

OHIO BOARD OF TAX APPEALS

Pramukh, Inc., An Ohio Corporation,)	
)	BTA CASE NO. 2000-L-87
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Cuyahoga County Board of Revision, Cuyahoga County Auditor, and the Lakewood Board of Education,)	
)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Karen H. Bauernschmidt, Esq. Karen H. Bauernschmidt Co. L.P.A. The Hoyt Block, Suite 214 700 W. St. Clair St. Cleveland, Ohio 44143
-------------------	---

For the County Appellees	- William D. Mason, Esq. Cuyahoga County Prosecutor By: Debra L. Talley, Esq. Asst. County Prosecutor Courts Tower, 9th Flr. 1200 Ontario Street Cleveland, Ohio 44113
--------------------------	--

For the Appellee School Board	- J. Paul Fidler, Esq. Schneider, Smeltz, Ranney & LaFond 1111 Superior Ave., Suite 1000 Cleveland, Ohio 44114
-------------------------------	---

ENTERED: May 26, 2000

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

This appeal is now considered by the Board of Tax Appeals following the filing of a Motion to Dismiss and Remand on March 22, 2000, by counsel for

Pramukh, Inc. (hereinafter “Appellant”). The motion asks that this Board remand the instant case to the Cuyahoga County Board of Revision (hereinafter “BOR”) with instructions to the BOR to dismiss the underlying increase complaint filed by the Lakewood Board of Education (“BOE”). Attached to the Appellant’s Motion is a memorandum in support of the motion with various exhibits relevant to the instant case. The Appellant asserts that the underlying complaint in the instant appeal is defective because it is the second filing on the same property by the BOE during the single triennial period of 1997 through 1999.

Following the filing of the motion to remand and dismiss, the Board scheduled an evidentiary hearing on April 25, 2000. Counsel for the BOE by way of letter dated April 17, 2000 notified this Board that the BOE did not intend to file a memorandum in opposition to the motion or attend the scheduled hearing. The BOE asked that the matter be submitted on the pleadings and statutory transcript. Counsel for the Appellant by way of letter dated April 21, 2000 also waived attendance at the hearing and asked that the matter be submitted on the pleadings and statutory transcript. Counsel for the Cuyahoga County Board of Revision has not entered an appearance or filed any responsive pleadings. By way of letter dated April 21, 2000 the parties were notified that the hearing before the Board on the motion was cancelled.

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 exists. 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).

Attached as Exhibit 1 to the Appellant's motion to dismiss is a copy of the original complaint filed on March 30, 1998 with the BOR by the BOE for parcels numbered 312-11-015 and 312-11-016 for tax year 1997, the first year of the triennial for Cuyahoga County. The reason stated on the complaint for the requested change for tax year 1997 is that the property sold on January 5, 1998 for \$1,100,000. The BOR granted an increase in valuation for the subject parcels to an assessed value of \$385,000, which represented an increase of \$208,670 in the assessed value. Calculating an assessment rate of 35%, this figure reflected a market value of \$1,100,000 or the same value as the January 5, 1998 sale price. (Exhibit 2 of the Appellant's motion.)

A review of the underlying complaint in the instant appeal filed with the BOR on March 30, 1999 by the BOE indicates that the tax year at issue is 1998,

the second year of the triennial for Cuyahoga County.¹ (Exhibit 3 of the Appellant's motion.) The parcels involved are the same parcels listed on the 1997 complaint. The reason stated on the 1998 complaint for the requested change is again the sale of the property for \$1,100,000 on January 5, 1998. The BOR's decision dated January 10, 2000 states that the BOR found the assessed value of the subject property to be \$385,000, "which represented an increase of \$208,670 in the assessed value for the 1998 tax year."² (Exhibit 4 of the Appellant's motion.)

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 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 a jurisdictionally defective complaint. 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 *Columbia Toledo Corp. v. Lucas Cty. Bd. of Revision* (1996), 81 Ohio St.3d 361; *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; *Prudential Insurance Company of America and Duke Realty*

¹ We presume the BOE filed the second complaint as a protective complaint without regard to the provisions of R.C. 5715.19(D) to the effect that an original complaint (i.e. 1997) shall continue in effect without further filing for any ensuing years until such complaint is determined by the BOR (i.e. May 24, 1999).

² Although the BOR's decision states that there is an increase in the assessed value, the 1998 BOR value determination is actually no change from the BOR determination for the 1997 tax year.

Limited Partnership v. Cuyahoga Cty. BOR, et al. (Dec 4, 1998), BTA Case No. 98-J-61, unreported.

Based upon the uncontroverted evidence presented, the Board finds and determines that the motion to dismiss and remand is well taken. Accordingly, it is the decision and order of the Board of Tax Appeals that this matter be remanded to the Cuyahoga County Board of Revision with instructions that the BOR dismiss the underlying complaint for 1998 for want of jurisdiction, and that it reinstate the value determined by the BOR for tax year 1997. The Board is cognizant of the fact that this Order results in no change in value because the BOR's decision for the 1998 complaint did not in fact reflect a change in value from the BOR's decision for the 1997 complaint.

ohiosearchkeybta