

Miamisburg City School)	
District Board of Education,)	
)	Case No. 98-J-1029
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Montgomery County Board of)	
Revision,)	
)	
Appellee,)	
)	
and)	
)	
Sears, Roebuck and Co.,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	-	Scott, Scriven & Wahoff, LLP By: Daniel J. Brake 50 West Broad Street Suite 2500 Columbus, Ohio 43215-3301
For the Board of Revision	-	Matthew Heck, Jr. Montgomery County Prosecuting Attorney By: Mark N. Dezarn, Assistant 301 West Third Street Fifth Floor Dayton, Ohio 45202
For the Property Owner	-	Arter & Hadden By: Karen H. Bauernschmidt 1100 Huntington Building 925 Euclid Avenue Cleveland, Ohio 44115-1475

Entered December 18, 1998.

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by the Miamisburg City School District Board of Education. ("BOE") The BOE has appealed from a decision of the Montgomery County Board of Revision which affirmed the auditor's value for the subject real property for tax year

1997. The property is located in the Miamisburg City School District and is identified on the auditor's records as parcel K45-24-1-55.

On October 30, 1998 counsel for the property owner filed a motion to dismiss the appeal. The body of the motion provides:

"Now comes the Appellee, Sears Roebuck & Co., and respectfully moves the Board of Tax Appeals for an order dismissing the within appeal filed by the Miamisburg City School District Board of Education. A Memorandum in Support of this Motion to Dismiss is attached hereto and made a part hereof a (sic) if fully rewritten herein."

The matter has been submitted to the Board of Tax Appeals upon the motion to dismiss and the memoranda filed by counsel for the property owner and counsel for the BOE.

The BOE filed the complaint below challenging the auditor's value for tax year 1997. The property owner filed a counter-complaint seeking no change. The board of revision ("BOR") affirmed the auditor's value by decision dated September 21, 1998.

The property owner is seeking dismissal because it has alleged that the wrong name is listed on the face of the complaint. In response to question one of the complaint, "Owner of property", the complainant typed, "Sears Merchandise Group". (Exhibit 1 attached to the motion to dismiss) The response to question two, "Complainant if not owner", is, "Miamisburg CSD Bd. of Ed." The tax bill lists the owner of the property as Sears, Roebuck & Co. (Exhibit 2 attached to the motion to dismiss) "Sears Merchandise Group" is the addressee. (Exhibit 2 attached to the motion to dismiss)

For the reasons which follow we find that the BOE complaint satisfied core jurisdictional requirements. R.C. 5715.19 sets forth the procedure for filing a complaint to increase land valuation. That section provides in pertinent part:

"Any person owning property within the county, * * *, the board of education of any school district with any territory within the county, * * * may file such a complaint.

* * *

"(B) Within thirty days after the last date such complaint may be filed, the auditor shall give notice of each complaint * * * to each property owner whose property is the subject of the complaint, if the complaint was not filed by such owner."

R.C. 5715.12 provides:

"The county board of revision shall not increase any valuation without giving notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard."

The complaint filed by the BOE did not name the owner of the property by its corporate name. The name on the complaint "Sears Merchandise Group", is presumably used to identify an operating division of the owner, "Sears, Roebuck & Co."

The Ohio Supreme Court considered the information a complainant must provide when filing a complaint with the BOR in Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision (1998), 80 Ohio St.3d 591, wherein it determined that substantial compliance with R.C. 5715.19 is necessary in order to invoke the jurisdiction of the BOR. In that case the property owner omitted responses to questions contained on DTE Form 1. The Court held that the omissions did not go to the core of procedural efficiency and the

responses met the requirements of R.C. 5715.19. The Court distinguished Stanjim v. Bd. of Rev. (1974), 38 Ohio St.2d 233, finding that the complainant in Stanjim had omitted data required in the "Pertinent Facts" section of former DTE Form 1. Subsequent to Stanjim, the "Pertinent Facts" section had been dropped. The Court noted that the information required under that section is now included on the property record card.

Here, the auditor carried the property on the property record card in the name of "Sears Merchandise Group". The owner is sufficiently identified so that the auditor can carry out his responsibility of notifying the owner. In fact, the tax bill listed the owner as "Sears, Roebuck & Co.", but the bill was mailed to "Sears Merchandise Group".

In support of dismissal, the property owner has cited Buckeye Foods v. Cuyahoga Cty. Bd. of Revision (1997), 78 Ohio St.3d 459. We find this reliance misplaced. Therein the complainants used an unregistered fictitious name to identify the owner. The Court held that the fictitious entity had no ownership interest in the property and therefore had no standing to file a complaint. However, this is not dispositive of the question of properly identifying the owner of the property in a third party complaint.

R.C. 5715.19 (C) requires the BOR to notify a property owner when a third party complaint is filed. The BOE sufficiently identified the owner so that notice of the complaint was provided to the property owner. We find that the BOE substantially complied

with core jurisdictional requirements in identifying the owner of the property in its third party complaint.

In so holding we find that this decision does not conflict with our findings in Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Rev. (June 30, 1997), B.T.A. No. 95-S-1282, unreported, and Cincinnati School District Bd. of Ed. v. Hamilton Cty. Bd. of Rev., B.T.A. No. 98-J-481, which is being released on the same date as the within decision. In those cases the complaint named a party not the owner of the property in question. In finding the complaints jurisdictionally defective we held that the name of the property owner is a core jurisdictional requirement to enable the auditor to notify the owner that a complaint has been filed.

Accordingly, we find that the motion to dismiss lacks merit, and is hereby overruled.