

OHIO BOARD OF TAX APPEALS

William A. Smith,)	
)	
Appellant,)	CASE NO. 2002-T-2404
)	
vs.)	(REAL PROPERTY TAX)
)	
Medina County Board of Revision)	DECISION AND ORDER
and the Medina County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	William A. Smith, pro se 7556 Coonclub Road Medina, Ohio 44256
For the County Appellees -	Dean Holman Median County Prosecuting Attorney Katharina E. Devanney Assistant Prosecuting Attorney 72 Public Square Medina, Ohio 44256

Entered December 5, 2003

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

On October 15, 2003, we issued an order requiring William A. Smith to show cause as to why this appeal should not be dismissed for failure to invoke the subject matter jurisdiction of the BOR.¹ No party has responded to our order within the time prescribed.

In Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio

¹ This appeal appears to be a refile of BTA No. 2002-T-952, which was dismissed on November 1, 2002 for lack of jurisdiction under *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. The record of BTA 2002-T-952 is hereby made a part of the record in this matter.

St.3d 479, the court held that “[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law.” *Id.* at the syllabus. The court determined that, to invoke the jurisdiction of the BOR, a complainant had to comply with the requirements of R.C. 5715.13 and 5715.19. Because the requirements are jurisdictional, “the failure to fully and properly complete the complaint will result in dismissal of the action.” *Id.* at 481.

In order to determine whether a valid complaint has been filed, the “critical inquiry” is to determine that the complaint has been “*** ‘prepared and filed’ either by the taxpayer acting in a pro se capacity or by an attorney authorized to practice law acting in the taxpayer’s behalf.” *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), 91 Ohio St.3d 308, 314.

As a result, we have previously determined that non-attorney trustees are not authorized to file a complaint with a BOR on behalf of a trust. *Mel Howard, Trustee v. Cuyahoga Cty. Bd. of Revision* (Oct. 31, 1997), BTA No. 1996-B-1138, unreported; *Dorcas W. Burns Trust v. Ashtabula Cty. Bd. of Revision* (Sept. 12, 1997), BTA No. 1997-K-710, unreported.²

² As a consequence of *Sharon Village*, the General Assembly amended R.C. 5715.13 and 5715.19 to authorize certain non-attorneys to file a BOR complaint. Among those listed were real estate brokers and trustees of a trust. However, in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appealed denied (2001), 91 Ohio St.3d 1489, the court found the amendments to R.C. 5715.13 and 5715.19 to be unconstitutional violations of the separation of powers. Subsequently, in *Bd. of Edn. of the Whitehall City School Dist. v. Franklin Cty. Bd. of Revision*, Franklin App. Nos. 01AP-878 and 01AP-879, 2002 Ohio 1256, the Tenth Appellate District reached an identical conclusion, finding that “*** amended R.C. 5715.19(A) is unconstitutional beyond a reasonable doubt insofar as it permits persons that are not attorneys or owners of the property to file a complaint before a board of revision on behalf of an owner.” *Id.* at 14. Cf. *Iberia Cabinet Mfg. Co. v. Walston*, 121 Ohio Misc.2d 121, 2002-Ohio-7450 (complaint filed by a person not authorized to do so found to be a nullity).

In the instant matter, William A. Smith filed the original complaint with the BOR. The owner of the subject property is listed in the county records as “William A. and Gloria J. Smith, Trustee.” Nothing in the record suggests that Mr. Smith is an attorney licensed to practice before the Supreme Court of Ohio, nor does the record evidence that the owner of the subject property is other than a trust. See *Gammarino v. Hamilton Cty. Bd. of Revision* (1998), 84 Ohio St.3d 155 (owner of property seeking a reduction in valuation listed as “trustee” of property when no trust existed entitled to represent himself before the BOR).

In conclusion, we find that the trustee’s filing of a complaint on behalf of the trust that owns the subject property failed to invoke the jurisdiction of the board of revision. The Board of Tax Appeals hereby remands this matter to the Medina County Board of Revision with instructions to dismiss the subject complaint and to reinstate the values determined by the Medina County Auditor for tax year 2001.

ohiosearchkeybta