

Board of Education, Princeton)	CASE NO. 97-K-830
City School District,)	
)	(EXEMPTION)
Appellant,)	
)	ORDER
vs.)	
)	(Granting Motion to
Roger W. Tracy, Tax)	Compel Discovery and
Commissioner of Ohio,)	Denying Motion for
)	Sanctions)
Appellee.)	

APPEARANCES:

For the Appellant	-	John W. Hust Schroeder, Maundrell Barbiere & Powers Suite 110 Governor's Knoll 11935 Mason Road Cincinnati, Ohio 45249
For the Appellee Tax Commissioner	-	Betty D. Montgomery Attorney General of Ohio By: Richard C. Farrin Phyllis J. Shambaugh Assistant Attorneys General State Office Tower-16th Floor 30 East Broad Street Columbus, Ohio 43266-0410
For the Appellee Property Owner	-	Duke Realty Partners c/o Duke Realty Investment 4555 Lake Forest Drive Suite 400 Cincinnati, Ohio 45242-3732

Entered January 28, 1999

This matter is now before the Board of Tax Appeals upon appellant's motion to compel discovery and/or for sanctions. In support of its motion, appellant has attached thereto an affidavit of its counsel:

"1. My name is John W. Hust and I am counsel of record for the Appellant, Board of Education, Princeton City School District, in connection with the above pending matter.

"2. On March 31, 1998, I forwarded to the Appellee [Duke Realty Partners], Interrogatories and Request for Production of Documents in connection with this case. Attached hereto as Exhibit A is a true and correct copy of those Interrogatories and Request for Production of Documents along with the cover letter.

"3. Having received no response, on August 31, 1998, I again contacted the Appellee by letter, a true and correct copy of which is attached hereto as Exhibit B requesting that said discovery be supplied in advance of the conference before the Board on September 30, 1998.

"4. To date, I have received no response, written, oral or otherwise to the Interrogatories and Request for Production of Documents or to the correspondence of August 31, 1998.

"5. The discovery requested is material and relevant to issues raised by the Appellant in connection with its appeal and will be needed at the trial of this action by Appellant.

"Further Affiant saith naught."

As a result of the above-cited failures, appellant asks that the appellee property owner, i.e., Duke Realty Partners, be ordered to provide responses to the discovery which appellant had previously served. Appellant also asks that in the event discovery is not forthcoming in compliance with an order emanating from this Board that "final judgment be entered in favor of Princeton in connection with its appeal from the grant of Appellee's application for exemption."

Before we rule upon the merits of appellant's motion to compel, we consider it appropriate to refer to Civ. R. 37(E):

"Before filing a motion authorized by this rule, the party shall make a reasonable effort to resolve the matter through discussion with the attorney, unrepresented party, or person from whom discovery is sought. The motion shall be accompanied by a statement reciting efforts made to resolve the matter in accordance with this section." (Emphasis added.)

The Staff Notes to Civ. 37 explain the purpose for this amendment:

"The 1994 amendment adds a division requiring attorneys, unrepresented parties, or persons to confer before bringing disputes to the attention of the trial court. The purpose of the amendment is to endorse and enforce the view that, in general, discovery is self-regulating and should require court intervention only as a last resort."

Ohio Adm. Code 5717-1-11(A)(2) is a reaffirmation that discovery should take place without the need for this Board's involvement. While appellant is to be commended for making some effort to obtain the information being sought prior to the filing of its motion to compel, this Board is unable to conclude that a single letter satisfies the intent of either Civ. 37(E) or Ohio Adm. Code 5717-1-11. Accordingly, in the future, it is anticipated that counsel will make undertake additional efforts to resolve discovery matters prior to seeking an order from this Board.

With respect to the merits of appellant's motion, we note that despite repeated notice having been given to the appellee property owner of the present appeal, it has yet to enter an appearance or participate in any fashion in these proceedings, including the timely filing of a response to the motion now under

consideration. See Ohio Adm. Code 5717-1-03. Nevertheless, said property owner initiated the proceedings before the Tax Commissioner, whose journal entry is the subject of this appeal, by filing an application seeking to have certain property granted exemption. Clearly, under these circumstances, appellant is entitled to obtain discoverable information from the property owner even though it has not yet participated in these proceedings. Compare North Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (July 12, 1996), B.T.A. No. 95-M-1261, unreported.

As the appellee property owner has failed to respond to appellant's motion, and as the information which is sought is not patently undiscoverable and is reasonably relevant to the subject matter involved in the present litigation, this Board will not undertake to review each and every element of appellant's discovery. See Independence Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (Sept. 2, 1994), B.T.A. No. 94-A-106, unreported; Gemini Co. v. Cuyahoga Cty. Bd. of Revision (Jan. 4, 1995), B.T.A. No. 94-K-1030, unreported. It is therefore the order of this Board that appellant's motion to compel discovery is hereby granted.

The appellee property owner shall provide appellant with the information responsive to said discovery no later than fourteen days following the issuance of this order. Although appellant has also asked that sanctions be imposed in the event that responses are not forthcoming within the period now ordered, said request is considered premature at this juncture. However, appellant may

renew its request under appropriate circumstances. See Civ. R.
37(E); Ohio Adm. Code 5717-1-11(A)(2)¹. ohiosearchkeybta

¹The appellee property owner is advised that pursuant to Ohio Adm. Code 5717-1-14, a wide variety of sanctions is available to this Board. Where these sanctions are not considered appropriate, other options may be considered. See, e.g., R.C. 5703.031.