

OHIO BOARD OF TAX APPEALS

Foxmoor Apartments,)
A General Partnership,)
)
Appellant,)
)
vs.)
)
Cuyahoga County Board of Revision,)
Cuyahoga County Auditor, and the)
Parma City School District)
Board of Education,)
)
Appellees.)

CASE NO. 2002-N-1218
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Todd W. Sleggs & Associates
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For the County Appellees - William D. Mason
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For the BOE - Taft, Stettinius & Hollister LLP
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Entered March 7, 2003

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

The record in this matter establishes the following: On July 10, 2002, the Cuyahoga County Board of Revision (“BOR”) certified its decision in BOR Complaint

No. 200105290674 to the complainant. However, at that time, a copy of the decision was not certified to the Tax Commissioner as required by R.C. 5715.20. On September 18, 2002, appellant filed the instant notice of appeal including the assignment of error, “The Tax Commissioner of the State of Ohio was not served with a copy of this decision by the Cuyahoga County Board of Revision as required by Revised Code 5715.20.”

The BOE filed a motion to dismiss, indicating “The board lacks jurisdiction to entertain this appeal because the underlying matter was finally decided before the supreme court issued its decision in CEI.”¹ Counsel for Foxmoor responded, indicating “In the absence of service on the Tax Commissioner, there never was a valid Board of Revision decision from which Foxmoor Apartments could take an appeal.”

R.C. 5717.01 provides the procedure to appeal from a decision of a county board of revision to this board. It requires that such appeal be taken within thirty days after notice of the decision of the board of revision is mailed as provided in R.C. 5715.20. The record indicates that no appeal was filed within thirty days after notice was served upon Foxmoor.

Upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (2002), 96 Ohio St.3d 165, 2002-Ohio-4033, issued August 21, 2002, the 30-day period for the filing of a notice of appeal by a party to a proceeding before a board of revision pursuant to R.C. 5717.01 does not start to run until the required notices are mailed by certified mail to all persons listed in R.C. 5715.20, including the Tax Commissioner.

¹ *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (2002), 96 Ohio St.3d 165, 2002-Ohio-4033, *infra*.

{¶17, 18} The threshold issue is the application of the Supreme Court’s announcement that this rule shall have prospective application only.

The court held:

“{¶20} Under our broad authority to limit the application of our decisions, *OAMCO v. Lindley* (1987), 29 Ohio St.3d 1, 29 OBR 122, 503 N.E. 2d 1388, syllabus, we declare that this decision shall, with the exception of the subject litigants **and cases currently pending at the time of this decision**, operate prospectively only. In doing so, we hold that any appeal that has been completed before the date of this decision shall remain final, but for those appeals still pending or not yet filed, the R.C. 5717.01 30-day appeal time shall be calculated from the date of the latest certified mailing required by R.C. 5715.20.” (Emphasis added.)

In *Cincinnati School District Bd. of Ed. v. Hamilton Cty. Bd. of Revision*

(Dec. 20, 2002), BTA No. 2002-A-1142, we held:

“However, the court, in its decision, made the decision prospective only, and provided that ‘any appeal that has been completed before the date of this decision shall remain final ***.’ {¶ 20}”

We conclude in applying the prospective language that Foxmoor’s complaint before the BOR had been concluded by the July 10, 2002 decision from which no appeal was taken. No demand was made upon the BOR by Foxmoor to certify its decision to the Tax Commissioner. There was therefore no case currently pending at the time of the issuance of the *Cleveland Elec. Illum. Co.* decision, on August 21, 2002. Applying the court’s announcement that “any appeal that has been completed before the date of this decision shall remain final” {¶20}, such decision has no application to the instant appeal.

Accordingly, it is ordered that the instant appeal be and the same is hereby dismissed.

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