

William R. Risman and	)	CASE NO. 96-M-548
Robert R. Risman,	)	
	)	(REAL PROPERTY TAX)
Appellants,	)	
	)	ORDER
vs.	)	
	)	(Overruling Motion to
Cuyahoga County Board of	)	Dismiss)
Revision, Cuyahoga County	)	
Auditor, the City of	)	
Strongsville, and the	)	
Strongsville Board of Education,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellants	-	David W. King Attorney at Law 24500 Chagrin Boulevard Suite 340 Beachwood, Ohio 44112
For the County Appellees	-	Stephanie Tubbs Jones Cuyahoga County Prosecuting Attorney By: Sandra Curtis Patrick Assistant Prosecuting Attorney Courts Tower - Justice Center 1200 Ontario Street Cleveland, Ohio 44113
For the Appellees	-	Daniel J. Kolick John P. Desimone Kolick & Kondzer 24500 Center Ridge Road Suite 175 Westlake, Ohio 44145

Entered October 17, 1997

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

The captioned appeal is now considered by the Board of Tax Appeals as a result of a motion to dismiss, filed by the City of Strongsville and the Strongsville Board of Education (BOE) on December 13, 1996. Appellees seek an Order finding that the original complaint filed on behalf of the appellants

and/or the subsequent appeal filed with this Board were jurisdictionally defective because neither had been filed by one authorized to commence or conduct such an action in Ohio.

Response from the appellants and reply from appellees City of Strongsville and BOE were subsequently filed. During the pendency of this matter, the Supreme Court issued Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479. After the issuance of this decision, the Board requested the parties address the Court's holding and its application to the facts in the instant appeal. The parties have responded and the Board now considers the matter upon appellees' original motion, the Statutory Transcript filed by the Cuyahoga County Auditor, and the legal argument of counsel.

The original complaint filed with the Cuyahoga County Board of Revision (BOR) was signed and executed by "Mark Burstein" as "Agent for Owner." (S.T. Exh. "A") Mr. Burstein is an attorney licensed to practice law in the State of Michigan, as has been so recognized by this Board. In Westbury Tower Corp. v. Cuyahoga Cty. Bd. of Revision (Dec. 20, 1996), B.T.A. Nos. 96-D-549, 96-T-570, 96-T-571, unreported, this Board recognized Mr. Burstein as an out-of-state attorney and held that the filing of a notice of appeal by an attorney at law who is not licensed to practice in Ohio is not a jurisdictional defect, following Jemo v. Lindley (1980), 64 Ohio St.2d 365.

In the instant appeal, the appellees, City of Strongsville and BOE, urge this Board to find that the original

complaint filed with the BOR failed to vest jurisdiction in that body. Appellees argue that the complaint signed by Mr. Burstein, an attorney not licensed in Ohio, is indistinguishable from a complaint signed by a non-attorney agent, which the Supreme Court found to be jurisdictionally defective in Sharon Village. This Board is unable to agree.

The Supreme Court held in the syllabus of Sharon Village that "[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." The Court then referred to R.C. 4705.01, the statute governing the practice of law in Ohio, which states:

"No person shall be permitted to practice as an attorney and counsel at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. \*\*\* "

Thus, persons practicing law in the State of Ohio must be licensed by the Supreme Court of Ohio pursuant to its prescribed and published rules. Those rules, however, make some provision for participation of an out-of-state attorney in a cause litigated within this state. Such participation may take place with "leave of the judge hearing such cause." Gov. Bar. R.I(9)(I). Royal Indemnity Co. v. J. C. Penney Co. (1986), 27 Ohio St.3d 31.

Whether to permit such representation by out-of-state counsel lies within the sound discretion of the tribunal before

which the matter is pending. Id.; State v. Ross (1973), 36 Ohio App.2d 185. In this instance, the BOR accepted Mr. Burstein's complaint and subsequent appearance as attorney for the property owner and permitted him to present the property owner's contentions as to valuation of the property. After due consideration, the BOR determined value. Such actions are indications that the tribunal exercised its discretion to authorize Burstein to appear before it. There has been no proffer of any evidence that the jurisdictional facts are other than as found in the Statutory Transcript, although the minutes of the BOR proceedings are minimal at best.

As it may be within the BOR's discretion to permit representation by an out-of-state attorney, this Board will not disturb the BOR's determination, in the absence of a showing of abuse of discretion or evidence that the out-of-state attorney did not have the proper authority to file the complaint or was otherwise engaged in conduct inimical to the BOR's exercise of its jurisdiction or the regulation of the practice of law by the Supreme Court. This Board, further, finds that Buckeye Foods v. Cuyahoga Cty. Bd. of Revision (1997), 78 Ohio St.3d 459 has no application to the instant appeal.

Considering the record now before us, we find that the complaint filed with the BOR in the instant appeal did establish jurisdiction pursuant to R.C. 5715.13. Compare Capital Park L.P. v. Franklin Cty. Bd. of Revision, B.T.A. No. 96-M-786, unreported, entered this same date.

This matter will be set for hearing in the normal  
course of the Board's business. ohiosearchkeybta