

William D. and)	
Catherine P. Turner,)	
)	CASE NO. 98-L-9
Appellants,)	
)	
vs.)	
)	(REAL PROPERTY TAX)
Hamilton County Board of)	
Revision and the Hamilton County)	DECISION AND ORDER
Auditor,)	
)	(Dismissing Appeal)
Appellees.)	

APPEARANCES:

For the Appellants - William D. Turner, Pro Se
790 South Troy Ave.
Glendale, Ohio 45246

For the County Appellees - Joseph T. Deters, Esq.
Hamilton County Prosecuting
Attorney
By: Thomas J. Scheve, Esq.
Assistant Prosecuting Attorney
125 East Court Street, Suite 300
Cincinnati, Ohio 45202

Entered: July 17, 1998

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

This appeal is considered by the Board of Tax Appeals pursuant to the notice of appeal filed herein by the above named Appellants on January 5, 1998. The appeal is taken from a final decision of the Hamilton County Board of Revision (Appellees herein), which determined the value of the subject real property for tax year 1996.

On March 16, 1998, Appellees filed a motion to dismiss Appellants' appeal for lack of jurisdiction, alleging that Appellants had failed to file their notice of appeal within thirty days of the mailing of the decision of the Board of Revision, as required by R.C. 5717.01. Pursuant to assignment and notice duly given, this matter came on for an evidentiary hearing on May 26, 1998. The hearing was expressly limited to the jurisdictional issue raised by Appellees' motion to dismiss. At the hearing, Appellant, William D. Turner, appeared and testified on his own behalf. Appellees appeared through counsel.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the Hamilton County Board of Revision, and the testimony and exhibits presented at the evidentiary hearing held before the Board.

In order to perfect an appeal with the Board of Tax Appeals, an appellant must comply with all of the jurisdictional requirements imposed by the General Assembly. Specifically, in the instant matter, the requirements of R.C. 5717.01 must be satisfied. R.C. 5717.01 provides in part 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 section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, either in person or by certified mail, with

the board of tax appeals and with the county board of revision. ***" (Emphasis added.)

The requirements of R.C. 5717.01 are specific and mandatory in nature. When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. American Restaurant and Lunch Co. v. Glander (1946), 147 Ohio St. 147. The thirty day requirement for filing a notice of appeal from a decision of a county board of revision to the Board of Tax Appeals is mandatory and jurisdictional. Board of Edn. of Mentor v. Bd. of Revision (1980), 61 Ohio St. 2d 322.

In reviewing this statute, the Ohio Supreme Court has held that the failure to timely file a notice of appeal is a jurisdictional defect and warrants dismissal of the case. Austin Co. v. Cuyahoga County Bd. of Revision (1989), 46 Ohio St.3d 192; Hope v. Highland County Bd. of Revision (1990), 56 Ohio St.3d 68. The thirty day time frame for filing an appeal begins to run from the date of mailing the board of revision's decision, made in compliance with R.C. 5715.20, rather than the date of a party's receipt of the decision. Blue Ash Partners v. Hamilton County Bd. of Revision (October 17, 1997), B.T.A. Case No. 95-T-1384, unreported.

In the instant matter, an examination of the statutory transcript establishes that Appellants filed a complaint as to the value of the subject property, being parcel number 596-9-157 on March 7, 1997. Thereafter the County Auditor did an appraisal of the property and recommended to the Hamilton County Board of

Revision ("BOR") that there be no change in the valuation of the subject property. A hearing before the BOR was scheduled and held on September 10, 1997. Thereafter, on October 31, 1997 the BOR rendered its decision granting a reduction to the value of the house on the subject property. Statutory Transcript Exhibit VI. The BOR mailed its decision to the Appellants by certified mail and the same was received by the Appellants on November 1, 1997. Statutory Transcript Exhibit VII.

The Appellants wrote a letter to the BOR dated November 28, 1997 which stated that they were in receipt of the BOR's decision and asked for information regarding the filing of an appeal and the composition of the board that would hear the appeal. This letter was received by the BOR on December 1, 1997, thirty-one days from the date of the BOR's decision. This letter was not sent to the Board of Tax Appeals. The BOR mailed a response that day to the Appellants. On December 28, 1997, the Appellants wrote a second letter to the BOR asking for more information regarding the filing of an appeal. This letter was not sent to the Board of Tax Appeals. Again the BOR mailed a response to the inquiry. Thereafter, on January 5, 1998 and roughly 66 days after the BOR had rendered and mailed its decision, the Appellants filed their appeal with the BOR and with the Board of Tax Appeals.

Appellants assert that they intended to file an appeal but that the information provided on the BOR's decision was incomplete as to what was necessary to file the appeal, and because of that fact, their appeal was not filed timely. While we empathize with the Appellants' inability to have their case heard

on the merits, being an administrative agency, we are constrained to strictly follow the statutes which define our powers. Zephyr Room Inc. v. Bowers (1955), 164 Ohio St. 287; Fineberg v. Kosydar (1975), 44 Ohio St. 2d 1.

Although this result may appear harsh, we note this Board's previous decision in Martinovich v. Montgomery Cty. Bd. of Revision (September 24, 1985), B.T.A. Case No. 82-B-89, unreported, in which this Board held:

"This Board is mindful of the fact that the Appellant elected to proceed on his own behalf as he is surely entitled to do. Nevertheless, whether a party wishing to appeal to this Board acts for himself or through an authorized representative, the action taken must comply with the jurisdictional requirements prescribed by the Ohio General Assembly in order to perfect an appeal in conformity with statutory terms and conditions."

In the instant case, the record before the Board establishes that the BOR rendered its decision on October 31, 1997. The Appellant did nothing to perfect an appeal of the BOR's decision until an inquiry letter dated November 28, 1997 was mailed by the Appellant to the BOR and received on December 1, 1997. This letter was received by the BOR 31 days after the BOR's decision was rendered, and was not also filed with the Board of Tax Appeals. Therefore, although apparently not intentionally, the Appellants failed to timely file their notice of appeal and properly invoke the jurisdiction of the Board of Tax Appeals as required pursuant to R.C. 5717.01.

Upon consideration of the existing record and applicable statutes, it is this Board's determination that the notice of

appeal herein was not filed in a timely fashion and therefore, this Board is without jurisdiction to issue a decision finding value for the subject property. Thus it is the decision and order of the Board of Tax Appeals that the motion to dismiss filed on behalf of the Appellees is hereby granted for lack of jurisdiction in accordance with Ohio Revised Code Section 5717.01, and that the Appellants' appeal must be, and hereby is, dismissed.