglas Parobek and/or Ambassador Research to file the complaint with the Board of Revision:"

NCR objected to these interrogatories because the information sought is "not reasonably calculated to lead to the discovery of admissible evidence." Upon consideration, this Board upholds the objection. The complaint filed with the Board of Revision is signed by NCR's counsel, Todd Sleggs. The record in this matter refers to neither Ambassador Research or Douglas Parobek. The county has provided this Board with nothing that either identifies them or indicates what relationship, if any, they may have to the filing of the complaint.

Although the scope of discovery under Civ. R. 26 is governed by a liberal philosophy, it is subject to certain limitations concerning the relevancy of the discovery requests to the subject matter of the pending action. The county has failed to demonstrate that these requests are reasonably likely to lead to information that is relevant to the value of the subject property. Consequently, the requests are beyond the scope of permissible discovery.

Interrogatory number 5 seeks the name of the person who determined the values that are set forth on the complaint filed with the Board of Revision. NCR objected to this request on the grounds that the information sought is not reasonably calculated to lead to the discovery of admissible evidence. The Board disagrees and finds that the information sought reasonably relates to the subject matter before it. The identity of those offering an opinion of the subject property's value as of tax lien date may provide information relevant to the determination of value. Moreover, NCR, as the owner of the subject property, expressed an opinion of value on the complaint. As such opinions are relevant to the proceedings before this Board, the identity of the person making an opinion could provide beneficial information. Thus, NCR is ordered to provide a response to interrogatory number 5.

The next two interrogatories read as follows:

"(6) State the exact number of appraisals that Ronald Davis, Brent Davis, and Davis and Davis have done for, or done at the request of, or done for clients of, Douglas Parobek and/or Ambassador Research for a county board of

revision in Ohio or for the Ohio Board of Tax Appeals, as of October 15, 1996:

"(7) State the exact sum of money that Douglas Parobek and/or Ambassador Research has paid to Ronald Davis, Brent Davis, and Davis and Davis, or any of their employers, for appraisals done by them at the request of, or done for clients of, Douglas Parobek and/or Ambassador Research, as of October 15, 1996:"

NCR objected to these interrogatories on two grounds. First, NCR objected that the information sought is not reasonably calculated to lead to the discovery of admissible evidence in this appeal. Second, NCR objected that it does not have this information. This Board sustains both objections.

Again, the requests refer to people and entities that are not parties before this Board, and they do not seek information concerning the matters before this Board. The county has failed to establish that the information it desires is connected to the instant appeal or is reasonably calculated to reveal any relevant material. While Mr. Davis may have appeared at the Board of Revision to give an opinion of the subject property's value, the interrogatories do not limit themselves to this issue. This Board finds the requests to be overly broad, as the information sought has not been sufficiently identified as being related to the subject matter of the appeal. The Board notes that NCR has indicated that the information sought by these interrogatories is not in its possession. The county has failed to demonstrate that NCR has possession of, or has access to, the information. Consequently, the Board finds that NCR has complied fully with the requests.

Interrogatory number 8 requests the name of the individual or entity that is paying Mr. Davis for his appraisal and his testimony before both the Board of Revision and this Board. NCR objected to this request on the basis that it is beyond the scope of Civ. R. 26(B)(4). With respect to the payments made to Mr. Davis for his testimony before the Board of Revision, the Board finds the objection to be without merit. Mr. Davis has already rendered an opinion of value for the subject property before the Board of Revision. The identity of the person who has paid him is discoverable because it may provide information relevant to the weight which should be afforded the opinion.

Concerning the second part of interrogatory number 8, the memoranda from both parties indicate that Mr. Davis will be the appraiser testifying before this Board. If this is true, then NCR must respond to this request. However, if Mr. Davis is not to testify before this Board, then the request is premature and NCR need not respond.

Interrogatory number 9 requests NCR to identify how the fee for the appraisal was determined and how much that fee was. NCR objected to this interrogatory on the basis of Civ. R. 26(B)(4). We find that the amount paid to Mr. Davis for the appraisal that he has already completed and presented to the BOR is discoverable. The Board finds that NCR must answer as to the question of the amount it has paid in appraisal fees. However, information concerning the determination of the fee is most likely not within the NCR's knowledge. If NCR does have such information in its possession, then it must provide it. If it does not, then

NCR must inform the county that it does not have the requested information.

In addition to the above interrogatories, the county is requesting this Board to compel NCR to respond to certain document requests. Civ. R. 34 governs the production of documents and provides in part:

"(A) Scope. Subject to the scope of discovery provisions of 26(B) any party may serve any other party a request to produce and permit the party making the request, or someone acting on his behalf, (1) to inspect and copy, any designated documents * * * that are in the possession, custody or control of the party upon whom the request is served; * * *"

"(B) Procedure. * * * The party upon whom the request is served shall serve a written response within a period designated in the request that is not less than twenty-eight days after the service of the requested * * *. With respect to each item or category, the response shall state that inspection and related activities will be permitted as requested, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. * * *"

Document request number 1 concerns entities and individuals that are not parties to the instant action and therefore the documents sought go beyond the scope of Civ. R. 34 and need not be complied with.

Document request number 2 provides:

"(2) All letters, memorandum, and other written communications of any kind, made at any time, between Appellant, and/or its agents, officers, and employees, Douglas Parobek and/or Ambassador Research, Inc.;"

NCR objected to document request number 2 because it is not likely to lead to relevant evidence. As previously stated, the county has not sufficiently identified Douglas Parobek and Ambassador Research, nor has it demonstrated that this information is reasonably likely to lead to admissible evidence. Moreover, the request is overly broad, as it may lead to information that is not at issue in the subject appeal. Therefore, NCR will not be required to honor document request number 2.

Document request numbers 3, 4, 5, and 6 provide:

"(3) All contracts and agreements of any kind between Douglas Parobek and/or Ambassador Research, Inc., and Ronald Davis, Brent Davis, and Davis & Davis;

"(4) All letters, memorandum, and other written communications of any kind between Douglas Parobek and/or Ambassador Research, Inc., and Ronald Davis, Brent Davis, and Davis and Davis concerning the property, or Mr. Davis' appraisal of the property, involved in this case;

"(5) Checking account records or cash receipts showing any and all payments made by Douglas Parobek and/or Ambassador Research, Inc. to Ronald Davis, Brent Davis, and Davis and Davis in connection with payment for the appraisal by Mr. Davis on the property involved in this case;

"(6) Checking account records or cash receipts showing any and all payments, or the total amount of payments to October 15, 1995, made by Douglas Parobek and/or Ambassador Research, Inc. to Ronald Davis, Brent Davis, and Davis and Davis in connection with payment for all appraisals done by Mr. Davis;"

NCR objected to these document requests because the information sought is not reasonably calculated to lead to the discovery of admissible evidence and the information requested is not in the possession of NCR. For the reasons stated above regarding document request number 2, we reject the county's aforementioned requests. Accordingly, NCR is not compelled to produce the documents that have been requested by the county in document requests 3, 4, 5, and 6.

Document request number 7 provides:

"(7) All contracts, agreements, letters, memorandum, or other written communications between Douglas Parobek and/or Ambassador Research, Inc., and Todd Sleggs concerning or relating to Mr. Sleggs employment, engagement, or compensation, or payment of fees in connection with this case."

NCR objected to this document request because the information sought is not reasonably calculated to lead to the discovery of admissible evidence and because the information falls within the attorney-client privilege. We agree with NCR that the county has failed to demonstrate that communications between Douglas Parobek and Ambassador Research are relevant to the value of the subject property. In addition, absent evidence to the contrary, the Board finds that some of the communications fall within the attorney-client privilege. Therefore, NCR is not required to supply the requested documents.

The final issue to be addressed by the Board is NCR's request for a protective order. Ohio Adm. Code 5717-1-11(D) authorizes the Board to issue protective orders "restricting discovery of a trade secret or other confidential research, development or commercial information." In light of our ruling herein, we find such protective order unnecessary.

IT IS ORDERED that NCR shall, within fourteen (14) days of the issuance of this order, answer the interrogatories as detailed above.

IT IS FURTHER ORDERED that NCR, shall, within in twenty-one (21) days of the issuance of this order, supply the county with copies of the documents.

IT IS FURTHER ORDERED that a certified copy of this order be sent by certified mail to each of the parties hereto by and through their respective counsel. ohiosearchkeybta