

ORIGINAL

IN THE SUPREME COURT OF OHIO

Willis Day Warehousing Co.	<b>FILED</b> JAN 20 2010 CLERK OF COURT SUPREME COURT OF OHIO	Case No. <u>10-0115</u>
Appellant,		
vs.		
Wood County Board of Revision, et al.	:	Board of Tax Appeal Case
	:	Nos. 2006-M-1794, 2007-M-868
Appellee.	:	

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

Now comes the Appellant Willis Day Warehousing Co., by and through its counsel and pursuant to Section 5717.04, Ohio Revised Code, gives notice of appeal from the decision of the Board of Tax Appeals dated December 22, 2009, a copy of which is attached to this notice of appeal and is hereby incorporated by reference.

The Appellant alleges the following errors in said decision of the Board of Tax Appeals:

1. The Board of Tax Appeals erred to the prejudice of Appellant when it determined as a matter of law it did not have jurisdiction of Appellant's appeal from a decision of the Wood County Board of Revision pertaining to tax year 2005, and concerning the valuation of Appellant's real property, on the ground that the initial complaint was not timely filed in that Auditor's increase in valuation of the Appellant's property was noticed and imposed after the March 31, 2006 statutory date for filing such appeals for 2005. The unreasonable, and unlawful application of the complaint/appeal provisions pertaining to real property in Chapter 57, Ohio Revised Code, denies Appellant Due Process of law and constitutes a taking of Appellant's property in

violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and the Due Process clauses of the Ohio Constitution.

2. The Board of Tax Appeals erred to Appellant's prejudice in failing to find that the time for filing a complaint with the Board of Revision for tax year 2005 had been tolled by the fact that the change in valuation by the Wood County Auditor was the result of a unilateral, unreasonable and unlawful act of the Auditor in violation of Chapter 319, Ohio Revised Code including but not limited to O.R.C. §319.35 and §319.36.

3. The Board of Tax Appeals erred to Appellant's prejudice in failing to determine that the Auditor's increase in the valuation of Appellant's property was contrary to the provisions of Chapter 319, Ohio Revised Code, and violative of the Due Process and Equal Protection provisions of the Constitution of the United States and the Ohio Constitution in that no certificate of change was issued nor were notices and an opportunity to be heard afforded as required by O.R.C. §5715.12.

4. The Board of Tax Appeals erred to Appellant's prejudice by failing to find that the actions of the Wood County Auditor in increasing the valuation of Appellant's property after the March 31, 2006 filing date without notice and an opportunity to be heard was unconstitutional thereby tolling the effect of the filing date such that Appellant's Complaint to the Board of Revision for tax year 2005 was timely.

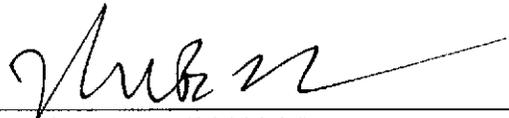
5. The Board of Tax Appeals erred in failing to correct the unlawful actions of Board of Revision and the County Auditor in increasing the valuation of Appellant's property under the Board's statutory authority to oversee the practices of County Auditors and Boards of Revision.

6. The Board of Tax Appeals further erred in holding that a complaint filed after March 31, 2006 as to tax year 2005, which if determined to be void, rendered a complaint timely filed as to tax year 2006 invalid, as such holding violates the Fifth and Fourteenth Amendments of the Constitution of the United States, the Due Process provision of the Ohio Constitution and O.R.C. §5715.12. Said holding further renders O.R.C. §5715.19 unconstitutional on its face and as applied under the Constitution of the United States and the Ohio Constitution as otherwise set forth herein.

7. The Board erred in determining the Appellant's request for documents was moot in that that Request included a demand for documents demonstrating compliance with O.R.C. Sections 319.35 and 319.36 relative to changing valuations.

For all of the above reasons the Decision of the Board of Tax Appeals must be reversed.

Respectfully submitted,



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Ronald B. Noga (0013345)  
1010 Old Henderson Road, Suite 1  
Columbus, Ohio 43220  
614/326-1954  
Attorney for Appellant

CERTIFICATE OF FILING AND SERVICE

This is to certify a copy of this Notice of Appeal was also filed with the Ohio Board of Tax Appeals this 20 day of January, 2010 and was served by certified mail on January 14, 2010 on the following parties:

Wood County Board of Revision  
One Courthouse Square  
P. O. Box 368  
Bowling Green, Ohio 43402

Wood County Auditor  
One Courthouse Square  
P. O. Box 368  
Bowling Green, Ohio 43402



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Ronald B. Noga

**OHIO BOARD OF TAX APPEALS**

Willis Day Warehousing Co., )  
 )  
 Appellant, )  
 )  
 vs. ) (REAL PROPERTY TAX)  
 )  
 ) DECISION AND ORDER  
 Wood County Board of Revision and the )  
 Wood County Auditor, )  
 )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Ronald B. Noga, Esq.  
1010 Old Henderson Road, Suite 1  
Columbus, Ohio 43220

For the County Appellees - Raymond C. Fisher  
Wood County Prosecuting Attorney  
James Gorry, Special Prosecutor  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215

Entered **DEC 22 2009**

Ms. Margulies and Mr. Johrendt concur; Mr. Dunlap concurs separately.

On September 16, 2008, the Board of Tax Appeals sought input from the parties regarding potential jurisdictional issues affecting the above-captioned appeals. Counsel for the appellant responded to the issues. The board also held an evidentiary hearing. This matter is now considered upon the "show cause" order, the responses thereto, and the record of the hearing held.

The notice of appeal in BTA No. 2006-M-1794 and the statutory transcript submitted by the Wood County Auditor as secretary of the Wood County

Board of Revision (“BOR”) called into question the jurisdictional validity of that appeal, as the original complaint was not filed in accordance with the law. The record also calls into question the jurisdictional validity of BTA No. 2007-M-868. When a complaint for an earlier year in a triennial period is filed, a subsequent complaint may not have jurisdictional validity even if the earlier complaint is also found to be jurisdictionally deficient.

R.C. 5715.19 sets forth the requirements for the filing of a complaint with a county board of revision:

“(A)(1) \*\*\* a complaint against any of the following determinations for the current tax year<sup>1</sup> shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year:

\*\*\*

“(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code[.]”

The record supports a finding that the complaint which was the genesis of BTA No. 2006-M-1794 and challenged value for tax year 2005 apparently was filed on August 8, 2006, well after the time period provided by R.C 5715.19(A)(1). The appellant argues, however, that the appeal period should be tolled because actions of the Wood County Auditor created a situation in which it was physically impossible

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<sup>1</sup> The relevant triennium for Wood County includes tax years 2005, 2006 and 2007. The complaint which was the genesis of BTA No. 2006-M-1794 challenged value for tax year 2005. The complaint which was the genesis of BTA No. 2007-M-868 challenged value for tax year 2006.

to meet the time limitations provided by statute.

The facts as deduced from the record are as follows: The appellant, Willis Day Warehousing Co. ("Willis Day"), is the owner of certain property located in Wood County. The property in question is subject to a "Current Agricultural Use Valuation" ("CAUV") adjustment. The CAUV adjustment was in existence at the time the first tax bill for tax year 2005 was issued. After that tax bill was issued, the auditor's staff realized the CAUV deduction applied to Willis Day's assessment was not correct because of changes made by a recent software conversion. S.T. BTA No. 2006-M-1794, Ex. E. The auditor's staff corrected the error prior to the issuance of the second-half tax bill. *Id.*

Willis Day received notice of the valuation correction through its second-half bill. After some discussion with the Wood County Auditor, Willis Day filed a complaint challenging the valuation change. S.T. BTA No. 2006-M-1794 Complaint, Cover letter. The BOR considered the complaint, concluding that the auditor's value was correct and Willis Day did not provide sufficient evidence to support a change in value. *Id.* Ex. E. An appeal to this board followed.

A review of the record before this board caused us to question the validity of the BOR's actions. The requirements of R.C. 5715.19 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. *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147.

Therefore, the BOR's first action should have been to question its own jurisdiction.

Willis Day claims, however, that the BOR's actions were lawful because case law permits it to file outside the time prescribed by R.C. 5715.19. Willis Day first claims that the auditor's failure to provide notice in sufficient time for the corporation to timely file a real property valuation complaint permits a tolling of the period during which complaints may be filed. In support of this claim, Willis Day cites *Slone v. Bd. of Embalmers and Funeral Directors of Ohio* (1995), 107 Ohio App.3d 628, and *Knickerbocker Properties Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192. Neither case is apposite.

The gravamen in *Slone* was the failure to serve a determination directly upon the party affected. The Ohio Board of Embalmers and Funeral Directors revoked the license of the appellant in *Slone*, but mailed notice of the revocation by certified mail only to the appellant's counsel. In that case, the appellate court concluded that the 15-day period during which the appellant could have appealed did not begin to run until notice was sent directly to him.<sup>2</sup> In *Knickerbocker*, the board of revision failed to provide proper notice to the property owner of a complaint filed against the property owner. The court held that jurisdiction was proper because the requirements of the statute had been met. However, the court's decision is applicable to this appeal:

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<sup>2</sup> The holding in *Slone* is consistent with the Ohio Supreme Court's holding in *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, wherein the court concluded when a county board of revision's decision had not been mailed to all persons identified by former R.C. 5715.20, the filing of a notice of appeal with this board was premature.

“When a *statute* specifically requires a litigant to perform certain acts in order to invoke the jurisdiction of an administrative tribunal (or the jurisdiction of a court to review an administrative decision), the performance of such acts usually constitutes a prerequisite to the tribunal’s jurisdiction. See *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, \*\*\*, paragraph one of the syllabus; *Zier v. Bur. of Unemp. Comp.* (1949), 151 Ohio St. 123, \*\*\*, paragraph one of the syllabus. By contrast, this case involves the manner in which the BOE filled out the valuation complaint form prescribed by the Tax Commissioner. Knickerbocker does not cite any statute that requires the complainant to provide an address.” *Id.* at ¶10. (Emphasis sic, parallel citations omitted.)

In the present appeal, R.C. 5715.19 specifically requires that a complaint challenging valuation must be filed by March 31 of the ensuing year. In this matter, the complaint was not filed until August 9 of the ensuing year. Therefore the complaint was untimely.

This is not the board’s first opportunity to consider this issue. In *Edgewater Yacht Club v. Cuyahoga Cty. Bd. of Revision* (June 29, 2001), BTA No. 1997-R-369, unreported, the auditor increased the value of certain property in the second year of a triennium and at the same time included within the tax bill a retroactive increase for the first year of the triennium. The property owner was made aware of the increase when it received its tax bill for the second year. The property owner challenged value for both the first year and the second year of the triennium. As to the jurisdictional validity of the challenge of value for the first year of the triennium, the board held:

“The jurisdiction of the BOR and this Board is established by statute. \*\*\* R.C. 5715.19(A)(1) provides that:

“\*\*\* a complaint against any of the following determinations for the **current tax year** shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year:

“(d) The determination of the total valuation or assessment of any parcel that **appears on the tax list** \*\*\*’

(Emphasis added.)

“Thus, according to the statute, a county board of revision is vested with jurisdiction to consider complaints filed only for the ‘current tax year’ if they are timely filed by March 31 of the subsequent year.

“Edgewater filed its complaint on February 7, 1996. (S.T. Exh. A) Therefore, pursuant to R.C. 5715.19(A)(1), the BOR was not empowered to decide value for 1994, only 1995.\*\*\* This proposition is further supported by the case law. *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 14, 2000), B.T.A. Nos. 97-M-960 and 961, unreported; *Fiery v. Lucas Cty. Bd. of Revision* (Sept. 10, 1993), B.T.A. No. 91-R-698, unreported; *Hunt v. Lorain Cty. Bd. of Revision* (Apr. 8, 1988), B.T.A. No. 86-D-709, unreported.” Id. at 3.

In a footnote, the board held:

“The Board acknowledges that the 1995 tax bill was the first notice Edgewater had of a change in the value of the yacht basin for 1994. There may exist an alternative remedy under such circumstances. See R.C. 2723.01.” Id. Footnote 6.

Willis Day also argues that the changes made to the tax duplicate were unlawful. We are unable to reach the substance of the claim, as we must find that the

BOR lacked jurisdiction to consider the matter.

As to the jurisdictional validity of BTA No. 2007-M-868, Willis Day timely filed a complaint challenging value of the same properties for the 2006 tax year. S.T., BTA No. 2007-M-868, Ex. 1. The BOR effectively dismissed the appeal, acknowledging the complaint filed in the earlier year, and stating “Pursuant to ORC 5715.19A(2) a complaint shall not be filed more than once within that three year period [since the last appraisal].” S.T., BTA No. 2007-M-868, Ex. E.

The BOR was correct. In *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision* (1998), 81 Ohio St.3d 683, the Ohio Supreme Court rejected the contention that a subsequent complaint filed within the same triennium was jurisdictionally valid when the initial complaint was dismissed as defective. The BTA found that when an initial complaint is jurisdictionally invalid and void ab initio, that complaint did not rise to a “filing” that would invoke the prohibition against a second filing as set forth in R.C. 5715.19(A)(2). The court held otherwise.

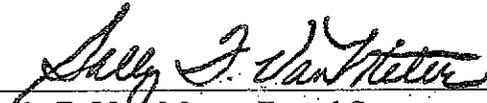
Therefore, this board must find that neither complaint filed with the BOR effectively lodged jurisdiction in that body. The complaint filed in BTA No. 2006-M-1794 was untimely, but, even jurisdictionally defective, served as a bar to the filing of another complaint by Willis Day during the triennium. Therefore, BTA No. 2006-M-1794 is remanded to the BOR with instructions to dismiss the complaint. The

board affirms the actions taken by the BOR in BTA No. 2007-M-868.<sup>3</sup>

Mr. Dunlap concurs.

I reluctantly concur with the decision dismissing the complaint. The outcome highlights the Board of Tax Appeals' lack of authority to apply the fairness principles of equity to a factual situation requiring a resolution other than the foregoing dismissal.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Sally F. Van Meter, Board Secretary

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<sup>3</sup> The board notes that counsel for Willis Day filed a motion to compel discovery on August 28, 2008. At the evidentiary hearing held on October 30, 2008, counsel for the county appellees sought an additional 10 days to respond to the discovery. The additional time was granted. Through his written brief in support of jurisdiction, counsel informed the board that the discovery was answered but there remained an issue as to an unfulfilled request for the production of certain documents. Our cursory review of the discovery requests revealed sufficient delineation of the issues through the interrogatories. Therefore, the failure to respond to the production requests is deemed, in this instance, moot.