

OHIO BOARD OF TAX APPEALS

Jack L. Patrick)	
)	
Appellant,)	CASE NO. 2004-A-810
)	
vs.)	(REAL PROPERTY TAX)
)	
Stark County Board of Revision and Stark County Auditor,)	DECISION AND ORDER
)	
Appellees.)	

APPEARANCES:

- For the Appellant - Jack L. Patrick, pro se
337 Hume Street, NE
North Canton, Ohio 44720

- For the County Appellees - John D. Ferrero
Stark County Prosecuting Attorney
David M. Bridenstine
Assistant Prosecuting Attorney
Stark County Office Building
110 Central Plaza South, Suite 510
P.O. Box 20049
Canton, Ohio 44701-7965

Entered April 8, 2005

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

This appeal is now considered by the Board of Tax Appeals following the issuance of our order requiring appellant to show cause why this board should not remand the instant matter to the Stark County Board of Revision with orders to dismiss the original complaint filed on behalf of the property owner because an attorney

neither signed nor prepared and/or filed the complaint in question. No responses to this board's order were received.

Our order was premised upon the court of appeals' decision in *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), in which the Cuyahoga County Court of Appeals found the amendments to R.C. 5715.13 and 5715.19, allowing specified non-attorneys to file valuation complaints before the board of revision, were unconstitutional violations of the separation of powers. In addition, the Ohio Supreme Court has repeatedly held that the filing of a complaint before the board of revision constitutes the practice of law. Specifically, in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479 and *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 are authorized to prepare and file real property complaints. Finally, this board and other courts have held that a non-attorney trustee may not file on behalf of a trust, as the trust and trustee are separate legal entities. See *The Dorcas W. Burns Trust v. Ashtabula Cty. Bd. of Revision* (Sept. 12, 1997), BTA No. 1997-K-710, unreported; *Jones, Trustee v. Geauga Cty. Bd. of Revision* (Feb. 6, 2004), BTA No. 2003-K-1277, unreported (ordering dismissal of a complaint filed by a trustee on behalf of a trust); *Tubalcain Trust v. Cornerstone Constr., Inc.* (May 26, 1994), Franklin App. No. 93APE12-1701 ('[a] trust, like a corporation, cannot act on its own behalf but, instead, must act through an individual. Since only attorneys can represent

another party in litigation before a court, necessarily an attorney must be engaged to represent a trust’); *Scott v. H.T.M. Trust* (May 9, 1991), Putnam App. No. 12-90-4, unreported (“A trustee of a trust, who is not a licensed and registered attorney at law, may not file pleadings, argue or otherwise represent the trust as its counsel in a court. *Williams v. Global Constr. Co., Ltd.* (1985), 26 Ohio App.3d 119 syllabus; See, R.C. 4705.01.”). Compare *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), 91 Ohio St. 3d 308, paragraph one of the syllabus, (“An attorney who signs an R.C. 5715.19 valuation complaint in his or her capacity as an attorney-at-law and files it, or directs its filing, in accord with R.C. Chapter 5715, has thereby ‘prepared and filed’ that complaint for purposes of determining whether jurisdiction has vested in a county board of revision, as contemplated by *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, 678 N.E. 2d 932.”).

A review of the original decrease complaint filed by Mr. Patrick with the Stark County Board of Revision indicates that it was signed by Jack Patrick.¹ In addition, the Stark County records indicate the owner of the subject property is a trust, with Jack L. and Janet E. Patrick listed as trustees. The subject property is not titled to the Patricks in their individual capacities, but in their capacities as trustees on behalf of an extant trust, an artificial legal entity. We are unable to overlook the distinction in the manner in which the Patricks elect to hold title to the subject property. *Watson v. Champaign Cty. Bd. of Revision* (Feb. 22, 2002), BTA No. 2001-V-1215, unreported. In addition, we note that subsequent to *Sharon Village Ltd.*, supra, the Supreme Court

¹ There is nothing in the record to establish that Mr. Patrick is an attorney, licensed to practice law.

held that instituting legal proceedings and appearing in court pro se as trustee for a trust constitutes the practice of law. *Mahoning Cty. Bar Assn. v. Alexander* (1997), 79 Ohio St.3d 1220, 1221.

The record clearly establishes that the original complaint was signed, presumably prepared, and filed by Jack Patrick, a trustee. Further, the Stark County records for the subject property indicate that the owner of such property is a trust, with Jack and Janet Patrick named as trustees for said trust. Therefore, based upon the foregoing, this board concludes that appellant's original complaint was insufficient to invoke the jurisdiction of the Stark County Board of Revision.

Accordingly, it is the decision and order of the Board of Tax Appeals that this matter be remanded to the Stark County Board of Revision with instructions to dismiss the original complaint filed on behalf of the property owner for lack of jurisdiction.

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