

Strongsville Board of)	CASE NOS. 96-T-977
Education,)	96-T-978
)	
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board)	
of Revision, Cuyahoga)	
County Auditor, and)	ORDER
Roberts Associates)	
Limited Partnership,)	
)	
Appellees.)	(Finding Jurisdiction)

APPEARANCES:

For the Appellant	- John P. Desimone Kolick & Kondzer 24500 Center Ridge Road Suite 175 Westlake, Ohio 44145-5697
For the County Appellees	- Stephanie Tubbs Jones Cuyahoga County Prosecuting Attorney By: Sandra Curtis-Patrick Assistant Prosecuting Attorney Courts Tower, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
For Roberts Assoc. Limited Partnership	- J. Kieran Jennings Fred Siegel Co. LPA 1900 East Ninth Street Suite 2700 Cleveland, Ohio 44114-3499

ENTERED: February 6, 1998

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

On July, 31, 1997, this Board issued an Order requiring Roberts Associates Limited Partnership to show cause why we should not order the Cuyahoga County Board of Revision to dismiss the

decrease complaint filed on behalf of Roberts Associates and to reinstate the value originally assigned to the subject property by the Cuyahoga County Auditor. The Order was based upon the Supreme Court's pronouncement in Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479. Therein, the Court announced at the syllabus that the "preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." In reaching this conclusion, the Court affirmed this Board's decision ordering the dismissal of a complaint filed with a county board of revision by a non-attorney on behalf of a property owner.

With respect to these appeals, a review of the statutory transcript certified to this Board by the Cuyahoga County Auditor discloses that the complaint requesting a decrease in the subject property's valuation was prepared and filed by "Robert E. Sykes, General Partner," on behalf of Roberts Associates Limited Partnership, the owner of the property. (S.T. Exhibit A.) Neither the complaint nor the remainder of the record establishes that Mr. Sykes is an attorney who would be otherwise authorized to file such a complaint under Sharon Village.

Counsel for both Roberts Associates and the Board of Education have responded to our Order. While Roberts urges us to retain jurisdiction over this matter, the Board of Education argues that we should apply Sharon Village and order the complaint's dismissal.

Since Sharon Village was decided by the Court, the issue of who may prepare and file a board of revision complaint has generated considerable debate and has been the subject of a multitude of appeals before this Board. In considering the jurisdictional sufficiency of board of revision complaints, we have attempted to follow the precise language of the Court's decision. As a result, we have applied Sharon Village to preclude jurisdiction over a corporate taxpayer's complaint, which was prepared and filed by a corporate officer, because the Court's opinion specifically addressed this issue. See Mirge Corp. v. Hamilton Cty. Bd. of Revision (Oct. 24, 1997), BTA No. 97-P-1026, unreported, appeal pending, S.Ct. No. 97-2423. Similarly, we have held that a complaint of a school board, a body corporate, which is prepared and filed by its treasurer, does not establish jurisdiction under R.C. 5715.19. Bd. of Edn. of the Orange City Schl. Dist. v. Cuyahoga Cty. Bd. of Revision (Nov. 21, 1997), BTA Nos. 96-P-1744 et seq., unreported. Sharon Village has also been applied to preclude jurisdiction over a trust's complaint which was prepared and filed by a non-attorney trustee. The Dorcas W. Burns Trust v. Ashtabula Cty. Bd. of Revision (Sep. 12, 1997), BTA No. 97-K-710, unreported. Our basis for ordering dismissal in such cases has been premised specifically upon the Court's determination that a trustee represents a separate legal entity; consequently, the preparation of a board of revision complaint constitutes practice of law. See Mahoning Cty. Bar Assn. v. Alexander (1997), 79 Ohio St.3d 1220.

At the same time, we have recognized the caveat in Sharon Village, that a taxpayer may prepare and file a complaint. R.C. 5715.13. Dismissal for failure to obtain jurisdiction is an extreme sanction, and one which we believe should be balanced with the need to allow taxpayers access to the board of revision process. We alluded to this principle in early litigation of the issue. See Krier v. Franklin Cty. Bd. of Revision (Aug. 27, 1993), Interim Order, BTA Nos. 92-P-1081 et seq, unreported, rev'd (1994), 100 Ohio App.3d 344, discretionary appeal disallowed (1995), 72 Ohio St.3d 1538. Krier was the progenitor of the Sharon Village line of cases, and we recognized there that "[e]very property owner is entitled to a determination that their property is assessed on a common level of assessment." Id. at 4.

We also reiterated this proposition in our original Sharon Village decision:

"While we find we have no other course open but to follow Krier, we take this opportunity to comment upon the difficult position in which that case leaves this Board. Literally thousands of complaints are filed with boards of revision throughout the state each year. Many complaints are executed by employees of titleholders, management companies, accounting firms, as well as a variety of tax valuation individuals and organizations. ***

"The Krier holding requires this Board to review the relationship of persons who may never appear before us. Further, we are required to draw distinctions among agents, not based upon their relationship with the principals whom they serve, but upon what we perceive their business or professional activities to be. We question whether such inquiries actually further what the legislature intended to be the function of either a county board of revision or this Board." Sharon

Village Ltd. v. Licking Cty. Bd. of Revision (Dec. 1, 1995), BTA No. 94-M-1214, unreported, at 14, aff'd 78 Ohio St.3d 479.

We again take this opportunity to acknowledge the right of an individual possessing an ownership interest in real property to prepare and file a complaint with a board of revision where that individual is a "party affected thereby." R.C. 5715.13. With this in mind, we shall examine the ability of Mr. Sykes, general partner of a limited partnership, to initiate proceedings before a board of revision.

Recently, in V.F. Holdings v. Cuyahoga Cty. Bd. of Revision (Dec. 12, 1997), Interim Order, BTA No. 97-M-664, unreported, we considered the authority of a partner to file a complaint. This appeal considered a complaint filed on behalf of a general partnership. We found that each partner in a general partnership has an ownership interest in the property owned thereby. As such, we concluded that a partner qualifies as a taxpayer, a party affected under R.C. 5715.13, and is therefore authorized to prepare and file a complaint. Id. at 5-6.

While the complaint in this matter was prepared and filed by a general partner, we note that Roberts Associates is a limited partnership. The Board has determined that a limited partner has no authority to prepare and file because a limited partner may not be held liable for partnership debts. In other words, such a partner fails to be a "party affected" by the valuation, as required by R.C. 5715.13. Lakeside Avenue Limited Partnership v. Cuyahoga Cty. Bd. of Revision (Jan. 9, 1998), BTA No. 97-K-695,

unreported. In Lakeside, we nevertheless alluded to the possibility that a general partner could file on behalf of a limited partnership:

"A limited partnership is defined in R.C. 1782.01(H) as 'a partnership formed by two or more persons under the laws of this state, having as members one or more general partners and one or more limited partners.' As reflected in R.C. 1782.24, the rights, powers and obligations of a general partner in a limited partnership are substantially like those of a partner in an ordinary partnership. As such, it is the general partner which manages the business of the partnership with the same liability as that of a partner in a partnership. ***

"Included among the powers with which the general partner is vested, is the discretionary authority to acquire, hold and dispose of property and to employ persons, including attorneys, in the operation and management of the partnership business." Lakeside, 10-13.

Underpinning these decisions is the common law principle, adopted in Ohio, that a partnership is an aggregate of individuals and does not constitute a separate legal entity. Arpadi v. First MSP Corp. (1994), 68 Ohio St.3d 453, 457; Byers v. Schlupe (1894), 51 Ohio St. 300, 314. Consequently, a partnership is not a separate legal entity such as a corporation or a trust. Arpadi. This distinction has been recognized as the basis for allowing an individual partner to file legal proceedings on behalf of his or her partnership. In the Matter of the Complaint of James M. Carpenter (Feb. 6, 1990), Interim Order, PUCO NO. 89-326-RC-CSS, unreported (general partner permitted to file on behalf of limited partnership). See, also Marks v. Fordyce, 5 O. Dec. Rep. 81.

Compare Hicks Roofing Co. Inc. v. Shah, Shah & Patel Investment Co. (May 16, 1989), Tuscarawas App. Nos. 88AP100085 & 88AP020025, unreported (partner who filed a purported answer on behalf of other individual partners and the partnership engaged in the unauthorized practice of law)!¹

Here, Mr. Sykes the general partner in the limited partnership. As a general partner who has all the rights of a partner in a partnership without limited partners and is personally liable for the debts of the limited partnership, Mr. Sykes is a "party affected" under R.C. 5715.13. R.C. 1782.24 Middleton v. Cuyahoga Cty. Bd. of Revision (1996), 70 Ohio St.3d 226,228. Consequently, we find that Mr. Sykes qualifies as an individual taxpayer who may initiate a complaint before a board of revision. Sharon Villag, supra.

Based upon the foregoing, IT IS THEREFORE ORDERED that this matter proceed before the Board of Tax Appeals in accordance with its Rules of Practice and Procedure. ohiosearchkeybta

¹ The Hicks court acknowledged a partner's right to file an answer on his own behalf and then based its decision on the Supreme Court's decision in In re Brown, Weiss & Wohl (1963), 175 Ohio St. 149. The Court determined in Brown that a partnership had engaged in the unauthorized practice of law by representing clients before the Industrial Commission.