

OHIO BOARD OF TAX APPEALS

Bedford Retirement Village LLC,)	
)	CASE NOS. 99-D-369
Appellant)	99-D-370
)	
vs.)	(REAL PROPERTY TAX)
)	
Board of Revision of Cuyahoga County,)	
Auditor of Cuyahoga County, and)	ORDER
Cleveland MSD Board of Education,)	(denying appellee's)
)	(motion for an order)
Appellees.)	(compelling discovery)

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Bedford Retirement Village LLC -

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ENTERED: February 29, 2000

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

Two appeals, each taken pursuant to R.C. 5717.01, from a final decision of the Cuyahoga County Board of Revision which determined real property values relating

to certain real properties for the tax year 1997 located in the Cleveland taxing district of Cuyahoga County.

On February 15, 2000, an “Appellee, Cleveland Municipal School District Board of Education’s Motion For Order Compelling Discovery,” with brief in support of the motion attached, was filed. The body of the motion states:

“Now comes Appellee, Cleveland Municipal School District Board of Education, by and through its counsel, Means, Bichimer, Burkholder & Baker Co., L.P.A., to hereby move this Board pursuant to Section 5717-1-11(A)(2) of the Ohio Administrative Code and Rule 37(A) of the Ohio Rules of Civil Procedure to issue an Order compelling Appellant, Bedford Retirement Village LLC, to respond to Appellee’s First Set of Interrogatories and Request for Production of Documents.

“The reason for which this Board should grant this motion is set forth in the attached Brief in Support.”

The body of the brief in support of the motion states:

“I. STATEMENT OF FACTS

“On June 22, 1999, Appellee, Cleveland Municipal School District Board of Education served its First Set of Interrogatories and Request for Production of Documents upon Appellant, Bedford Retirement Village LLC, pursuant to Rules 33 and 34 of the Ohio Rules of Civil Procedure and Section 5717-1-11 of the Ohio Administrative Code. A copy of the Appellee’s First Set of Interrogatories and Request for Production of Documents attached hereto as Exhibit ‘A’.

“II. LAW AND ARGUMENT

“Appellant has not responded to Appellee’s First Set of Interrogatories and Request for Production of Documents. Section 5717-1-11(A)(3) of the Ohio Administrative Code sets forth that ‘Answers, objections, or other responses to discovery requests must be served within twenty-eight days after service.’ Appellee’s First Set of Interrogatories and Request for Production of Documents was sent to

Appellant on June 22, 1999. Appellant should have responded to Appellee's First Set of Interrogatories and Request for Production of Documents on or before June 26, 1999.

“Appellee has made extra-judicial efforts to effect discovery in accordance with Section 5717-1-11(A)(4) of the Ohio Administrative Code. On August 27, 1999, Appellee contacted Appellant in writing regarding discovery, requesting Appellant to respond within ten (10) days. A copy of Appellee's August 27, 1999, correspondence is attached as Exhibit 'B'. As of this date, Appellant has not responded to Appellee's discovery request.

“III. CONCLUSIONS”

“For the preceding reasons, Appellee respectfully request this Board to Order Appellant to respond to Appellee's First Set of Interrogatories and Request for Production of Documents.”

By “Certificate of Service” attached to the motion, counsel for the Appellee represents that a copy of the motion and support brief were served upon Appellant's counsel of record on February 9, 2000. No response to the motion was filed within the fourteen days prescribed by Ohio Adm.Code 5717-1-12(B).

Ohio Adm.Code 5717-1-11 provides in part:

“(A) Discovery may be permitted by *** written interrogatories; production of documents or tangible things ***. The ‘Ohio Rules of Civil Procedure’ shall be followed for discovery purposes to the extent they are not inconsistent with other board rules, and subject to the following limitations:

“(1) Discovery shall be commenced by all parties promptly after the filing of a notice of appeal and shall be completed as expeditiously as possible. *Discovery shall be completed not more than one hundred days after the filing of the notice of appeal, which shall also be the last day for a party to seek involvement of the board in discovery matters.* Upon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions. (Emphasis added.)

“(2) The board expects all counsel to provide for orderly, mutual discovery, freely exchanging discoverable information and documents. Counsel shall make all reasonable efforts to resolve discovery disputes by extra-judicial means, without intervention by the assigned attorney examiner. To the extent counsel may not resolve such disputes, then they may seek intervention of the attorney examiner to supervise discovery.”

The subject appeal having been filed on March 18, 1999, the 120-day period for a party to seek involvement of the board in discovery matters, prescribed by Ohio Adm.Code 5717-1-11 (A) (1), ended July 16, 1999. It is evident that the authorized period for involving this board in discovery matters terminated long ago. It is also evident from the record that no prior motion seeking other specific times for completion of discovery or consideration of discovery had been filed.

The facts asserted by the motion are not contested by a response filed. Therefore, for purposes here, the facts asserted are assumed to be true.

The purpose of the discovery rules is to remove the element of gamemanship from the trial. *State v. Howard* (1978), 56 Ohio St.2d 328, 333; *Lakewood v. Papadelis* (1987), 32 Ohio St.3d 1, 3.

The motion asserts that the service of the discovery requests were served upon the appellant on June 22, 1999 – 24 days before the close of the 120-day period prescribed for the completion of the discovery process. Although the movant appears to have been dilatory in making the discovery requests late in the 120-day discovery period referred to in Ohio Adm.Code 5717-1-11 (A) (1), the discovery rules do not grant discretion to a party to *legally* ignore a request of an opposing party until a tribunal orders compliance with such request. *Lakewood v. Papadelis* (1987), 32 Ohio St.3d 1, 3.

There is a mandatory duty imposed upon a party to timely and properly respond to a discovery request of an opposing party. A failure to properly respond to

a discovery request within the time period prescribed by rule, whether due to confusion, disagreement as to what is discoverable or any other reason, triggers the right of the requesting party to seek the involvement of this board with regard to such discovery matters. It is the responsibility of all parties to actively and timely pursue authorized discovery so as to provide all parties adequate time in which to seek the involvement of this board, if needed, within the 120-day period *All parties are expected to be mindful of the board's rule requiring timely and voluntary exchange of discovery materials, as well as the 120-day discovery completion period.*

The failure to timely seek the board's involvement pursuant to Ohio Adm.Code 5717-1-11 (A) (1) is not a prerequisite nor does such failure limit in any way the authority of this board's imposition of the sanctions prescribed by Ohio Adm.Code 5717-1-14 for noncompliance with the discovery provisions. Whether any sanctions should ultimately be imposed for the alleged noncompliance with the discovery request is not a matter presently before the board for consideration.

IT IS ORDERED that the motion requesting an order compelling discovery filed on behalf of the Appellee, Cleveland Municipal School District Board of Education, be and is denied for the reason that such motion was not filed within the 120-day period expressly prescribed by Ohio Adm. Code 5717-1-11 (A) (1).

IT IS FURTHER ORDERED that a certified copy of this order be sent to each of the parties hereto by and through their respective counsel.