

OHIO BOARD OF TAX APPEALS

Global Realty Management,)
)
 Appellant,)
)
 vs.)
)
 Cuyahoga County Board of Revision,)
 Cuyahoga County Auditor and the)
 Shaker Heights Board of Education,)
)
 Appellees.)

CASE NO. 98-S-176
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Peggy Fong
75 West Stonebrook
Orange Village, Ohio 44022

For the County Appellees - William D. Mason
Cuyahoga County Prosecuting Attorney
By: Timothy J. Kollin
Assistant Prosecuting Attorney
Courts Tower, Ninth Floor
1200 Ontario Street
Cleveland, Ohio 44113

For the Shaker Heights - Charles P. Braman, Esq.
Board of Education Charles P. Braman & Co., Inc.
23399 Chagrin Blvd., Suite 102
Beachwood, Ohio 44122

Entered May 26, 2000

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

This appeal is considered by the Board of Tax Appeals pursuant to a notice of appeal filed herein on behalf of Global Realty Management, Inc. (Global). The appeal is taken from a final decision of the Cuyahoga County Board of Revision which

determined the value of the subject real property for tax year 1996.

The subject property is located in the Shaker Heights taxing district, Cuyahoga County, Ohio, and is identified on the auditor's records as parcel number 736-08-071. The Cuyahoga County Auditor determined the true and taxable value of the subject property for tax year 1996 to be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 95,000	\$ 33,250
Building	\$725,000	\$253,750
Total	\$820,000	\$287,000

Subsequently, a complaint was filed with the Cuyahoga County Board of Revision ("BOR") by the Shaker Heights Board of Education, contending that the value of the property should be increased to reflect the February 1996 sale price of \$1,065,000. The BOR determined that the sale price accurately reflected the value of the property and increased the values for tax year 1996 as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 95,000	\$ 33,250
Building	\$ 970,000	\$339,500
Total	\$1,065,000	\$372,750

Appellant contends that the BOR improperly increased the subject property. Appellant contends that the true and taxable value of the subject property as of January 1, 1996 should be that originally assigned by the Auditor, i.e.,:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 95,000	\$ 33,250
Building	\$725,000	\$253,750
Total	\$820,000	\$287,000

An evidentiary hearing was held in this matter on February 7, 2000. No appearance was made by or on behalf of the appellant or BOE at this hearing. The county appellees appeared at this hearing through counsel. Therefore, this matter is considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the Auditor pursuant to R.C. 5717.01 and the record of the evidentiary hearing.

Before turning to the merits of this appeal, we must first address a jurisdictional issue. On April 16, 1998, this Board issued an order requiring the parties to show cause why this Board should not remand this matter to the Cuyahoga County Board of Revision to dismiss the increase complaint filed on the BOE's behalf for tax year 1996. Our order was premised on the Supreme Court's decision in *Sharon Village Ltd. v. Licking Cty. Bd. Of Revision* (1997), 78 Ohio St.3d 479, wherein the Court held in its syllabus: "The preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law."

Subsequently, in *Worthington City School District v. Bd. of Revision of Franklin County, et al.* (1999), 85 Ohio St.3d 15, the Supreme Court discussed its previous holding in *Sharon Village*, stating:

"In *Sharon Village* * * *, we 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.' Thus, an attorney, or the owner of the property, must prepare and file the complaint. * * * ."

"In Case No. 97-1880, *Treneff*, an attorney, *prepared and filed* or caused to be filed the complaint at issue. This satisfies the requirements of *Sharon Village*. The fact that

Ameritech Corporation's property tax manager, Gregory A. Stein, reviewed and signed the prepared complaint is not fatal. Stein simply reviewed the prepared complaint to verify the accuracy of the information contained therein, and he signed the complaint for that same purpose at the direction of Treneff. Stein did not engage in the practice of law. Accordingly, we find that the Franklin County Board of Revision had jurisdiction to consider the complaint by 'Ameritech,' a registered trade name under which Ohio Bell, the property owner, may 'commence * * * an action,' * * * since the complaint was prepared and filed by an attorney on Ohio Bell's behalf. Id. at 158" (Emphasis in original.)

A review of the record in this case establishes that Daniel L. Wilson, Treasurer of the BOE, signed the increase complaint filed on behalf of the BOE. At the evidentiary hearing before this Board, the BOE submitted the affidavit of Charles Braman. In this affidavit, Mr. Braman asserts:

"1. At all times relevant hereto, I was an attorney licensed to practice law in the State of Ohio. I served as tax valuation counsel for the Shaker Heights Board of Education (the 'School Board') and, as a result, I have personal knowledge of the facts stated in this affidavit.

"2. During my representation of the School Board in tax valuation proceedings I prepared all complaints on the valuation of real property that were filed on behalf of the School Board under either Section 5717.19(A) or (B), Ohio Revised Code. Not only have I prepared each complaint for the School Board, I have prepared tax valuation complaints in the same manner for six other boards of education that I have represented in this same capacity over the years.

"3. Attached as Exhibit A to this Affidavit is a copy of the tax valuation complaint that was filed with the Cuyahoga County Board of Revision (the 'BOR') in the Global Realty Management case involving the value of its property located at 19606 – 19636 Van Aken Boulevard for the 1996 tax year (the 'Complaint'). I prepared the Complaint on behalf of the School Board by first instructing my assistant to type the data that I

provided her onto a blank DTE Form 1 and then by reviewing the completed draft Complaint for accuracy.

“4. After assuring that it contained accurate information, I caused the Complaint to be filed by asking my colleague to mail the Complaint to the Treasurer for the Shaker Heights Board of Education for his review and signature before a notary, further instructing the Treasurer to forward the signed and notarized Complaint to the Board of Revision.”

In this case, as in Worthington, an attorney prepared and filed the complaint with the Cuyahoga County BOR. Therefore, as in Worthington, counsel's preparation and filing of the complaint are sufficient to satisfy the requirements of *Sharon Village, Ltd. v. Licking Cty. Bd. Of Revision* (1997), 78 Ohio St.3d 479. See *Edgewater Yacht Club v. Cuyahoga County Board of Revision* (Aug. 12, 1999), *Cuyahoga App. No. 75584*, unreported. Thus, the signature of non-attorney Daniel L. Wilson on the complaint does not render the complaint jurisdictionally defective. Therefore, the Board of Tax Appeals concludes that we have jurisdiction to consider the merits of the appeal before us.

Turning to the merits of this matter, we first note that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn., supra*; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of*

Revision (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn., supra.*

Applying this rationale to the instant matter, it is clear that the burden of persuasion is on Global, as appellant; that is, Global has the burden of providing competent and probative evidence which demonstrates its right to the value sought. Further, in interpreting the meaning of "true value", the Supreme Court has traditionally held that the best evidence of a property's fair market value or "true value in money" for tax purposes is that amount for which the property would sell on the open market between willing parties. *State, ex rel. Park Investment Co., v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In the later case of *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, the Court further expounded upon its view of the use of a sale to establish the fair market value of real property. In paragraph one of the syllabus, the Court stated:

"The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction."

The Court again stressed that the sale price represents the best indication of value in *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543. Therein, the Court stated:

"Nevertheless, we have always insisted that the sale price of an arm's length transaction occurring within a reasonable time of the tax lien date was the value of the property as of the tax lien date." (Citation omitted.)

See, also, *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62

As set forth above, the BOE filed the initial complaint in this matter, seeking an increase in the value of the property to reflect the price paid in the February 1996 sale of the subject property. At the hearing before the BOR, the BOE submitted copies of a general warranty deed indicating that the property transferred from Lawrence C. Schmelzer and Jerome H. Schmelzer to Global Realty Management, Inc. in February of 1996 for \$1,065,000. The BOR determined that the sale price was the best indication of the true value of the subject property.

Once evidence is submitted that an arm's length sale of the subject property has occurred, a rebuttable presumption arises that the sale price reflects the true value of the subject property; and, consequently, a rebuttable presumption exists that the sale has met all the requirements that characterize true value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once this presumption arises, the person contending that the value is other than the sale price is required to rebut the presumption by submitting evidence that the sale was either not an arm's length transaction, or, due to other circumstances surrounding the sale, that the sale price is not indicative of the true value of the subject property as of the tax lien date.

The appellant in this case has failed to appear and present any evidence to this Board relating to the circumstances of the February 1996 sale, or the true value of the subject property. In addition, there is nothing in the record to indicate that the subject sale was not an arm's length transaction. As is their practice, the BOR does not take full minutes of its proceedings. R.C. 5715.08 We cannot determine from the statutory transcript whether any evidence of the circumstances of appellant's purchase of the property, or any claim for reduction in the true value of the property for personal property transferred, was presented to the BOR. Accordingly, we find the appellant has failed to meet its burden of establishing that the sale price paid in the February 1996 transfer of the subject property is not indicative of true value.

Based upon the foregoing, the Board finds from the preponderance of the evidence that the value determined by the BOR, i.e., the price paid in the February 1996

sale of the subject property, is the true value of the property. Accordingly, the true and taxable values of the subject property are as follows for the tax year 1996:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 95,000	\$ 33,250
Buildin g	\$ 970,000	\$339,500
Total	\$1,065,000	\$372,750

It is hereby ordered that the Auditor of Cuyahoga County shall cause his records to reflect the values herein determined and to assess the same in accordance therewith as provided by law. ohiosearchkeybta