

IN THE SUPREME COURT OF OHIO

Cincinnati City School District,  
Board of Education

Case No. 2007-1217

Appellee,

v.

On Appeal from the Ohio  
Board of Tax Appeals  
Case No. 2005-M-1069

Hamilton County Board of Revision,  
Hamilton County Auditor, and the Tax  
Commissioner of the State of Ohio

Appellees,

and

Anchor Lyons Limited Partnership,

Appellant.

---

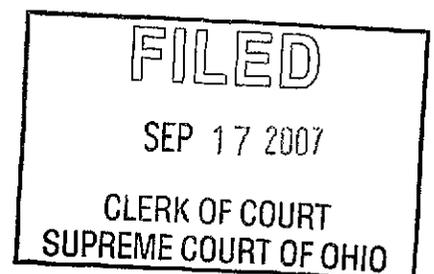
MOTION OF APPELLEE CINCINNATI SCHOOL DISTRICT,  
BOARD OF EDUCATION, TO DISMISS APPEAL

---

David C. DiMuzio (0034428) (COUNSEL OF RECORD)  
Jennifer B. Antaki (0072165)  
DAVID C. DIMUZIO, INC.  
Suite 1900  
1014 Vine Street  
Cincinnati, Ohio 45202  
(513) 621-2888  
Fax No. (513) 345-4449

COUNSEL FOR APPELLEE CINCINNATI SCHOOL  
DISTRICT, BOARD OF EDUCATION

Mark Dann (031514) (COUNSEL OF RECORD)  
Ohio Attorney General  
30 East Broad Street,  
17<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
(614) 466-4320  
Fax No. (614) 466-5087



COUNSEL FOR APPELLEE  
RICHARD A LEVIN, TAX  
COMMISSIONER OF OHIO

Nicholas M.J. Ray (0068664) (COUNSEL OF RECORD)  
Jay P. Siegel (0067701)  
SIEGEL SIEGEL JOHNSON & JENNINGS CO., LPA  
3001 Bethel Road, Suite 208  
Columbus, Ohio 43220  
(614) 442-8885  
Fax No. (614) 442-8880

COUNSEL FOR APPELLANT  
ANCHOR LYONS LIMITED PARTNERSHIP

Thomas J. Scheve (0011256) (COUNSEL OF RECORD)  
Assistant Prosecuting Attorney  
230 East Ninth Street  
Cincinnati, Ohio 45202  
(513) 946-3040  
Fax No. (513) 946-3018

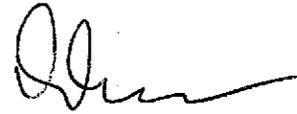
COUNSEL FOR APPELLEES HON. DUSTY RHODES,  
HAMILTON COUNTY AUDITOR AND BOARD  
OF REVISION

**MOTION TO DISMISS**

Now comes Appellee Cincinnati School District, Board of Education, and moves this Court to dismiss Anchor Lyons Limited Partnership's appeal because Appellant failed to comply with the mandatory and jurisdictional requirements of R.C. 5717.04 in that it failed to join the actual property owner, Ballantrae Investments LLC, as an appellee in its notice of appeal to this Court and it failed to serve a copy of its appeal on the property owner as set forth in Columbus City School Dist. Bd. of Educ. v. Franklin Cty. Bd. of Revision (2007), 114 Ohio St.3d 1224.

For the reasons set forth in the attached Memorandum in Support, we respectfully request that the Court dismiss this appeal.

Respectfully submitted,



---

David C. DiMuzio

Counsel for Appellee  
Cincinnati School District,  
Board of Education

## MEMORANDUM IN SUPPORT

Appellant Anchor Lyons Limited Partnership (hereinafter "Anchor Lyons") purchased the subject property, a 14.006-acre parcel of land improved with a Wal-Mart store, on or about October 7, 2004 for the price of \$15,918,900. See Original Complaint. The property is located at 2322 Ferguson Road in the city of Cincinnati and further identified as parcel no. 248-0002-033. Id. Approximately one year later, on or about September 7, 2005, Anchor Lyons sold the property to the current owner, Ballantrae Investments LLC, an unrelated entity, for the price of \$17,800,000. (Tr. at 29).

On March 30, 2005, Appellee Cincinnati School District, Board of Education (hereinafter "BOE") filed an Original Complaint with the Hamilton County Board of Revision for tax year 2004, seeking to increase the true value of the subject property to the earlier sale price of \$15,918,900. The BOR held a hearing on the complaint on July 26, 2005, and rendered its decision that same day. A copy of the BOR's decision was sent to Anchor Lyons on August 1, 2005.

Appellee BOE filed a Notice of Appeal to the Board of Tax Appeals on August 22, 2005. (See Notice of Appeal to the Board of Tax Appeals). At the time the BOE filed its appeal to the BTA, Anchor Lyons had not yet sold the property to Ballantrae Investments LLC. The sale to Ballantrae took place in September 2005. (Tr. at 29).

At the hearing before the BTA, the property owner presented the testimony of Robin Lorms, an appraiser who also testified before the BOR. (Decision at 3). Mr. Lorms testified that the subject property should be valued at \$6,000,000 as of the tax lien date. (Id. at 4). The Hamilton County Auditor presented the testimony of Antoinette Ebert, an appraiser from the Auditor's office. (Id.) Ms. Ebert opined that the subject

property should be valued at \$15,918,900. (Id.) On June 8, 2007, the BTA rendered a decision holding that the sale by which Anchor Lyons acquired the property was an arm's-length transaction and that the sale price of \$15,918,900 was the true value for tax year 2004. (Id. at 11-12)

On July 6, 2007, Anchor Lyons filed a notice of appeal with this Court. Anchor Lyons did not join the property owner, Ballantrae Investments LLC, in the appeal and did not serve a copy of its Notice of Appeal on the current property owner. (See Notice of Appeal of Anchor Lyons Limited Partnership). As noted earlier, the fact of the more recent sale to Ballantrae Investments LLC was known to the parties and discussed in the BTA record. (Tr. at 29).

### **ARGUMENT**

A. Appellant Anchor Lyons Did Not Join the Property Owner as an Appellee in its Notice of Appeal in Violation of the Mandatory and Jurisdictional Requirements of R.C. 5717.04.

Anchor Lyons was required by R.C. 5717.04 to make the property owner, Ballantrae Investments LLC, an appellee in its notice of appeal filed with this Court and to serve a copy of the notice of appeal on the property owner. Anchor Lyons did not satisfy these requirements. Pursuant to the Court's recent decision in Columbus City School Dist. Bd. of Educ. v. Franklin Cty. Bd. of Revision (2007), 114 Ohio St.3d 1224, Appellant failed to properly invoke the jurisdiction of the Court and the appeal must be dismissed. In the Columbus case, this Court concluded that the "person in whose name the property is listed or sought to be listed" as set forth in R.C. 5717.03(B) is the person whom the record shows to be the owner of the property as of the time that the BTA was required to certify its decision. The record of this case shows that, long before the BTA

issued its decision in June 2007, Anchor Lyons sold the property to Ballantrae Investments LLC, whose ownership presumptively continued. (Tr. at 29). As a result, R.C. 5717.04 required joinder of Ballantrae Investments LLC and service of the notice of appeal on that entity.

Because Anchor Lyons did not join the owner as an appellee or serve the notice of appeal on the person the record showed to be the owner, it failed to invoke the jurisdiction of the Court and the appeal should be dismissed for want of jurisdiction.

**CONCLUSION**

Wherefore, Appellee Cincinnati School District, Board of Education, respectfully requests that the Court dismiss the appeal for want of jurisdiction.

Respectfully submitted,



David C. DiMuzio  
DAVID C. DIMUZIO, INC.  
1900 Kroger Building  
1410 Vine Street  
Cincinnati, OH 45202  
(513) 621-2888  
Fax (513) 345-4449

COUNSEL FOR  
APPELLEE CINCINNATI  
SCHOOL DISTRICT,  
BOARD OF EDUCATION

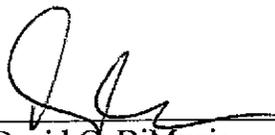
**CERTIFICATE OF SERVICE**

I certify that a copy of the Motion to Dismiss of Appellee Cincinnati School District, Board of Education, to Dismiss Appeal was sent by ordinary U.S. Mail this 14 day of September, 2007 to:

Mark Dann (031514) (COUNSEL OF RECORD)  
Ohio Attorney General  
30 East Broad Street,  
17<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
(614) 466-4320  
Fax No. (614) 466-5087

Nicholas M.J. Ray (0068664) (COUNSEL OF RECORD)  
Jay P. Siegel (0067701)  
SIEGEL SIEGEL JOHNSON & JENNINGS CO., LPA  
3001 Bethel Road, Suite 208  
Columbus, Ohio 43220  
(614) 442-8885  
Fax No. (614) 442-8880

Thomas J. Scheve (0011256) (COUNSEL OF RECORD)  
Assistant Prosecuting Attorney  
230 East Ninth Street  
Cincinnati, Ohio 45202  
(513) 946-3040  
Fax No. (513) 946-3018

  
\_\_\_\_\_  
David C. DiMuzio  
Counsel for Appellee  
Cincinnati School District, Board of  
Education