

OHIO BOARD OF TAX APPEALS

West Chester Village Mall,)	
)	
Appellant,)	CASE NO. 98-S-1102
)	
vs.)	(REAL PROPERTY TAX)
)	
Butler County Board of Revision and the)	ORDER
Butler County Auditor,)	
)	(Denying Motion to Dismiss)
Appellees.)	

APPEARANCES:

Appeal filed by	-Paul Miller, Property Manager Brittany Hills Drive Dayton, Ohio 45459
For the County Appellees	-John F. Holcomb Butler County Prosecuting Attorney By: Harry B. Zornow Assistant Prosecuting Attorney 216 Key Bank Building 6 S. Second Street P.O. Box 515 Hamilton, Ohio 45012
For the Lakota Board of Education	-No appearance 5030 Tylersville Road West Chester, Ohio 45069

Entered March 26, 1999

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

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed herein on behalf of appellant West Chester Village Mall (West Chester). The appeal is taken from a decision of the Butler County Board of Revision (BOR) which determined the value of the subject property for tax year 1997.

On February 16, 1999, counsel for the county appellees filed a motion to dismiss this matter, alleging that this Board lacks jurisdiction because the notice of appeal to this Board was filed on behalf of West Chester by a non-attorney. No response was filed to the appellees' motion. Accordingly, this matter is submitted upon the notice of appeal, the statutory transcript certified by the Auditor pursuant to R.C. 5717.01 and the motion to dismiss filed by the appellees.

The matter was initiated by a timely and legally sufficient complaint filed by the Lakota Board of Education with the BOR seeking an increase in value of certain real property owned by West Chester. West Chester filed a notice of appeal with this Board pursuant to R.C. §5717.01 from the BOR's determination to increase the value of the subject property. The notice of appeal was signed by "Paul Miller, Property Manager." There is nothing in the record to suggest that Mr. Miller is licensed to practice law. The county appellees contend this matter should be dismissed solely because such notice of appeal was prepared and filed by a non-attorney.

The county appellees rely upon the Ohio Supreme Court's decision in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, in which the 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 non-attorney tax agent on behalf of a property owner.

The Board of Tax Appeals, as a matter of long standing practice, has accepted jurisdiction of appeals where the notice of appeal was 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.] Since the corporate accountant could not act in a representative capacity for the 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 jurisdiction to define its jurisdiction by rule, and held 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 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 circumstances underlying such failure to have an officer or attorney sign the notice of appeal. *Id.* page 369.

This Board has had previous occasion to consider the Court's ruling in *Sharon Village* in light of its previous ruling in *Jemo*. In *Tranor Co., Ltd. v. Cuyahoga Cty. Bd. of Revision* (March 20, 1998), B.T.A. No 97-N-712, unreported, we stated:

"The *Jemo* decision was also considered by the Supreme Court when rendering 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 respects 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."

In this case, the appellees contend that we should not follow our previous decision in *Tranor*, citing the recent decision of the Supreme Court in *Cleveland Bar Assoc. v. Misch* (1998), 82 Ohio St.3d 256. In that case, the Court held in its syllabus that an individual "licensed to practice law in Illinois but not authorized to practice law in Ohio who counseled an Ohio client with respect to its Ohio tax obligations and represented that client before the Board of Tax Appeals, drafted buy-sell agreements for

Ohio companies, and acted as legal counsel to corporations located in Ohio is engaged in the unauthorized practice of law.”

Based upon the record before them, the Court determined that the respondent’s conduct constituted the unauthorized practice of law. The Court determined that, by performing certain services and signing documents as general counsel, the respondent had “directly and indirectly held himself out as authorized to practice law in Ohio.” The county appellees contend that, based upon this ruling, the Board should no longer accept jurisdiction over appeals when the notice of appeal was filed on behalf of a corporation by a non-attorney. However, we find nothing in the court’s decision in *Misch* that would require such a result.

As set forth above, *Misch* involved an out of state attorney whose conduct, when considered as a whole, constituted the unauthorized practice of law. Filing a notice of appeal with this Board was only one of the many acts engaged in by the out of state attorney. While the county appellees request that we interpret the Court’s decision narrowly to mean that any non-attorney who files a notice of appeal with this Board on behalf of a corporation has engaged in the unauthorized practice of law, we decline to do so. We can find nothing in the Court’s decision to either implicitly or explicitly overrule its previous holding in *Jemo*. As we previously stated in *Tranor*, until the Court holds otherwise, we shall continue our reliance upon the ruling in *Jemo* and accept jurisdiction of notices of appeal filed on behalf of corporations by non-attorney representatives.

However, having determined that we have jurisdiction to consider the instant appeal, we must also refer to Ohio Adm. Code 5717-1-02, which provides:

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

"(B) All parties not acting on their own behalf shall be represented by an attorney at law authorized to practice before the courts of the state of Ohio.

"(C) Persons authorized to practice law in other jurisdictions may, upon proper application to the board, be authorized to practice before the board in a particular proceeding."

A review of the notice of appeal in this case does not indicate whether Mr. Miller is an attorney, officer or partner of the appellant. Pursuant to Ohio Adm. Code 5717-1-02, all future representation of appellant in this matter should proceed through: an officer of appellant, if West Chester is a corporation; or an attorney at law either authorized to practice in the state of Ohio or one authorized to practice in another jurisdiction provided proper application is made to this Board.

Based upon the foregoing, it is ordered that the motion of the county appellees must be, and hereby is denied. It is further ordered that this appeal be scheduled for an evidentiary hearing to determine the value of the subject property.