

Mayfield City School District)
 Board of Education,)
)
 Appellant/Appellee,) CASE NOS. 97-G-589
) 97-G-594
 and)
) (REAL PROPERTY TAX)
 Aintree Park Apartments, et al.,)
)
 Appellant/Appellee,) Affirmed on Appeal 3/31/99
)
 vs.)
) DECISION AND ORDER
 Cuyahoga County Board of)
 Revision and Cuyahoga County) 85 Ohio St.3d 165, 1999-Ohio-259
 Auditor,)
) Appellees.)

APPEARANCES:

For the Appellant- Fred Livingstone
 Bd. of Education Robert Brindza
 Kelley, McCann & Livingstone, LLP
 3500 BP Tower
 200 Public Square
 Cleveland, Ohio 44114-2302

For the Appellant- Fred Siegel
 Aintree Pk. Apts. Fred Siegel Co. L.P.A.
 1900 East Ninth Street
 Suite 2700
 Cleveland, Ohio 44114

For the County- Stephanie Tubbs Jones
 Appellees Cuyahoga County Prosecuting
 Attorney
 By: Timothy Kollin
 Assistant Prosecuting Attorney
 Eighth Floor-Courts Tower
 1200 Ontario Street
 Cleveland, Ohio 44113

Entered: February 6, 1998

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a "Motion to Dismiss" filed by the appellant/appellee property owner. The motion pertains to the

appeal filed by the Board of Education. Said motion provides as follows:

"The Appellee, Aintree Park Apts (sic) et al., by and through counsel hereby moves the Board of Tax Appeals pursuant to Ohio Adm. Code 5717-1-12 for an order dismissing the above styled appeal for lack of jurisdiction. The complaint filed on behalf of the Mayfield Village Board of Education with the Cuyahoga County Board of Revision was jurisdictionally defective pursuant to Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479,483. The Grounds for this motion are stated with particularity in the Memorandum in Support of Motion which is attached hereto and incorporated herein by reference."

In its supporting memorandum, appellant, citing Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479, submits that the notice of appeal must be dismissed since the counter-complaint in the instant matter was signed by Robert P. Baker, who is the Treasurer of the Mayfield City School District, but not an attorney at law¹.

The Board of Education (BOE) was given an extension of time in which to respond to the motion to dismiss. On September 12, 1997, in its reply to the foregoing motion, the appellee BOE contends that Sharon Village, supra, does not apply to Boards of Education for a number of reasons. The BOE also

¹This case is a companion case to four other cases regarding the subject property for tax years 1994 and 1995. The four other cases involve the same jurisdictional issue of the validity of the complaints and counter-complaints filed by the Board of Education. In Case Nos. 97-G-346, 97-G-348, and 97-G-367, the Board of Education filed the original complaint. In the instant matter, the Board of Education filed counter-complaints.

requested that we schedule this matter for an oral hearing to enable the BOE to present evidence in support of its position.

Subsequent to requesting an oral hearing on the matter, the parties agreed to waive the hearing on this jurisdictional matter, and instead submit the deposition of the Treasurer, Robert P. Baker. On December 1, 1997, the parties filed herein the deposition which reflects that all parties were present through representation by counsel. Mr. Baker acknowledged that he signed the counter-complaint. (Deposition Page 18) Moreover, he stated that he was not an attorney. (Deposition Page 34) He further stated that the complaint forms are filled out by their appraiser, Richard Van Curen and Company, and that if he had any questions regarding what was on the complaint form he would call the appraiser. (Deposition Page 17) Also, he relied upon the Van Curen Firm for accuracy, as tax consultant, when he signed the complaint. (Deposition Page 47) When asked who he would call with a legal question, he responded Fred Livingstone, Esq. (Deposition Page 17)

Recently, this Board addressed the issue of a Board of Education's counter-complaint being prepared and signed by a non-attorney in Novy Family Partnership v. Cuyahoga Cty. Bd. of Revision, et al. (Jan. 16, 1998), B.T.A. Case No. 97-T-240, unreported, where we found the Board of Revision was without jurisdiction to consider the counter-complaint filed by the Board of Education under R.C. 5715.19(B). Consequently, we dismissed the Board of Education as a party to the appeal. In Novy, supra, the counter complaint was signed by the Treasurer of the Parma Board of Education, a non-attorney. Therein we stated:

"It is well established that only complainants before a board of revision have a right to appeal to this Board or to participate in its proceedings. ***.

"In the instant matter, however, the Board of Education's complaint was jurisdictionally defective. Consequently, the Board of Revision was never empowered to consider the merits of that complaint. Sharon Village. See, also, Stanjim Co. v. Bd. of Revision (1974), 38 Ohio St.2d 233, Cert. denied (1974), 419 U.S. 1109. Because the Board of Revision lacked Jurisdiction to consider the Board of Education's counter-complaint, the Board of Education never became a party to the proceedings. May Dept. Stores v. Cuyahoga Cty. Bd. of Revision (1977), 49 Ohio St.2d 183, at 188; N. Olmsted, supra, at 220."

This Board made the same determination regarding original complaints filed by Boards of Education in Board of Education of the Orange City School District v. Cuyahoga Cty. Bd. of Revision, et al. (Nov. 21, 1997) B.T.A. Case Nos. 96-P-1744, 1745, unreported.

Specifically, we held that:

"We conducted a sua sponte review of appeals pending upon our docket in August of 1997 following the decision of the Ohio Supreme Court in Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St. 3d 479. In so doing, we observed the original complaint filed on behalf of the school district was signed by its 'treasurer.' There is no indication in the record that this person was an attorney duly licensed to practice law within the state of Ohio.

" * * *

"(t)he school district argues Sharon Village is not applicable asserting the complaint filed there was a 'decrease' complaint filed under

R.C. 5715.13, while the original complaint filed by the school district in this matter is an 'increase' complaint filed under R.C. 5715.19 (A)(1).

"But, upon careful review of the applicable case law and the statutory scheme concerning school districts, we believe it is not the statute under which a complaint is filed that determines whether or not the unauthorized practice of law has occurred. Nor is it whether one seeks an 'increase' or 'decrease' that is important. Rather, it is the nature of the activity conducted and the qualifications of the person performing the activity that determine whether or not the unauthorized practice of law has occurred. In that regard, the statutes have long provided that a board of education is not only a body politic, but also a body 'corporate'

" * * *

We went on to find that case law has consistently held that a corporate body cannot act through its corporate officers rather than counsel to maintain litigation on the corporation's behalf. See, e.g., Union Savings Association v. Home Owners Aid, Inc. (1970), 23 Ohio St.2d 60. Citing to R.C. 3313.35 and 309.10 as a manifestation of the "General Assembly's intent that a board of education must operate through legal counsel when an activity involves the practice of law," we determined that a board of education, i.e., a corporate body, cannot maintain an "adversarial cause of action by and through its corporate officers."

The facts herein vary only slightly from the foregoing cases. All pertinent facts are virtually identical as to this issue. In both situations the complaint was filed with the board of revision on behalf of a school board by its treasurer, a non-attorney. As we stated in Novy, supra, and BOE of the Orange City

School District, supra, "under Sharon Village the preparation and filing of a complaint constitute the practice of law." Thus, it is incumbent upon this Board to make the determination here, as we did in those cases, that "the school district's unlicensed representatives engaged in the unauthorized practice of law."

It is important to note that after the "Orange City" decision was released we gave counsel an opportunity to file a response to the decision. Counsel for the Board of Education filed a supplemental response, however there was no factual distinction between the present case and "Orange City." The response was basically a legal response that the "Orange City" case was wrongly decided. Therefore, we find nothing in the supplemental response persuasive to change our decision.

In the instant matter it is uncontested that the activities referenced above were performed by a person or persons who were not licensed to practice law. And, under Sharon Village, supra, the preparation and filing of a complaint constitute the practice of law. Thus, in performing these activities the Board of Education's unlicensed representatives engaged in the unauthorized practice of law. Novy, supra; Orange City, supra. Therefore, we find that the Board of Education never became a party to the proceedings before the Board of Revision.

Based upon the foregoing, it is the Order of the Board of Tax Appeals that the appeal filed by the Mayfield City School District Board of Education must be, and hereby is, dismissed.

²This Board made the same determination as to the Board of Education in the four referenced companion cases.

Further, the Board of Education is dismissed as a party to this appeal. It is also Ordered that the appeal filed by Aintree Park Apts. be retained for further proceedings in accordance with the Board's Rules of Practice and Procedure.