

Prudential Insurance Company)	
of America and Duke Realty)	
Limited Partnership,)	Case No. 98-J-61
)	
Appellants,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Cuyahoga County Auditor and)	
Cuyahoga County Board of)	
Revision,)	
)	
Appellees,)	
)	
and)	
)	
Board of Education for the)	
Orange City School District,)	
)	
Appellee.)	

APPEARANCES:

For the Appellants	-	Arter & Hadden, LLP By: Karen H. Bauernschmidt 925 Euclid Avenue 1100 Huntington Building Cleveland, Ohio 44115
For the County Appellees	-	Stephanie Tubbs Jones Cuyahoga County Prosecuting Attorney By: Gregory B. Rowinski Assistant Courts Tower 1200 Ontario Street Cleveland, Ohio 44113
For the Board of Education	-	Kadish, Hinkel & Weibel By: Kevin M. Hinkel David H. Seed 1717 East Ninth Street 2112 East Ohio Building Cleveland, Ohio 44114

Entered December 4, 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 herein by Prudential Insurance Company of America and Duke Realty Limited Partnership. ("Appellants") Appellants have appealed from a decision of the Cuyahoga County Board of Revision which determined the value of the subject real property for tax year 1996. The property is located in the Orange taxing district and is identified on the auditor's records as parcel 872-36-001/002/003.

On February, 12, 1998 the appellants filed a motion to remand the matter. The body of the motion provides:

"Now come the Appellants, Prudential Insurance Co. of America and Duke Realty Ltd. Part., and respectfully move the Board of Tax Appeals for an order remanding the within appeal to the Cuyahoga County Board of Revision for the purposes of dismissing the Appellee, Board of Education's 1996 complaint and reinstate the Auditor's original 1996 valuation. The Cuyahoga County Board of Revision had no jurisdiction over the tax year 1996 complaint filed by Appellee, Board of Education. Therefore, the Board of Revision erred in changing the Auditor's valuation for the tax year 1996. A Copy of a Memorandum in support of this motion is attached hereto."

The matter has been submitted to the Board of Tax Appeals upon the motion to dismiss, the notice of appeal, the statutory transcript certified herein by the Cuyahoga County Board of Revision, and the briefs filed by counsel for the property owner, and the board of education.

The subject property consists of two three story office buildings located at 30050 and 30100 Chagrin Boulevard in Pepper Pike, Ohio. On February 25, 1995 the property was sold for \$6,800,000. On March 29, 1996 counsel for the board of education filed a complaint seeking an increase of the property's value to \$11,600,000 for tax year 1995. On May 20, 1996 the property owner filed a counter-complaint seeking a reduction in value to \$6,800,000 to reflect the February 25, 1995 sale. On November 25, 1996 the property was again sold for \$12,200,000.

The board of revision met on February 12, 1997 to determine the merits of the 1995 complaints. At the hearing the board of education amended its 1995 complaint to \$12,200,000 to reflect the November 25, 1996 sale. By a decision mailed on April 7, 1997, the board of revision increased the value to \$10,500,000. The board of education appealed that decision to this Board.

On March 28, 1997 the board of education filed a complaint challenging the property's valuation for tax year 1996. On line 9 of the complaint counsel for the board of education listed as the reason for filing, "Recent sale of property". On line 10 counsel listed the November 25, 1996 sale for \$12,200,000.

The property owner is seeking to have the board of education's 1996 complaint dismissed as the second filing

¹That appeal has been assigned B.T.A. Case No. 97-B-457.

within the triennial period.² R.C. 5715.19 (A)(2) provides in pertinent part:

"No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

"(a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;

"(b) The property lost value due to some casualty;

"(c) Substantial improvement was added to the property;

"(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property."

In construing R.C. 5715.19 (A)(2) the Ohio Supreme Court has held that a second complaint filed within a triennial period which does not allege one of the enumerated circumstances in R.C. 5715.19 (A)(2) is jurisdictionally defective. Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision (1998), 81 Ohio St.3d 683;

²Property in Cuyahoga County was appraised in 1994. Therefore the triennial period includes 1994, 1995, and 1996.

Columbia Toledo Corp. v. Lucas Cty. Bd. of Revision (1996), 76 Ohio St.3d 361. The Court stated in Columbia Toledo Corp.:

"The language of R.C. 5715.19(A)(2) is very simple and it is very clear - there can be no second appeal in the same interim period unless one of the enumerated circumstances is alleged."

The board of education's increase complaint filed for tax year 1996 is its second filing for the 1994-1996 triennial period. On the complaint it alleged that its filing was prompted by the "recent sale of property". R.C. 5715.19 (A)(2) provides that a subsequent complaint may be filed if the property was sold in an arm's length transaction after the tax lien date for the tax year for which the prior complaint was filed and the circumstances were not taken into consideration with respect to the prior complaint. The subject property was sold after the 1995 tax lien date, but the sale occurred prior to the February 12, 1997 board of revision hearing. The board of education sought to amend its complaint at the board of revision hearing to reflect the November 25, 1996 sale, and offered evidence of the sale. The board of revision took the circumstances of the sale into consideration with respect to the 1995 complaint.

Included within the statutory transcript are the BOR's hearing minutes Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, B.T.A. Nos. 97-B-456, 457, which involves the

valuation of the subject property for tax year 1995. Those minutes provided:

"Submitted for the Board of Education: Value requested was amended from \$11,599,140 to \$12,200,000. Submitted was packet with information on subject property and conveyance fee statement indicating a consideration of \$12,200,000 for 1996.

" * * *

"Upon consideration of the complaint and after investigation, research, examination of testimony and evidence submitted in accordance with the law, the Board of Revision found the taxable value of the subject property to be \$3,675,000, involving a building increase of \$1,050,000 for the tax year 1995."

Clear from the minutes of the preceding, the BOR was informed of the November, 1996 sale and "considered" it in determining value for 1995. Therefore the BOR was without jurisdiction to consider the complaint filed by the BOE by virtue of the prohibition of R.C. 5715.19(A)(2). The Board therefore finds and determines that the motion to remand is well taken. The within appeal is hereby remanded to the Cuyahoga County Board of Revision with orders to dismiss the complaint filed by the board of education, and to reinstate the auditor's valuation for tax year 1996.