

V.F. Holdings,)	CASE NO. 97-M-664
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Cuyahoga County Board of)	(Retaining Jurisdiction)
Revision and the Cuyahoga)	
County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Robert K. Danzinger
 Chattman, Gaines & Stern
 1400 Renaissance Center
 1350 Euclid Avenue
 Cleveland, OH 44115-1817

Joseph A. Balog
 General Counsel
 The Dalad Group
 6200 Rockside Woods Blvd.
 Independence, Ohio 44131

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

Entered December 12, 1997

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

The above-captioned appeal is now considered by the Board of Tax Appeals following the issuance of a sua sponte Order on August 14, 1997. Through that Order, this Board identified Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479, as potentially dispositive of this appeal and requested response from the parties. The appellant responded through counsel. The parties have, further, filed a

"Stipulation of Facts" with this Board. By way of Stipulation, the parties have agreed to certain facts relating to the underlying appeal. The parties have also submitted the partnership agreement entered by the individual partners of V.F. Holdings, the title holder, the General Warranty Deed covering the subject property, and affidavits from both the attorney for the partnership and the general partner whose signature appears on the complaint. These documents, factual information, and the Statutory Transcript certified to this Board by the Cuyahoga County Auditor, form the record upon which this Board renders its decision.

The subject property is titled to V.F. Holdings, an Ohio General Partnership. The general partnership was formed December 28, 1989, to invest in and manage real property. On December 29, 1989, the subject property was transferred to the partnership by General Warranty Deed executed by Neil Viny, et al.

On March 31, 1995, a complaint against the assessment of the subject property for tax year 1994 was filed. The complaint listed V.F. Holdings as the owner of the property, and also identified Joseph A. Balog as the complainant's attorney. Neil Viny, one of the general partners, signed the complaint, verifying the truthfulness and accuracy of the information contained therein.

The Cuyahoga County Board of Revision (BOR) held a hearing upon the complaint on April 17, 1997. Representing the property owner were Joseph A. Balog and Debra Moss, Attorneys-

at-Law. A map of the site, certain information on lease payments, and income statements were presented for consideration. After consideration, the BOR determined that the property was accurately assessed and retained the Auditor's value. An appeal to this Board followed. Upon review of the Statutory Transcript, the Show Cause Order issued.

In response to the Show Cause Order, the appellant property owner argues that the present case is distinguishable from Sharon Village, because the complaint in the present matter, while verified by a general partner, was prepared and filed by an attorney. The appellant insists that the facts surrounding the filing of the complaint are unlike those taking place in Sharon Village, in which an agent with no relationship with the subject property other than for tax reduction purposes prepared, signed and filed the complaints ultimately found to be jurisdictionally defective.

Prior to making a factual determination as to the manner and preparation of the complaint filed with the BOR, this Board will consider whether the signor of the instant complaint was legally authorized to prepare and file such a complaint with the BOR. If the signor had the requisite authority to prepare and file the complaint under R.C. 5715.13, it will be unnecessary for this Board to rely upon factual assertions not readily apparent from the face of the complaint.

The Supreme Court in Sharon Village held that it is the practice of law to prepare and file a complaint before a

board of revision on behalf of a taxpayer. At the same time, the Court recognized that a taxpayer may seek a tax reduction:

"In this case [Sharon Village] we are not asked to decide whether a taxpayer may prepare and file a complaint with the BOR. Clearly, such action is permissible. See R.C. 5715.13."

While the Court referred to R.C. 5715.13, such statute does not refer to filings by taxpayers. That section provides:

"The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made."

(Emphasis Added)

The import of the words "party affected thereby" was discussed by the Court in Middleton v. Cuyahoga Cty. Bd. of Revision (1996), 74 Ohio St.3d 226. Therein, the Court held:

"a party affected by a complaint to decrease the value of property is one upon whom the decrease will produce a material influence or effect. Of course, a decrease in value will produce a material effect on the property owner because it will reduce his or her taxes."

Reconciling Middleton and Sharon Village, this Board finds that an individual property owner is the taxpayer referred to in Sharon Village, and the party "affected by" a decrease complaint. Therefore, individual property owners are

authorized by R.C. 5715.13 to prepare and file complaints on their own behalf with boards of revision.

Various ownership interests may be created in real property and the holders of such interests may be materially affected by a change in the taxable value of such property. We have previously considered the Court's specific reference to corporate property owners in Sharon Village and have found that the only proper agents to prepare and file valuation complaints on behalf of corporations are attorneys. 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; TRW v. Cuyahoga Cty. Bd. of Revision (Nov. 28, 1997), B.T.A. Case No. 96-M-1262, 1263, unreported. However, the property here under consideration is owned by a general partnership.

The general partnership which owns the property presently under consideration was formed pursuant to and is governed by the Uniform Partnership Act, R.C. Chap. 1775 et seq. Significantly, under R.C. 1775.07(A), all property acquired by a partnership is partnership property. However, property owned by a partnership is not required to be titled to the partnership. It may be so titled, or title may be in the name of one or more of the partners. See R.C. 1775.09.

Most significant for present purposes is the Act's treatment of an ownership interest in a partnership. R.C. 1775.24(A) provides that each partner is a co-owner of partnership property and holds a tenancy in the partnership.

The tenancy rights are further delineated in R.C. 1775.24(B), which provides that an individual partner has the right to possess specific partnership property for partnership purposes. Finally, each partner is jointly liable for the debts and obligations of the partnership. R.C. 1775.14(B).

Thus, general partners have an ownership interest in partnership property, as distinguished from shareholders in a corporation who have no ownership interest in the property of the corporation. Having an actual ownership interest, a partner is therefore "a party affected by" a decrease in the value of real property held by the partnership. Such a person is authorized to file a valuation complaint.

Although R.C. 1775.08 prescribes every partner to be an agent of the partnership for business purposes, it is not the holding of this Board that an individual partner is qualified, by reason of his agency relationship to the partnership, to prepare and file valuation complaints. Rather, a partner has an ownership interest and is a party affected.

It is the holding of this Board in the instant appeal that Mr. Neil Viny, by virtue of his partnership interest in V.F. Holdings, a general partnership, qualifies as a taxpayer, a party affected, under R.C. 5715.13, and authorized to prepare and file a valuation complaint. It is therefore unnecessary for this Board to consider the factual assertion that the complaint was prepared by the partnership attorney.

This Board finds, therefore, that the complaint filed with the BOR in the captioned matter was jurisdictionally sufficient. The matter shall be set for hearing in the ordinary course of the Board's business.