

Morgan Harris Jr., DBA,)	
RJM Financial Service,)	
Appellant,)	CASE NO. 98-A-202
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board)	ORDER
of Revision and Cuyahoga)	
County Auditor,)	(Establishing Jurisdiction)
Appellees.)	

APPEARANCES:

For the Appellant	-	J. Kieran Jennings Fred Siegel Co., L.P.A. 1900 East Ninth Street, Suite 2700 Cleveland, Ohio 44114-3499
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For the County Appellees	-	Stephanie Tubbs Jones Cuyahoga County Prosecuting Attorney By: Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower-Eighth Floor 1200 Ontario Street Cleveland, Ohio 44113
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Entered September 18, 1998

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

This cause and matter comes on to be considered by this Board following our issuance of an order requiring the appellant to show cause why this Board should not remand the instant matter to the county board of revision, with the specific instructions to dismiss the appellant's complaint, in application of the holding in Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St. 3d 479. In that case, the Supreme Court held that "the preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." Based upon

the Court's pronouncement as well as review of the complaint filed in the instant matter, we determined that the subject complaint herein was filed on behalf of the appellant property owner by Charles R. Ritley, a non-attorney, who was identified as a receiver for the property, and, accordingly, we issued the aforementioned show cause order.

In response to said order, appellant's counsel responded by brief, specifically providing the following factual background:

"On August 30 1994 Charles R. 'Chuck' Ritley was appointed by Judge Gaul as the receiver for the property designated by the Cuyahoga County Auditor as PPN 672-19-002 commonly known as 1832-1864 Forest Hills Blvd. in East Cleveland, hereinafter the subject. On March 9, 1995 Charles R. Ritley, Receiver (Appellant) filed a complaint against the valuation of real property in the Cuyahoga County Board of Revision. The complaint was signed by Charles R. Ritley, Receiver. The complaint set forth that the property was in foreclosure and was in poor condition. It further stated that the fair market value should be \$380,000. Thus the complaint requested a decrease in assessed value of \$186,800.

"On December 16, 1997 the BOR citing Krier v. Franklin County Board of Revision (1994), 100 Ohio App. 3d 344, dismissed the case for a lack of jurisdiction. Having found jurisdiction the Board of Tax Appeals remanded the case back to the BOR on July 18, 1997 [by stipulation of the parties]. The BOR held its second hearing on January 30, 1998. On February 12, 1998 a decision was rendered by the BOR maintaining the auditor's original value. That decision was appealed to the Board of Tax Appeals on February 17, 1998. [the instant appeal]" (Appellant's Brief, p. 2)

Initially, we note that the Court, in Sharon Village, specifically stated that it was "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" Instead, the Court was asked to determine whether the appellant's agent, a nonlawyer, engaged in the unauthorized practice of law when he prepared and filed real property tax valuation complaints with a county board of revision.

Thus, the question now before this Board, is whether, under Sharon Village, a judicially-appointed receiver of property, who is not an attorney, can file and prosecute a complaint against the valuation of that particular property, in the same manner as an individual property owner would.

As set forth earlier, Mr. Ritley was appointed as receiver on August 30, 1994, by court order. We also note that thereafter, on June 9, 1998, the same judge issued an order clarifying the powers of this receiver, specifically enumerating that "(T)he Receiver in his individual capacity has the right to execute and prosecute a complaint in matters regarding the property, including but not limited to real property tax complaints, wherein the receiver in his discretion believes it appropriate." The Order also went on to provide that "(T)he Receiver has all rights of ownership as granted under the discretion of this Court, and the duties imposed on his position therefrom."

R.C. 2735.04 enumerates the powers of a receiver as follows:

"Under the control of the court which appointed him, as provided in section 2735.01 of the Revised Code, a receiver may bring and defend actions in his own name as receiver, take and keep possession of property, receive rents, collect, compound for, and compromise demands, make transfers, and generally do such acts respecting the property as the court authorizes."

The Supreme Court has interpreted R.C. 2735.04 "as enabling the trial court to exercise its sound judicial discretion to limit or expand a receiver's powers as it deems appropriate. Absent a showing that the trial court has abused that discretion, a reviewing court will not disturb the trial court's judgment." State, ex rel. Celebrezze v. Gibbs(1991), 60 Ohio St. 3d 69, 74.

In contrast, we compare the rights and powers of a judicially-appointed receiver to those of a trustee, as set forth in Mahoning Cty. Bar Assn. v. Alexander (1997), 79 Ohio St. 3d 1220. Therein, the Court stated:

"[W]e find that by instituting legal proceedings and by appearing in court pro se as trustee for a trust, respondent in this capacity represented the interests of the trust (a separate legal entity), and of other persons, and, thus, engaged in the practice of law. In re Ellis (1971), 53 Haw. 23, 29, 487 P. 2d 286, 290; Back Acres Pure Trust v. Fahnlander (1989), 233 Neb. 28, 29, 443 N.W.2d 604, 605. We therefore find that respondent is in contempt of the disbarment order of this court * * * ." Id. at 1221.

After considering the holding in Mahoning Cty., supra, this Board determined that "the legal ramifications" of a trust preclude a trustee, who may be a beneficiary under a trust, and "hence have the full enjoyment of the subject property," from being

considered an owner who may file a complaint with the board of revision, since a trust is a separate legal entity. George Cisco v. Ashtabula Cty. Board of Revision, et al. (Jan. 2, 1998), B.T.A. Case No. 97-T-782, unreported.

Thus, based upon the statutory provisions delineating the powers invested in a receiver (as contrasted with those of a trustee), this Board finds that Mr. Ritley was competent to file a complaint against the valuation of the subject property with the Cuyahoga County Board of Revision, as we established in our earlier review under Krier, supra. Accordingly, we find that such complaint was legally sufficient to establish jurisdiction with said board. The instant matter shall therefore be set for hearing in the ordinary course of the Board's docketing procedures.