

IN THE SUPREME COURT OF OHIO

JOHN E. KAISER, et al., : Case No. 2012-0630
Appellant, : On Appeal from the Franklin County
v. : Court of Appeals, Tenth Appellate
Judicial District.
FRANKLIN COUNTY AUDTOR, et al., :
Appellees : Court of Appeals
Case No. 10 AP-909

**APPELLEES' FRANKLIN COUNTY BOARD OF REVISION AND FRANKLIN
COUNTY AUDITOR'S MEMORANDUM IN OPPOSITION TO JURISDICTION**

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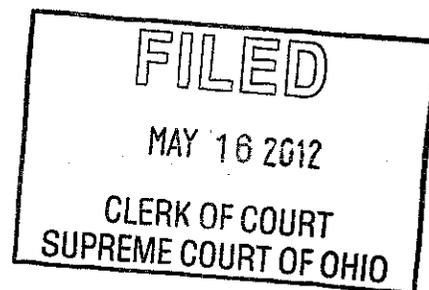


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I. STATEMENT IN OPPOSITION TO JURISDICTION

The Appellants have framed this case as one where the Franklin County Auditor and Franklin County Board of Revision have used a listing price as evidence of true value of real property. The record reflects a different set of facts, however.

The record reflects conflicting evidence presented by the Appellants concerning the true value of their home. For example, Ms. Kaiser testified under oath that an appraisal exists that values the subject property at \$800,000 (Tr. pg. 16 lines 21-22). At the same time, the Appellants were requesting a value of \$550,494 based on their own unique, superficial and poorly conceived comparable sales analysis.

The record also reflects a complete lack of competent, probative evidence to support the Appellants' requested value reduction. The Appellants' comparable sales analysis was not performed in compliance with the Uniform Standards of Professional Appraisal Practice. This conflicting and poor evidence gave rise to a determination by the BOR and Court of Common Pleas and upheld by the Court of Appeals that the Appellants did not meet their burden of proof. The result was that the Auditor's value was upheld as the default value.

This is a fact sensitive case and in this way it is no different than any other board of revision case heard many times every day in Ohio. The Appellants failed to prove with probative, competent evidence, the value that they were requesting.

If it was true that the listing price was used as definitive evidence of true value, the BOR and Court of Common Pleas would have determined value in line with the listing price. However, this was not done.

Therefore, the Appellants have simply misconstrued the facts of this case in an attempt to raise a substantial constitutional question or an issue of public or great general interest.

This case surely does not stand for the proposition that “property owners can be taxed based upon their own assessment of the property’s value as reflected in a listing price”. (Memorandum in Support of Jurisdiction p. 1) The exact listing price is not even a part of the record. The BOR decision simply turned on what most BOR decisions turn on- the burden of proof. The parade of horrors that Appellants pose as resulting from their imaginary version of the actual legal decision is thus laughable.

Ultimately, the BOR decision boiled down to the inability of the Appellants to prove their case. Now the Appellants are attempting to expand their factual failings and their personal grievances into a constitutional matter.

II. STATEMENT OF THE CASE AND FACTS

The Franklin County Board of Revision’s decision was to “no-change” the Franklin County Auditor’s tax year 2008 true value of parcel 222-001234 of \$775,000. The BOR’s decision was based on the failings of the Appellants to prove their value with competent, probative evidence. Both the Franklin County Court of Common Pleas and the Franklin County Court of Appeals upheld the decision of the Franklin County Board of Revision.

III. ARGUMENT IN RESPONSE TO APPELLANTS’ PROPOSITIONS OF LAW.

Proposition of Law No. 1: A board of revision is correct in “no-changing” an auditor’s value when the complainants fail to present probative and competent evidence in support of their requested value.

The BOR decision was based on the Appellants inability to prove their value. This was due to the lack of competent, probative evidence as to their requested true value. A listing price is among the pieces of evidence that lacks competence and probativeness. *Schindler v. Cuyahoga Cty BOR et. al.* (May 8, 2012), BTA 2011-Q-1147. Because there was no competent, probative evidence of value presented by the Appellants, the BOR defaulted to the Auditor's original true value for tax year 2008.

A party who asserts a right to an increase or decrease in the value of real property has the burden to prove its right to the value asserted. *Cleveland Bd. of Edn v. Cuyahoga Cty Bd. of Revision* (1994), 68 Ohio St. 3d 336. 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.*

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there was a burden of persuasion that rested with the Appellants to convince the trial court that they were entitled to the value which they sought. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 325

The Appellants' Proposition of Law therefore is based on a faulty premise and is merely an attempt to reframe the actual decision as upheld by both the Franklin County Court of Common Pleas and the Franklin County Court of Appeals.

The BOR "no-changed" the Auditor's value of \$775,000 for tax year 2008. If the BOR was going to value the subject property in line with the listing price, it would have

probed more carefully what that listing price was, (something more precise than the vague “low \$700’s”) and given the property the same value as that listing price. The BOR did not do this, and in fact, it does not seem that the exact listing price is to be found in the record at all.

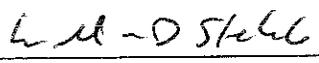
It is well established that “an offering for sale is not a definitive indicator of value” *Lewis A. and Marjorie E. Rankin v. Ottawa Co. Board of Revision, et al.* (June 30, 1992), B.T.A. Case No. 89-B-473, unreported. The BOR, the Court of Common Pleas and the Court of Appeals all recognized this legal principle and the record does not reflect that any tribunal considered a listing price as a definitive indicator of value. In fact, as mentioned above, the listing price is not even definitively determined in the record, how it could be used as a “definitive indicator of value” is therefore a mystery.

CONCLUSION

For the reasons set forth herein, Appellees Franklin County Auditor and Franklin County Board of Revision respectfully request that this Court decline jurisdiction of this matter for the reasons set forth herein.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Memo In Opposition to Jurisdiction was served upon:

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by regular U.S. mail, postage prepaid, this 16th day of May 2012

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