

OHIO BOARD OF TAX APPEALS

Al Gammarino, Trustee,)
)
 Appellant,)
)
 vs.)
)
 Hamilton County Board of Revision)
 and Hamilton County Auditor,)
)
 Appellees.)

CASE NO. 2002-N-1340

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant - Al Gammarino, pro se
3700 East Galbraith Road
Cincinnati, Ohio 45236

For the County Appellees - Michael K. Allen
Hamilton County Prosecuting Attorney
Thomas J. Scheve
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Entered March 7, 2003

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

The record in this matter establishes the following: On April 30, 2002, the Hamilton County Board of Revision (“BOR”) certified its decision in BOR Case No. 2001-025-5-40500-RG 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 May 28, 2002, appellant filed a notice of appeal with this board from the BOR’s decision, docketed as BTA No. 2002-A-630.

The BOR's decision dismissed the complaint for failure to prosecute. In BTA No. 2002-A-630, we issued an order requiring appellant to show cause why this board should not affirm the BOR's decision to dismiss the original complaint for failure to prosecute. Subsequently, the auditor filed a motion to dismiss and a response to the show cause order; the appellant also responded to the show cause order. On August 2, 2002 we issued a decision affirming the dismissal of the complaint.¹

Thereafter, on September 4, 2002, the BOR certified a copy of its decision in BOR Case No. 2001-025-5-40500-RG to the Tax Commissioner. On October 2, 2002, appellant filed the instant appeal. The auditor filed a motion to dismiss in the instant matter, indicating:

“The current appeal apparently is filed in response to the Supreme Court's decision in *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (2002), 96 Ohio St.3d 165, in which the Court held that boards of revision must notify the Tax Commissioner of its decisions (even though the Commissioner had effectively waived service) before the appeal time began to run. The Court said its ruling would be prospective only. The court said ‘we hold that any appeal that has been completed before the date of this decision shall remain finalized.’

“The Court's decision was announced August 21, 2002. The Board of Tax Appeal's decision in the underlying case was announced August 2, 2002. Thus, this case was final and the instant appeal should be dismissed.”

In BTA No. 2002-A-630, our decision was issued August 2, 2002. R.C. 5717.04 outlines the procedure to appeal from a decision of this board. It requires that such appeal be taken within thirty days after the date of the entry of the decision. The

¹ The motion to dismiss also indicated the complaint was the second filed in the same interim period.

thirtieth day was Sunday, September 1, so any appeal was due to be filed by Monday, September 2, 2002. Nothing in the record indicates an appeal was filed.

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

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,² made the decision prospective only, and provided that ‘any appeal that has been completed before the date of this decision shall remain final

² Referring to *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (2002), 96 Ohio St.3d 165, 2002-Ohio-4033.

***.’ {¶ 20} BTA Nos. 2000-T-1382-1387, inclusive, and BTA No. 2000-P-1607, appeals taken from the BOR’s decision issued September 8, 2000, in which all parties to the instant appeal were also parties, have been completed and the parties’ rights finally determined on March 2, 2001 and April 27, 2001, respectively.”

BOR case number 2001-025-5-40500-RG was appealed by appellant in BTA Case No. 2002-A-630. The parties’ rights were finally determined by the BTA in its order issued on August 2, 2002. There was no appeal pending at the time of the issuance of the *Cleveland Elec. Illum. Co.* decision, August 21, 2002. Notwithstanding, the BOR certified its decision to the Tax Commissioner in case number 2001-025-5-40500-RG on September 4, 2002. Applying the court’s announcement that “any appeal that has been completed before the date of this decision shall remain final,” {¶20} the BOR’s certification of its decision to the Tax Commissioner was without any legal effect and did not act to revive this matter. Accordingly, the instant appeal is hereby dismissed.

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