

# OHIO BOARD OF TAX APPEALS

Board of Education of the	)	CASE NO. 00-G-1043
Columbus City Schools,	)	
	)	(REAL PROPERTY TAX)
Appellant,	)	
	)	DECISION AND ORDER
vs.	)	
	)	
Franklin County Board of Revision,	)	
Franklin County Auditor, and	)	
Homelife Properties, Ltd.,	)	
	)	
Appellees.	)	

## APPEARANCES:

For the Bd. of Edn. -	Martin J. Hughes, III Green & Hughes 100 East Wilson Bridge Road Suite 210 Worthington, Ohio 43085
For the Board of Revision -	Ron O'Brien Franklin County Prosecuting Attorney By: Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20 <sup>th</sup> Floor Columbus, Ohio 43215
For Homelife Properties, Ltd. -	Mark A. Engel Bricker & Eckler LLP 100 South Third Street Columbus, Ohio 43215

Entered September 28, 2001

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

This matter came to be considered by the Board of Tax Appeals upon a motion to dismiss filed by Appellant Board of Education of the Columbus City School District (“BOE”). The basis for the motion is lack of jurisdiction. Thereafter, a memorandum opposing the motion was filed by Homelife Properties, Ltd.

(“Homelife”). For the reasons stated below, this Board grants the motion to dismiss of the BOE.

The statutory transcript reflects that a complaint seeking a decrease in value was filed with the Franklin County Board of Revision (“BOR”) by Mr. Donald Rankey, managing member of Homelife. Homelife is a limited liability company.

In *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479 and its companion decision, *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, the Court concluded that only individual owners of real property and attorneys-at-law were authorized to prepare and file real property complaints. The memorandum opposing the motion does not claim that Mr. Rankey is an attorney licensed to practice law in the State of Ohio. Instead, the memorandum argues that Mr. Rankey, as managing member of the limited liability company which owns the property, is authorized to file the complaint. We disagree. See *Board of Education for the Toledo Public Schools v. Lucas Cty. Bd. of Revision* (Apr. 3, 1998), B.T.A. No. 97-P-1299, unreported, involving a limited liability company.

Counsel for Homelife also argues that even if the complaint is jurisdictionally invalid, the complaint could be refiled as a result of legislation enacted by the General Assembly. In response to the consequences of the *Sharon Village* decision, the General Assembly enacted Sub.H.B. 694 (147 Ohio Laws, eff. Mar. 30, 1999). Through that enactment, both R.C. 5715.13 and 5715.19 were amended to allow real property complaints to be filed by designated persons who were statutorily authorized to act in a representative capacity. Additionally, R.C. 5715.19(A)(3) allowed for the refiling of complaints previously dismissed if certain time limitations were met. The General Assembly later extended the time limitations in Am.Sub.H.B. 283 (147 Ohio Laws, eff. July 1, 1999).

In *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), 91 Ohio St.3d 308, the Supreme Court held that the amendments to R.C. 5715.19 concerning refiling cannot be constitutionally applied, as such enactments

violate Section 28, Article II of the Ohio Constitution, which prohibits the enactment of retroactive legislation. The Court found that Sub.H.B. 694 “purports to create a new right in property owners to refile dismissed complaints under new substantive rules governing the vesting of jurisdiction in a board of revision to reduce real property assessments and creates a new right to file successive valuation complaints in the same triennium under particular circumstances.” The Court continued:

“While the General Assembly may have the right to accomplish such changes, assuming they are otherwise constitutional, the General Assembly may not do so retroactively, as such changes bring with them new burdens and therefore are not merely remedial. The county officials who opposed reduction in assessed valuations when the first complaints were dismissed could have concluded that those dismissals, followed by exhaustion of judicial review, ended the valuation proceedings and established the value of the property for the triennium period, thereby creating a ‘reasonable expectation of finality.’ Cf. *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 281, 525 N.E.2d 805, 808. But Sub.H.B. No. 694 imposes on those officials a burden to again defend the value determined by the auditor and, potentially, to refund taxes if the complainant is successful. Under *Bielat [v. Bielat]* (2000), 87 Ohio St.3d 350] and *Crotty [v. Zangerle]* (1938), 133 Ohio St. 532], Sub.H.B. No. 694 is unconstitutionally retroactive because it creates a new right while, at the same time, imposing a new burden on parties who had appeared in opposition to the merits of once-dismissed valuation complaints or countercomplaints.”

See also, *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appeal denied Apr. 11, 2001.

Given the foregoing, this Board must find that Homelife’s complaint on the subject property lacked jurisdictional validity. Accordingly, this matter is remanded to the Franklin County Board of Revision with instructions to dismiss the

subject complaint and reinstate the values originally determined by the Franklin County Auditor.

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