

OHIO BOARD OF TAX APPEALS

JGT Enterprises, Inc.,)	
An Ohio Corporation, and)	BTA CASE NO. 98-L-928
Lorain County Savings &)	
Trust Co.,)	
)	
Appellants,)	(REAL PROPERTY TAX)
)	
vs.)	
)	DECISION AND ORDER
Lorain County Board of)	
Revision, Lorain County)	
Auditor, and the Elyria)	(Dismissing Appeal)
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants	- Karen H. Bauernschmidt, Esq. Arter & Hadden 1100 Huntington Building 925 Euclid Ave. Cleveland, Ohio 44115-1475
For the County Appellees	- Gregory A. White, Esq. Lorain County Prosecutor By: John Morrison, Esq. Asst. County Prosecutor 226 Middle Ave., 4 th Flr. Elyria, Ohio 44035
For the Appellee School Board	- Timothy J. Armstrong, Esq. Armstrong, Mitchell, Damiani & Zaccagnini 1725 The Midland Building 101 Prospect Ave. Cleveland, Ohio 44115

ENTERED: March 17, 2000

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

On September 3, 1999, this Board issued an order denying a motion to consolidate and requiring the parties to show cause why this Board should not affirm the Lorain County Board of Revision's dismissal of the subject complaint filed for the 1997 tax year. The Lorain County Board of Revision (hereinafter BOR) dismissed the underlying complaint below. The BOR found that the complaint (BOR Case No. 98-117 – 1997 tax year on March 31, 1998) was the second to be filed for the same year and same parcels. The BOR noted that the first complaint (BOR Case No. 98-06 – 1997 tax year filed on January 21, 1998) was filed on behalf of the current property owner, JGT Enterprises, Inc. by Mr. Jay Tokar, President of JGT Enterprises, Inc.

The BOR accepted jurisdiction over the first complaint, and the counter complaint filed by the Elyria Board of Education (BOR Case No. 98-06A – tax year 1997). The BOR conducted a hearing and ultimately found value. That decision (in BOR Case Nos. 98-06 and 98-06A) was then appealed by the Elyria Board of Education (hereinafter BOE) to this Board and assigned BTA Case No. 98-L-1129. This Board has retained jurisdiction over BTA Case No. 98-L-1129 based upon the Ohio Legislature's recently enacted H.B. 694 (effective March 30, 1999) amending R.C. 5715.13 and 5715.19 and the Board's prior decision in *34501 Heritage Ltd. v. Cuyahoga Cty. Bd. of Revision* (June 18, 1999), BTA Case No. 97-M-1059, unreported. BTA Case No. 98-L-1129 is pending with the Board.

A review of the original complaint filed in the instant appeal indicates that the same tax year and parcels are involved as in BTA Case 98-L-1129. JGT Enterprises,

Inc. is again listed as the complainant and the owner of the subject property. The Lorain County Savings and Trust Co. is also listed as an owner and complainant. In addition PremierBank and Trust is listed as a complainant. The statutory transcript provides information that indicates The Lorain County Savings and Trust Co. and PremierBank and Trust were the prior owners that had sold the property to JGT Enterprises, Inc. in September, 1997. Neither The Lorain County Savings and Trust Co. and PremierBank and Trust were owners of the subject parcels at the time they filed the second complaint. Counsel for The Lorain County Savings and Trust Co. and PremierBank and Trust does not represent JGT Enterprises, Inc. as reflected in the filings for the instant case as well as BTA Case No. 98-L-1129.

The issue for resolution by this Board is whether the underlying complaint for the instant appeal was the second filing of a valuation complaint within the same triennial in violation of R.C. 5715.19(A)(2). R.C. 5715.19(A)(2) provides that no complaint shall be filed in the same interim period by the same person, board, or officer for the same property unless one of the four statutorily provided exceptions exist. See *Gammarino v. Hamilton Cty. Bd. of Revision* (1994), 71 Ohio St.3d 388. These exceptions include that the property: (1) has been sold in an arm's length transaction, (2) has lost value due to some casualty, (3) has had a substantial improvement added to the property, or (4) has had a change of at least fifteen percent in the property's occupancy that has had a substantial economic impact thereon. R.C. 5715.19(A)(2).

The original complaint filed in the instant case does not express any of the enumerated exceptions to the triennial rule. None of the parties in the instant case has filed a response to the Board's show cause order asserting any of the exceptions to the triennial rule. The Supreme Court has addressed this issue in *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision* (1998), 81 Ohio St.3d 682. In that case the Supreme Court held that the filing of any complaint with a board of revision, even a jurisdictionally defective complaint, must be considered to be a filing within the triennial for purposes of R.C. 5715.19(A)(2). Therefore, no other complaint may be filed during the period unless it expressly raises one of the exceptions contained within R.C. 5715.19(A)(2)(a-d). See also *C.O.A. Housing, Inc. v. Van Wert Cty. Bd. of Revision* (May 29, 1998), BTA Case No. 95-K-300, unreported; *Meigs County Elderly Housing Corp. v. Meigs Cty. Bd. of Revision* (June 19, 1998), BTA Case No. 96-G-788, unreported.

The record before the Board establishes that the property owner as of January 1, 1998 filed a property valuation complaint for tax year 1997. The value of the various parcels listed on the complaint was ultimately determined by the BOR for tax year 1997. For purposes of our review herein, the valuation complaint filed in BOR Case No. 98-06 was a filing for purposes of R.C. 5715.19(A)(2) despite any alleged jurisdictional defects. The appeal of the BOR's value determination in that case is still pending resolution by this Board in BTA Case No. 98-L-1129. The underlying complaint in BTA Case No. 98-L-1129 is the first filing for purposes of R.C. 5715.19(A)(2). *Elkem, supra.*

The Board concludes that the complaint filed in the instant case is the second filing in the triennial period. The complaint does not enumerate one of the statutory exceptions to the triennial rule. Therefore, this Board must conclude that the Lorain County Board of Revision's dismissal of the underlying complaint in the instant case was reasonable and in accordance with the law.

Based upon all of the foregoing, it is the decision and order of the Board of Tax Appeals that the dismissal of the underlying complaint in the instant case by the Lorain County Board of Revision must be, and the same hereby is affirmed. ohiosearchkeybta