

OHIO BOARD OF TAX APPEALS

Eugene Tareshawty, Trustee, and)
Elvina Tareshawty, Trustee,)
)
Appellants,) CASE NO. 2004-T-1443
)
vs.) (REAL PROPERTY TAX)
)
Mahoning County Board of Revision) DECISION AND ORDER
and the Mahoning County Auditor,)
)
Appellees.)

APPEARANCES:

For the Appellants - Stewart I. Mandel
Attorney at Law
210 Scott St. N.E.
Warren, Ohio 44483

Eugene Tareshawty, Trustee
105 Javit Court
Youngstown, Ohio 44515

For the County Appellees - Paul J. Gains
Mahoning County Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503

Entered March 18, 2005

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

On February 4, 2005, this board issued an order requiring the appellants to show cause as to why this matter should not be dismissed for failure to raise the subject matter jurisdiction of the BTA. The appellants have filed a response to that order within the time specified thereby.

A review of the record in this matter indicates that the appellants filed the subject notice of appeal with the Board of Tax Appeals on December 28, 2004.¹ The record further indicates that notice of the BOR's decision was mailed by certified mail to the complainants on September 7, 2004. See R.C. 5715.20.

R.C. 5717.01 sets forth the requirements for bringing an appeal before the Board of Tax Appeals as follows:

“An appeal from a decision of a county board of revision may be taken to the board of tax appeals *within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code.* *** Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing.” (Emphasis added.)

The requirements of R.C. 5717.01 must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192; *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. One of those requirements is that the notice of appeal must be filed with both the Board of Tax Appeals and the board of revision within thirty days after the certified mailing of the board of revision's decision. Failing to comply with the requirement will lead to the dismissal of the

¹ The notice of appeal was mailed to the BTA by U.S.P.S. certified mail on December 28, 2004, giving the notice of appeal a deemed filing date of the date of mailing. R.C. 5717.01. This board physically received the notice of appeal on December 30, 2004.

appeal. *Austin Co.*, supra; *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

The appellants have not denied any of the foregoing. Instead, they argue that the notice of appeal is, in actuality, the refiling of a previously dismissed complaint under R.C. 5715.19(A)(3). A previous appeal to this board from the same BOR decision was remanded, with orders to dismiss the original complaint, under authority of *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479. See *Tareshawty v. Mahoning Cty. Bd. of Revision* (Jan. 21, 2005), BTA No. 2004-T-915, unreported. At the time the issue of jurisdiction in BTA No. 2004-T-915 was pending with this board under a show cause order, the appellants filed the instant notice of appeal. The notice of appeal, filed on DTE Form 4, referenced the BOR's September 7, 2004 decision and had attached thereto a copy of the BOR's determination of value.

In a letter attached to the notice of appeal, appellants' counsel represents that "[p]ursuant to Ohio Revised Code Section 5715.19, Subsection (A)(3), I am hereby refiling the Notice of Appeal from a Decision of a County Board of Revision to the Board of Tax Appeals on behalf of Eugene & Elvina Tareshawty *** which was previously assigned the Case No. [2004-T-915]." In their response to our show cause order, the appellants further represent that "the submission of the Notice of Appeal to the board of revision should be deemed a permissible refiling as a 'complaint' under the terms of ***" R.C. 5715.19(A)(3). We find the appellants' arguments to be unavailing.

R.C. 5715.19(A)(3) is not applicable to appeals to the BTA. By its terms, R.C. 5715.19(A)(3) purportedly permits the refiling of a complaint with a

county board of revision where “the board of tax appeals, or any court dismisses a complaint *** for the reason that the act of filing the complaint was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law ***.” It does not permit the refiling of the notice of appeal to this board where the underlying complaint has been dismissed under *Sharon Village*, supra.

It is clear from our review of the notice of appeal that the appellants seek to have this board again review the BOR’s September 7, 2004 decision. This we have already done in BTA No. 2004-T-915, and finding the underlying complaint to be jurisdictionally defective, we have remanded the matter to the BOR, with orders to dismiss the complaint.²

Even if we were to review this matter in a light most favorable to the appellants, we would still be constrained to dismiss this appeal. Assuming for the moment that the notice of appeal before us represents an attempt to refile an original complaint with the BOR under R.C. 5715.19(A)(3), then the matter is pending before the BOR; there has been no determination of value under such a complaint upon which an appeal to this board can be based. Thus, this appeal would be considered premature, and the dismissal of the appeal would be proper. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2003-Ohio-4033.

As regards any filing made to the BOR under the auspices of R.C. 5715.19(A)(3), we note that the propriety of such a filing is not before us in the

² The record does not indicate whether the BOR has acted upon our order in BTA No. 2004-T-915.

context of this appeal. We thus cannot speak to such issues raised thereby. We do note, however, that R.C. 5715.19(A)(3) has been found by the Ohio Supreme Court to violate Section 28, Article II of the Ohio Constitution as retroactive legislation. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), 91 Ohio St.3d 308. Therefore, the issue of the constitutionality of re-filing has been considered by the court. See, also, *Rubbermaid, Inc. v. Wayne Cty. Aud.*, 95 Ohio St.3d, 2002-Ohio-2338. As a result, in *Euclid City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 7, 2005), BTA No. 2004-A-394, unreported, we remanded to the BOR a complaint for purposes of dismissing it as an unconstitutional re-filing pursuant to R.C. 5715.19(A)(3). See, also, *Painesville Township Local School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (Dec. 17, 2004), BTA No. 2004-M-921, unreported.

Based upon all of the foregoing, we are constrained to find that the appellants have failed to properly perfect an appeal to the Board of Tax Appeals. Consequently, the board orders that BTA No. 2004-T-1443 be, and the same hereby is, dismissed.

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