

ORIGINAL

IN THE SUPREME COURT OF OHIO

L. J. SMITH, INC.

Appellant,

vs.

AUDITOR AND BOARD OF
REVISION OF HARRISON
COUNTY, OHIO, *ET AL.*,

Appellees.

Case No. 13-0934

On Appeal from the
Ohio Board of Tax Appeals

B.T.A. Case No. 2011-W-611

NOTICE OF APPEAL OF APPELLANT
L. J. SMITH, INC.

J. Kevin Lundholm (# 0030393)
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OF EDUCATION

FILED

JUN 10 2013

CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED

JUN 10 2013

CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Appeal of Appellant, L. J. Smith, Inc.

Pursuant to S. Ct. Prac. R. 2.3(A)(1), notice is hereby given that Appellant, L. J. Smith, Inc., hereby appeals to the Supreme Court of Ohio from the order entered in this action on the 9th day of May, 2013. A copy of this decision is attached.

Appellant claims the errors which follow:

1. The Board unreasonably or unlawfully decided that the Harrison County Auditor properly performed his duties, despite evidence to the contrary.
2. The Board unreasonably or unlawfully failed to remand the matter for proceedings consistent with Ohio Revised Code Chapter 5715, specifically for the Harrison County Board of Revision to hold an evidentiary hearing.

A written demand for a record of the proceedings has been filed with the Ohio Board of Tax Appeals, pursuant to R.C. 5717.04.

Respectfully submitted,



J. Kevin Lundholm (# 0030393)

Kyler, Pringle, Lundholm & Durmann, L.P.A.

COUNSEL FOR APPELLANT, L. J. SMITH, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal was served, via certified mail, return receipt requested, on this 1st day of June, 2013, upon the following:

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*Counsel for Appellee, Conotton Valley Union Local
School District Board of Education*



J. Kevin Lundholm (# 0030393)

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COUNSEL FOR APPELLANT, L. J. SMITH, INC.

OHIO BOARD OF TAX APPEALS

L.J. Smith, Inc.,)
)
Appellant,) (CASE NOS. 2011-W-611
) (REAL PROPERTY TAX)
vs.)
) DECISION AND ORDER
)
Harrison County Board of Revision,)
Harrison County Auditor and Conotton)
Valley Union Local School District Board)
of Education,)
)
Appellees.)

APPEARANCES:

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Entered **MAY 09 2013**

Mr. Williamson and Mr. Johrendt concur.

This matter came to be considered by the Board of Tax Appeals upon the filing of what we have interpreted as a motion to remand with instructions to vacate the board of revision’s decision to reduce the true and taxable values of the subject properties. By way of the motion, the Conotton Valley Union Local School District Board of Education (“BOE”) argues that the appellant failed to file a formal complaint

with the board of revision and that the board of revision lacked jurisdiction to issue a decision reducing the values of the subject properties. In support of its position, the BOE submitted an affidavit from Patrick Moore, Harrison County Auditor, averring that the appellant never filed a complaint contesting the valuations of the subject properties. The appellant argues that it did, in fact, file a complaint seeking reductions to the subject properties' values with the county board of revision; however, the appellant concedes that the board of revision may not have satisfied its statutory duties to provide notice of the complaint to the affected board of education and to provide the parties an opportunity to be heard on the complaint. Therefore, instead of vacating the board of revision's decision, the appellant argues that the case should be remanded for proceedings consistent with statutory requirements. In support of its position, the appellant submitted an affidavit from Amy Guy, Chief Financial Officer at L.J. Smith, Inc., averring that she did, in fact, submit a complaint challenging the subject properties' valuations. The county appellees have failed to respond to the motion within the period for doing so established by the board's rules.¹ See Ohio Adm. Code 5717-1-12(B). Based upon the record before us, we conclude that the board of revision lacked jurisdiction to issue a decision reducing the subject properties' values.

The board of education's motion is premised upon relevant portions of R.C. 5715.13 and R.C. 5715.19. R.C. 5715.13 provides, in relevant part, that:

“the county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written

¹ On February 25, 2013, this board issued an order requiring the board of revision to certify a copy of the transcript as required by R.C. 5717.01.

application therefor, verified by oath and signature, showing the facts upon which it is claimed such decrease should be made.”

R.C. 5715.19(A)(1) further provides that “a complaint * * * shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year.” More specifically, R.C. 5715.19(B) provides for the following:

“Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner’s spouse, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education; a property owner * * * may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.”

The limited record before us demonstrates the following. On November 4, 2010, representatives of the parties to this litigation discussed the values of the subject properties at an “informal meeting.” On March 15, 2011, the board of revision issued a “final appealable order” reducing the subject properties’ values and this appeal ensued.

However, nothing in the record demonstrates that the appellant did, in fact, file a complaint with the board of revision as required by R.C. 5715.19. Although the appellant provided the affidavit of Ms. Guy averring that she filed a complaint

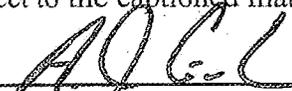
contesting the subject properties' values and attached a copy of a complaint to its motion in opposition, said complaint does not contain a stamp demonstrating that it was actually filed with the board of revision. In addition, the county auditor provided an affidavit averring that "[t]he Complaint Against the Valuation of Real Property that is [] alleged to have been filed by L.J. Smith, Inc. was never filed with my office." Board of Education's Response at Affidavit of Patrick Moore.

We note the disagreement between Ms. Guy and Mr. Moore about whether the appellant filed a complaint challenging the subject properties' values and do not doubt that they are both telling the truth as they know it. However, as the Supreme Court has stated, "[t]he rule is generally accepted that, in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner. All legal intendments are in favor of the administrative action.' ****" *Cedar Bay Constr., Inc. v. Fremont* (1990), 50 Ohio St.3d 19, 21. (Citations omitted.) See, also, *Wheeling Steel Corp. v. Evatt* (1944), 143 Ohio St. 71, paragraph seven of the syllabus; *Zalud Oldsmobile Pontiac, Inc. v. Tracy* (1996), 77 Ohio St.3d 74; *Althof v. Ohio State Bd. of Psychology*, Franklin App. No. 05AP-1169, 2007-Ohio-1010, at ¶35. Compare, *Consolidated Freightways, Inc. v. Summit Cty. Bd. of Revision* (1986), 21 Ohio St.3d 17.

Accordingly, we conclude that the appellant failed to file a complaint seeking reductions to the subject properties' values and, as a consequence, the board of

revision lacked jurisdiction to decrease the subject properties' values. Therefore, we remand this case to the board of revision with instructions to vacate its decision dated March 15, 2011 and to reinstate the county auditor's values.

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.



A.J. Groebey, Board Secretary