ORIGINAL

IN THE SUPREME COURT OF OHIO

CHARLES F. AND CHRISTINA E. GINTER,	:	
Appellees,	:	Case No. 13-1710
v.	:	Appeal from the Ohio Board of Tax Appeals BTA Case No. 2013-Y-1782
AUGLAIZE COUNTY AUDITOR AND AUGLAIZE COUNTY BOARD OF REVISION,	:	
Appellants,	:	
TAX COMMISSIONER OF OHIO,	:	
Appellee.	:	

NOTICE OF APPEAL OF THE AUGLAIZE COUNTY AUDITOR AND AUGLAIZE COUNTY BOARD OF REVISION

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The Honorable Mike DeWine (0009181)
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Charles F. and Christina E. Ginter
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Appellees

Rami Awadallah (0079468)
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CLERK OF COURT
SUPREME COURT OF OHIO

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BOARD OF TAX APPEALS

FILED
OCT 31 2013
BOARD OF TAX APPEALS
COLUMBUS, OHIO

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CHARLES F. AND CHRISTINA E. GINTER,	:	
	:	Case No. _____
Appellees,		
	:	
v.		Appeal from the Ohio Board of Tax Appeals
	:	BTA Case No. 2013-Y-1782
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	:	
Appellants,		
	:	
TAX COMMISSIONER OF OHIO,		
	:	
Appellee.		

NOTICE OF APPEAL OF THE AUGLAIZE COUNTY AUDITOR AND AUGLAIZE COUNTY BOARD OF REVISION

Now come Appellants Auglaize County Auditor and Auglaize County Board of Revision and give notice of their appeal to the Supreme Court from the decision of the Ohio Board of Tax Appeals in the case of *Charles F. & Christina E. Ginter v. Auglaize Cty. Bd. of Revision, et al.*, BTA Case No. 2013-Y-1782, rendered on October 2, 2013, a copy of which is attached hereto as Exhibit B. The Errors complained of are set forth herein as Exhibit A.

Respectfully Submitted,

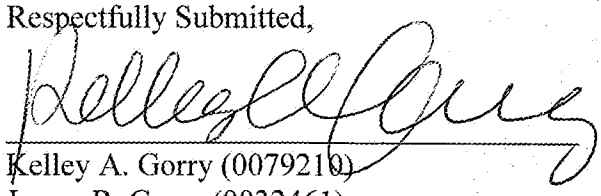

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EXHIBIT A – STATEMENT OF ERRORS

The decision of the Ohio Board of Tax Appeals (the "BTA") was unreasonable and unlawful for the following reasons:

(1) The BTA erred in failing to affirm the dismissal of the complaint by the Board of Revision (the "BOR") when having been duly notified of the hearing, neither Appellees nor their counsel appeared for the BOR hearing.

(2) The BTA erred in failing to apply this Court's directive in *LCL Income Properties v. Rhodes*, 71 Ohio St. 3d 652, 646 N.E.2d 1108 (1995) that requiring a taxpayer to appear at the hearing in support of a complaint is a reasonable procedural requirement.

(3) The BTA erred in assuming jurisdiction over the value of the subject property when the only issue on appeal was the propriety of the BOR's dismissal for failure to prosecute.

(4) The BTA erred in usurping the original jurisdiction of the BOR to issue a decision upon the value of the subject property arising from Appellees' complaint pursuant to R.C. 5715.11 and R.C. 5715.19.

(5) The BTA erred in directing the BOR to value the subject property in accordance with a sale price when the record does not contain any admissible or competent and probative evidence of the sale.

(6) The BTA erred in impliedly holding that a presumption of value arises when Appellees filed a complainant based upon their purchase of the subject property.

(7) The BTA erred in holding that Appellees are entitled to the benefit of a presumption of value from a sale in which they were a party and possess all relevant information regarding the sale and fail to appear at the BOR hearing to testify regarding the sale.

(8) The BTA erred in impliedly holding that Appellees' presentation of unauthenticated and inadmissible hearsay documents creates a rebuttable presumption of value.

(9) The BTA erred in impliedly holding that Appellees' presentation of a settlement statement creates a rebuttable presumption of value.

(10) The BTA erred in holding that a presumption of value applies to a sale for which the record is devoid of any evidence regarding the arm's-length nature of the sale.

(11) The BTA erred in holding that there was evidence in the record to support a finding that the sale was a "facially valid sale."

(12) The BTA erred in failing to hold that a presumption of the arm's-length nature of the sale can arise only when the property owner presents with the BOR with the actual facts relating to the sale in the form of competent and probative evidence.

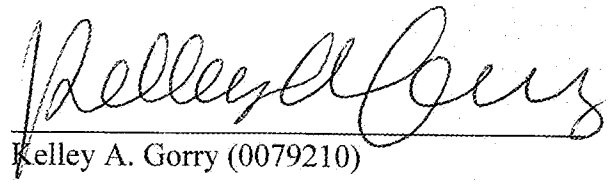
(13) The BTA erred in impermissibly shifting the original burden of proof from Appellees as Appellants are effectively incapable of rebutting the presumption accorded the sale when Appellees fail to appear at the BOR hearing.

(14) The BTA's decision violates the provisions of R.C. 5715.01, which require that true value must be based on the "facts and circumstances relating to the value of the property," when there are no such facts and circumstances in the record before the BTA.

(15) The BTA erred in failing to hold that Appellees bore the burden of proving that the sale of the subject property from Federal National Mortgage Association (aka Fannie Mae) was voluntary pursuant to this Court's decision in *Columbus City Sch. Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St. 3d 529, 2012-Ohio-5680, 983 N.E.2d 1285 (2013).

PROOF OF SERVICE ON BOARD OF TAX APPEALS

I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon the Clerk of the Board of Tax Appeals as evidenced by its filing stamp set forth hereon.



Kelley A. Gorry (0079210)

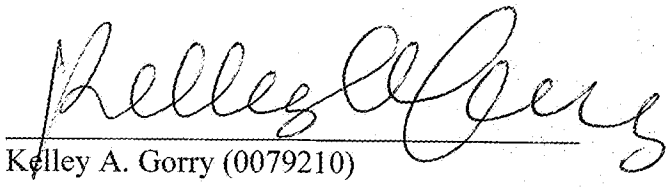
CERTIFICATE OF SERVICY BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served by certified mail, postage prepaid, with return receipt requested, this 31st day of October, 2013, upon:

Charles F. and Christina E. Ginter
133 North Augustus Street
St. Marys, OH 45885
Appellees

Rami Awadallah, Esq.
P.O. Box 361771
Cleveland, OH 44136
Attorney for Appellees before Board of Revision

The Honorable Mike DeWine, Esq.
Ohio Attorney General
30 East Broad Street, 17h Floor
Columbus, OH 43215
Attorney for Appellee Ohio Tax Commissioner



Kelley A. Gorry (0079210)

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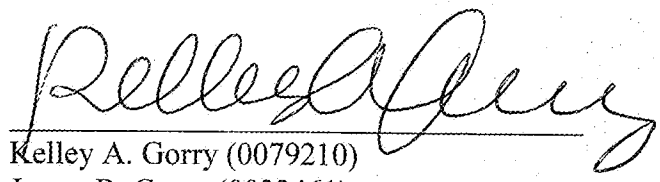
CHARLES F. AND CHRISTINA E. GINTER, et al.,	:	
	:	Case No. _____
Appellees,	:	
v.		Appeal from the Ohio Board of Tax Appeals
	:	BTA Case No. 2013-Y-1782
AUGLAIZE COUNTY AUDITOR AND AUGLAIZE COUNTY BOARD OF REVISION,	:	
	:	
Appellants,	:	

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

The Appellant, who has filed a notice of appeal with the Supreme Court of Ohio, makes this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case of *Charles F. & Christina E. Ginter v. Auglaize Cty. Bd. of Revision, et al.*, BTA Case No. 2013-Y-1782, rendered on October 2, 2013, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully Submitted,



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Attorneys for Appellants Auglaize County Auditor and Board of Revision

EXHIBIT B

OHIO BOARD OF TAX APPEALS

Charles F. & Christina E. Ginter,	)	CASE NO. 2013-Y-1782
	)	
Appellants,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Auglaize County Board of Revision and the Auglaize County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellants - Charles F. & Christina E. Ginter
P.O. Box 361771
Cleveland, Ohio 44136

For the County Appellees - Edwin A. Pierce
Auglaize County Prosecuting Attorney
Kelley A. Gorry, Special Prosecuting Attorney
Rich & Gillis Law Group
6400 Riverside Drive, Suite D
Dublin, Ohio 43017

Entered OCT 02 2013

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

This matter is before the Board of Tax Appeals upon the county appellees' motion to affirm the decision of the Auglaize County Board of Revision ("BOR"), in which it dismissed the appellants' complaint due to their failure to appear at a hearing to prosecute the complaint. Although an apparent response to the county appellees' motion was received by this board, it does not appear that it was served on the opposing parties as it did not include proof of service.[1] As the filing does not

[1] On August 6, 2013, a filing was received by this board with a cover page stating, "Enclosed is supporting evidence of a proper waiver of appeareance [sic] before the board of revision for a previously filed BTA case." Included in the packet of information was a purported waiver of appearance before the May 30, 2013 BOR hearing, which was apparently prepared by attorney Rami Awadallah and dated May 15, 2013. Because it appeared from the face of the documents that the filing had not been served on the county appellees, this board provided a copy to appellees' counsel of

identify the party offering it or include a proof of service on opposing parties, we decline to consider the documents and affirmations contained therein. See Ohio Adm. Code 5717-1-5.[2] Therefore, this matter is now considered upon the notice of appeal, the statutory transcript certified to this board by the BOR, and the appellees' motion.

The record shows that on March 21, 2013, the appellants filed a complaint with the BOR requesting a decrease in the value of certain real property, i.e., parcel number K32-014-043-00, for tax year 2011. On their complaint, the appellants indicated that the property sold within the last three years. The parties also provided evidence of the sale, which showed that the property transferred on October 8, 2010 for $99,900 in an apparent arm's-length transaction. On May 6, 2013, notice was sent to the appellants advising that the matter would be heard by the BOR on May 30, 2013.

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record. In response, appellees' counsel asserted that the BOR had not received a copy of the purported waiver prior to the hearing and included the auditor's fax receipt log to support this assertion. Counsel provided a copy of this correspondence to the appellants and Tax Compliance Services, though the organization was not a party to the case. On August 21, 2013, this board received a filing from Tax Compliance Services, though it was not clear as to whether this filing was served on opposing parties as no certificate of service was included, indicating as follows: "No Waiver Was Sent To The BOR For This Property. Rami Awadallah Did Not Prepare The Original Complaint Therefore No Waiver Was Filed. Rami Awadallah Did Prepare A Waiver For All Of The Auglaize County Properties Including This Property Which Was Kept In Our Records And Inadvertently Included With The BTA Case Files. Please Accept Our Apologizes [sic]."

[2] In pertinent part, Ohio Adm. Code 5717-1-5 provides:

> "(A) Unless otherwise ordered by the board or an attorney examiner, a copy of all motions or pleadings, briefs, papers and other documents filed with the board subsequent to the notice of appeal shall be served upon the counsel of record or the parties, if not represented by counsel, at the time of filing.
>
> "(B) All motions or pleadings, briefs, papers and other documents shall contain a certificate of service indicating that the required service has been made, the manner in which service was made, and the names and addresses of the parties or counsel of record upon whom service was made."

When the appellants failed to attend the hearing, the BOR dismissed the complaint for failure to prosecute. From this decision, the appellants filed the instant appeal.

We acknowledge that a board of revision has the discretion to dismiss a complaint when a complainant fails to appear at a duly scheduled hearing, see, e.g., *LCL Income Properties v. Rhodes* (1995), 71 Ohio St.3d 652. Such discretionary authority, however, is not without limits, see, e.g., *Snavely v. Erie Cty. Bd. of Revision* (1997), 78 Ohio St.3d 500. Additionally, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. Further, the Supreme Court has held that upon the presentation of basic evidence of the sale and the sale price, "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, 327. Typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13.

Recognizing the utility of a sale in determining the value of real property, the aforementioned presumptions generally accorded a sale, and the affirmative burden borne by a party opposing such sale, we find that a dismissal is improper where facially valid sale appears in the record.

Based upon the foregoing, we find that the BOR improperly dismissed the complaint in this matter. Accordingly, it is the order of the Board of Tax Appeals

that the decision of the BOR must be, and hereby is, reversed. Additionally, we direct the BOR to value the subject property in accordance with the sale amount.

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. Groeber, Board Secretary