

Tranor Co., Ltd.,	)	CASE NO. 97-N-712
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	ORDER
	)	
Cuyahoga County Board of	)	(Denying Motion to Dismiss)
Revision, Cuyahoga County	)	
Auditor and Orange City	)	
School District Board of	)	
Education,	)	
	)	
Appellees.	)	

APPEARANCES:

Appeal filed by	-	Arthur G. Merriman, Jr. Member of Tranor Co., Ltd. 7185 Chagrin Road Chagrin Falls, Ohio 44023
For the County Appellees	-	Stephanie Tubbs Jones Cuyahoga County Prosecuting Attorney By: David G. Lambert Assistant Prosecuting Attorney Courts Tower - 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Orange City School District Board of Education	-	David H. Seed Kadish, Hinkel & Weibel 2112 East Ohio Building 1717 East Ninth Street Cleveland, Ohio 44114

Entered: March 20, 1998

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

This matter is considered by the Board of Tax Appeals upon a "Motion to Dismiss" filed by counsel for the Orange City School District Board of Education ("BOE"). The BOE seeks an order from this Board dismissing the notice of appeal filed by Tranor Co., Ltd. ("Tranor") which was timely filed with this Board, for the

stated reason that "the preparation and filing of an appeal pursuant to R.C. 5717.01 by a nonattorney constitute the unauthorized practice of law." Arthur Merriman filed a response to the BOE's motion to dismiss.

This matter was initiated by a timely and legally sufficient complaint filed by the BOE with the board of revision seeking an increase in value of certain real property owned by Tranor. Tranor filed a notice of appeal with this Board pursuant to R.C. Section 5717.01 from the board of revision's determination of an increase in the value of such property. The notice of appeal was signed by "Arthur G. Merriman, Jr. (Member)" who owns Tranor, a limited liability company, jointly with his wife. Mr. Merriman is not licensed to practice law. To date, there have been no other proceedings before this Board where Mr. Merriman has acted in a representative capacity for Tranor. The BOE contends that the appeal should be dismissed solely because such notice of appeal was prepared and filed by a nonattorney.

The BOE relies upon the recent decision in Sharon Village v. Licking County Bd. of Revision (1997), 78 Ohio St. 3d 479, in which the Ohio Supreme Court held in its syllabus, "{T}he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." Upon reaching this conclusion, the Court affirmed this Board's decision ordering the dismissal of a complaint filed with a board of revision by a nonattorney tax agent on behalf of a property owner upon the authority of Krier et al. v. Franklin Cty. Bd. of Revision (1994), 100 Ohio App.3d 344. Similarly in Gammarino v. Hamilton

Cty. Bd. of Revision (1997), 80 Ohio St.3d 32, the Court held that the preparation and filing of a complaint with a board of revision on behalf of a taxpayer by an individual not authorized to practice law in Ohio constituted the unauthorized practice of law. In these cases, the Court has construed agent in the context of R.C. 5715.13 to include the affected party's attorney.

The BOE also directs our attention to Cincinnati Bar Assn. v. Estep (1995), 74 Ohio St.3d 172 and State ex rel. Nicodemus Indus. Comm. (1983), 5 Ohio St.3d 58. In these cases, the Supreme Court held that the practice and appearance before the Bureau of Workers Compensation and Industrial Commission was the practice of law. The BOE argues that since the Court determined that appearing before such administrative agencies was considered the practice of law, Mr. Merriman's actions here constitute the practice of law, and this Board must dismiss the appeal for the reasons set forth in Sharon Village and Gammarino, supra.

The Board of Tax Appeals as a matter of long standing practice has accepted jurisdiction of appeals where the notice of appeal was prepared and filed by a corporate taxpayer's officer or other agent relying upon the decision in Jemo Associates, Inc. v. Lindley (1980), 64 Ohio St.2d 365. In Jemo, the Board had initially dismissed a notice of appeal since it had been signed by an accountant, not a corporate officer or attorney, as required by Ohio Adm. Code 5717-1-08(C) [Repealed.] Ohio Adm. Code 5717-1-02 regarding appearance before the Board provided at that time a corporation might act for itself through an officer. Since the corporate accountant could not act in a representative capacity for

a corporation, the notice of appeal was found jurisdictionally defective by the Board. The Supreme Court reversed the Board's decision observing the Board is not vested with any jurisdiction to define its jurisdiction by rule, and held that an agent entitled to sign a notice of appeal need not be a corporate officer or an attorney to confer jurisdiction on this Board. The Court found nothing in R.C. 5717.02 which "suggests that the General Assembly intended an appeal by a corporation be jurisdictionally sufficient only where an agent of the corporation who signs its notice of appeal is either an officer thereof or an attorney." Id. page 367; see footnotes 2 and 3. The Court also evidenced its concern with a sanction short of dismissal to assure compliance without forfeiting the corporation's right of appeal. The Court also indicated some willingness to consider circumstance underlying such failure to have an officer or attorney sign the notice of appeal. Id. page 369.

The Jemo decision was also considered by the Supreme Court in its decision in Sharon Village. We must presume from the Court's reference, that the question of unauthorized practice of law is not relevant to the filing of a notice of appeal with the Board where the notice was in all other respect sufficient to establish jurisdiction in the Board. Suffice it to say, until the Court holds otherwise, we shall continue our reliance upon the ruling in Jemo, supra, and accept jurisdiction of notices of appeal filed by corporate officers.

More recently following the holding in Jemo, this Board decided Chevron U.S.A., Inc. v. Hamilton Cty. Bd. of Revision, et

al. (Apr. 2, 1993), B.T.A. No. 92-J-1563, unreported; and PSS Properties v. Franklin Cty. Bd. of Revision, et al. (Apr. 19, 1996), B.T.A. No. 94-A-1082, unreported. In Chevron, we held that a notice of appeal filed on behalf of a taxpayer by an agent, who was neither a corporate officer or an attorney, was jurisdictionally sufficient. Furthermore, in PSS Properties, we held that an agent could file a notice of appeal on behalf of a partnership with this Board although they were not a partner or attorney.

Finally, we refer to the Board's rules of practice and procedure, Ohio Adm Code 5717-1-02(A), which provides:

"In any proceeding before the board, a person who is a party to an appeal may appear and act on his or her own behalf. A person may appear and act on behalf of a partnership or association of which he or she is a member or on behalf of any corporation for which he or she is an officer if such partnership, association, or corporation is a party to the appeal."

Mr. Merriman represents himself to be a member of the limited liability company, and its co-owner with his wife. The explicit language of Ohio Adm. Code 5717-1-02(A), as well as the controlling case law, permit Mr. Merriman to prepare and file the notice of appeal on behalf of Tranor Co., Ltd.

Upon consideration of the motion to dismiss and for the foregoing reasons, the Board of Tax Appeals finds that the BOE's "Motion to Dismiss" is not well taken. It is ORDERED that the motion to dismiss be, and the same is hereby denied. ohiosearchkeybta