

MFI Partners Ltd. Partnership,)	
)	CASE NO. 96-S-1137
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	
Franklin County Board)	
of Revision, Franklin)	(Order Denying Motion
County Auditor and the South-)	to Strike Evidence)
Western City School District,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Wayne E. Petkovic Attorney at Law P.O. Box 20565 Columbus, Ohio 43220
For the County Appellees	-	Ron O'Brien Franklin County Prosecuting Attorney Matthew H. Chafin Assistant Prosecuting Attorney 373 South High Street Columbus, Ohio 43215
For the Appellee Board of Education	-	Jeffrey A. Rich Teaford, Rich & Wheeler 20 East Broad Street Columbus, Ohio 43215-3862

ENTERED: March 27, 1998

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

On October 17, 1997, this Board issued an Order requiring the parties to show cause why evidence presented to the Franklin County Board of Revision (BOR) on appellant's behalf should not be stricken from the record. This Order was predicated upon the recent decision of the Supreme Court in Sharon Village

Ltd. v. Licking Cty. Bd. of Revision (1997), 76 Ohio St.3d 479, where the Court found the preparation and filing of a complaint on behalf of the property owner with the BOR by a nonattorney constituted the unauthorized practice of law.

A review of the record establishes that the counsel for the Board of Education (BOE) prepared and filed an original complaint with the BOR on February 27, 1995 seeking an increase in the true value of the subject property. Thereafter, on April 18, 1995 a counter-complaint was filed on appellant's behalf. This counter-complaint was signed by appellant's "agent", Larry Knight. Mr. Knight, who qualified himself as a real estate appraiser, appeared at the BOR hearing on appellant's behalf. At this hearing, Mr. Knight offered his testimony and documentary evidence relevant to the value of the subject property.

On November 7, 1997, counsel for the BOE filed its response to this Board's Order, contending that all evidence and testimony submitted by appellant's agent must be stricken from the record. As support for this contention, BOE counsel maintains that Mr. Knight's actions in preparing and filing the counter-complaint, as well as appearing before the BOR on appellant's behalf, constitute the unauthorized practice of law under Sharon Village Ltd., supra.

On January 28, 1998, counsel for appellant filed a response with this Board. Counsel contends Sharon Village Ltd, supra does not apply in this instance because the appellant property owner "is and was a party to the matter by virtue of the

complaint being filed by the Board of Education, whether or not it filed a counter-complaint."

Initially, this Board must recognize that appellant, as the owner of the subject property, is in all events, an indispensable party to any proceedings relating to the value of its property before the BOR, and before this Board. In Columbus Apartments Assoc. v. Cuyahoga Cty. Bd. of Revision (1981), 67 Ohio St. 2d 85, the Supreme Court in its opinion recognized that a property owner is a party in all board of revision proceedings and is ensured an opportunity to participate therein by the procedural safeguards provided by R.C. Chapter 5715:

"It is quite evident from the above brief analysis of these sections from this chapter of law, dealing with procedures before the boards of revision and appeals therefrom, that it is the legislative intent to provide every procedural safeguard for the taxpayer. Indeed, most of these sections are in essence a codification of the fundamental concepts of due process.

In that it is the owner's, not the school board's, property which is the subject of the complaint and evaluation proceeding before a board of revision, the owner is an indispensable party to that proceeding. By no less reason or authority should the owner be denied the right to be a party upon an appeal of a determination which materially affects his property interests." Id. at 89-90.

This Board holds that appellant's right to participate in the BOR's review of the value of the subject property was not predicated upon the filing of a complaint or counter-complaint. It existed because appellant, as owner of the subject property was entitled to participate in the proceedings before the BOR. South-

Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision (Dec. 6, 1996), B.T.A. No. 95-T-228, unreported. Further, appellant had the right and means to challenge the subject's valuation, even if it chose not to appear before the BOR. In Columbus Apartments, supra, the Supreme Court held that, where a third party files a complaint on the value of real property, it is unnecessary for a property owner to file a complaint in order for the owner to file an appeal with either the Board of Tax Appeals or a Court of Common Pleas. Id. at paragraphs 1 and 2 of the syllabus; R.C. 5717.01; R.C. 5717.05.

In the instant appeal, no question was apparently raised before the BOR, that the agent's presence constituted an appearance in a representative capacity. The BOR proceeded to swear the agent, who identified himself as an appraiser and gave competent and relevant testimony regarding the transaction by which the appellant acquired the property. The BOR gave implicit recognition to the proposition that the owner always has the right and means to challenge the value which may be claimed by a third party complainant.

We would contrast these proceedings with the action of the BOR in Columbia-Toledo Corp. v. Lucas Cty. Bd. of Revision (December 23, 1992), B.T.A. No. 91-J-1209, unreported. In this proceeding the owner's property tax consulting firm sought to enter an appearance and provide evidence as to value, which was refused by the BOR. The owner's agent then requested a continuance so that the owner might obtain an attorney which was denied and the

complaint dismissed for want of prosecution under its rules. We concluded for the reasons expressed in the opinion that the BOR's action was unreasonable and unlawful, and remanded the complaint for a determination of value. We felt required to distinguish between the reasonableness of a rule and the reasonableness of enforcement. We concluded that a sanction short of dismissal would assure compliance without depriving the owner of the property its right to a determination of value which is the statutory obligation of a BOR. Finally we expressed our opinion that in a situation which might justify a dismissal for want of prosecution, better practice dictates that the BOR find value based upon the evidence before it.

We now have a limited question before us, whether evidence offered by a person qualified to give testimony regarding the circumstances involving the purchase of the subject property and accepted by the BOR in a hearing called for such purpose, must now be stricken. Whether or not the agent's presence at the hearing before the BOR was the unauthorized practice of law is not before us, nor do we feel that it is our function to make such determination so long as the integrity of the proceedings before the BOR and this Board is protected.

There is no challenge to our determination of this appeal. And for the reasons expressed, we find that the motion to strike is not well taken. Although the parties have waived their right to a hearing before this Board and would submit the appeal upon the record before the BOR, under the circumstances, the Board

shall schedule this appeal for the hearing of additional evidence on the question of the value of the subject property. R.C. 5717.01

It is therefore ORDERED that the motion to strike is hereby overruled. It is further ORDERED that this appeal shall be scheduled for the hearing of additional evidence in accordance with the rules of practice and procedure. ohiosearchkeybta