

OHIO BOARD OF TAX APPEALS

Tallmadge Board of Education,)	CASE NO. 97-K-1195
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Summit County Board of)	(Retaining Jurisdiction)
Revision, Summit County)	
Auditor and the SidCo)	
Associates, LLC,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Deborah J. Papushak Armstrong, Mitchell, Damiani & Zaccagnini 1725 The Midland Building 101 Prospect Avenue, West Cleveland, Ohio 44115-1091
For the County Appellees	-	Michael T. Callahan Summit County Prosecuting Attorney 310 Society Bldg. 159 South Main Street Akron, Ohio 44308
For the Appellee Property Owner	-	James E. Davis Roderick, Myers & Linton, LLP 15 th Floor, One Cascade Plaza Akron, Ohio 44308-1108

Entered June 04, 1999

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

This appeal is now considered by the Board of Tax Appeals following the filing of a response and a supplemental response of the appellee property owner to

our Order requiring “that the appellee property owner show cause why this Board should not vacate the decision of the Summit County Board of Revision [(“BOR”)] granting a decrease in the subject property's value and remand this matter with instructions that it dismiss the decrease complaint purportedly filed on the owner's behalf.” *Id.* at 3. No response to this Order has been filed on behalf of the appellees.

Although this matter was scheduled to proceed to a hearing to be convened “for the limited purpose of ascertaining the extent of counsel’s involvement in the ‘preparation and filing’ of the underlying [real property] complaint [with the Summit County Board of Revision],” counsel for appellant and the county appellees have since advised this Board of their waiver of appearance at this hearing. They have also indicated that no objection will be made to this Board’s consideration of the appellee property owner’s earlier responses to our Order.

As we have previously indicated, our earlier Order was premised upon the Supreme Court’s decision in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, wherein the court held in its syllabus: "The preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law."¹ In our earlier Order, we described those existing facts which suggested that the underlying complaint may be defective:

¹ Within the body of its decision, the court in *Sharon Village* continued, stating:

"R.C. 5715.13 states that a board of revision may make no decrease in 'any valuation complained of unless the party affected thereby *or his agent* makes and files with the board a written application

“With respect to the present appeal, a review of the statutory transcript reveals that the original complaint requesting a decrease in the subject property's valuation was filed on behalf of the appellee property owner, SidCo Associates, LLC, by ‘Norman D. Belliveau Member SidCo Associates, LLC.’ Neither the complaint nor the remainder of the existing record suggests that Belliveau is an attorney authorized to make such filing.” *Id.* at 2.

In the response to our Order, the appellee property owner asserted that an attorney assisted in the preparation and filing of said complaint. In support of this claim, the appellee property owner submitted the affidavit² of Norman D. Belliveau, which stated as follows:

“1. My name is Norman D. Belliveau and I am now and was at the time of the preparation and filing of the Complaint, the managing member of SidCo Associates, LLC, a limited liability company organized under and pursuant to the laws of the State of Ohio. I have personal knowledge of the facts stated in this Affidavit.

Footnote contd. _____

therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.’ (Emphasis added.) We interpret the term ‘agent’ as used in R.C. 5715.13 to include the affected party's attorney and, in the case of a corporation, a regularly connected agent who is an attorney authorized by the corporation and possessing sufficient knowledge to verify the facts averred in the complaint.” *Id.* at 483.

² We acknowledge that on prior occasions, this Board has accorded limited evidentiary value to affidavits due to the fact that they are considered *ex parte* declarations which tend to deprive opposing parties from examining the declarant regarding the assertions contained therein. See, *e.g.*, *Hanley v. Tracy* (May 12, 1995), B.T.A. No. 94-K-1413, unreported; *Genlyte Group, Inc. v. Tracy* (Sept. 25, 1998), B.T.A. No. 96-K-532, unreported. However, in the instant matter, the opposing parties were not only aware that the above-quoted affidavit was submitted to this Board, but they have consented to its consideration in this matter for the limited purpose of determining the jurisdictional issue which was previously raised. Accordingly, in this instance, we consider the matter to be distinguishable from those cases where such affidavits have been stricken from consideration.

“2. SidCo Associates, LLC is the tax payer in this cause. I am aware that this Affidavit will be submitted to the Board of Tax Appeals in connection with a Show Cause Order.

“3. James E. Davis is now and was during the time of the preparation and filing of the Complaint, legal counsel to the tax payer.

“4. I did not prepare or file the Complaint or give legal advice to the company.

“5. I signed the Complaint and was sworn in respect to the facts set forth in the Complaint.

“6. I had personal knowledge of the facts with respect to the Complaint and the means by which the valuation in the Complaint was determined.

“7. James E. Davis, although counsel to SidCo Associates, LLC, except for the amount of the purchase price, did not have personal knowledge of the facts set forth in the Complaint and was made aware of those facts by me.

“8. Based on those facts and my instruction, James E. Davis prepared the Complaint as counsel to the company.

“9. Based on my direction, James E. Davis filed the Complaint with the Summit County Board of Review [*sic*] together with a Notice of Appearance.

“10. James E. Davis provided a date-stamped copy of the Complaint to me together with a copy of the Notice of Appearance as counsel to the company.

“11. I testified at the Hearing before the Board of Revision in support of the complaint.

“12. James E. Davis did not testify at the Hearing before the Board of Revision.

“13. James E. Davis represented SidCo Associates, LLC as counsel to that company at the Hearing before the Board of Revision and provided legal advice to the company.

“FURTHER, AFFIANT SAITH NAUGHT.”

Consistent with the foregoing, a review of the record certified to this Board reveals that Davis filed an entry of appearance as counsel on behalf of the appellee property owner at the time the complaint was filed with the BOR. Davis also notarized the signature of Belliveau on the appellee property owner’s complaint. As previously indicated, neither appellant nor the county appellees has presented this Board with any evidence, or argument, which would suggest that Davis did not “prepare and file” the underlying complaint on behalf of the appellee property owner.

Recently, in *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, which involved five consolidated appeals, the Supreme Court considered facts similar to those presented herein. In this regard, the court held:

“In case No. 97-1880, *Trenew*, an attorney, *prepared and filed* or caused to be filed the complaint at issue. This satisfies the requirements of *Sharon Village*. The fact that Ameritech Corporation’s property tax manager, Gregory A. Stein, reviewed and signed the complaint is not fatal. Stein simply reviewed the complaint to verify the accuracy of the information contained therein, and he signed the complaint for that same purpose at the direction of *Trenew*. Stein did not engage in the practice of law. Accordingly, we find that the Franklin County Board of Revision had jurisdiction to consider the

complaint by ‘Ameritech,’ a registered trade name under which Ohio Bell, the property owner, may ‘commence *** an action,’ R.C. 1329.10(B), since the complaint was prepared and filed by an attorney on Ohio Bell’s behalf.” *Id.* at 160.

Based upon the uncontroverted evidence contained within the record of this appeal, we conclude that the complaint filed on behalf of the appellee property owner in this matter was sufficient to invoke the jurisdiction of the Summit County Board of Revision. Given the length of time this matter has been pending before this Board, it is considered appropriate, pursuant to Ohio Adm. Code 5717-1-21, to divert this appeal to the Board’s mediation program. The parties shall hereafter be notified as to the date upon which this appeal shall proceed to said mediation conference.

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