ORIGINAL

IN THE SUPREME COURT OF OHIO

L. J. SMITH, INC.	:	**Case No. 2013-0934**
Appellant,	:	
vs.	:	**On Appeal from the Ohio Board of Tax Appeals**
AUDITOR AND BOARD OF REVISION OF HARRISON COUNTY, OHIO, *ET AL.*,	:	**B.T.A. Case No. 2011-W-611**
Appellees.	:	

REPLY BRIEF OF APPELLANT L. J. SMITH, INC.

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PROPOSITION OF LAW NO. I 1

A taxpayer may not be denied the right to proceed with a complaint against the valuation of real estate because of irregularities in the processing of the complaint by the county auditor and county board of revision.

Assignment of Error No. 1 1

The Board unreasonably or unlawfully decided that the Harrison County Auditor properly performed his duties, despite evidence to the contrary.

Assignment of Error No. 2 1

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.

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ARGUMENT

PROPOSITION OF LAW NO. I:

A taxpayer may not be denied the right to proceed with a complaint against the valuation of real estate because of irregularities in the processing of the complaint by the county auditor and county board of revision.

Assignment of Error No. 1

> **The Board unreasonably or unlawfully decided that the Harrison County Auditor properly performed his duties, despite evidence to the contrary.**

Assignment of Error No. 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.**

When an item is deposited in the mail, there are three potential outcomes: the item is returned to the sender, the item is lost, or the item is delivered to the named recipient. Here, we know from Amy Guy's Affidavit that the Appellant's complaint was mailed and not returned as undeliverable. (Guy Affidavit, at ¶ 5.) We also know that the Complaint, e.g., in particular, the $2.7 million appraisal offered by L. J. Smith was discussed with the Harrison County Auditor and his staff. (Guy Affidavit, at ¶ 6, 10-13.)

The Harrison County Auditor acted, *albeit* "informally," on the L. J. Smith complaint. He scheduled a meeting of the affected parties and ultimately issued a decision on a new value. Nearly two years after the appeal to the Board of Tax Appeals was taken, the Auditor first claimed that a complaint was never "filed." Curiously, the Auditor did not state that the complaint was not received at his office. If acted upon, how

could the public official say, "I did not receive it"? The only logical explanation in the present circumstances is that the auditor's office received the complaint, neglected to file-stamp it and proceeded "informally."

The Conotton Valley School District has concocted a scenario where the Appellant is to blame for the informal handling of the complaint:

> "...a representative of L. J. Smith simply contacted the Auditor to request a reduction in the property's value. (Appellee Supp. 1-12.) Such a request prompted the Auditor to schedule an informal meeting to discuss reducing the value of the property. (Appellee Supp. 1-12.)"

Appellee's Merit Brief, at p. 2.

The scenario is not supported by the factual record before this court. There is absolutely no evidence that L. J. Smith "simply contacted" the Auditor with a "request" for a reduction in value.

Upon receipt of a complaint, it is incumbent upon a public official to process it properly, e.g., file-stamp it and then follow the statutory procedures regarding notice and a hearing. The taxpayer should not be punished for the Auditor's mishandling of his duties.

This is not a situation where a complaint was mailed on the eve of a filing deadline and only received after the time it was due. *Fulton v. State, ex rel. General Motors*, 130 Oh. St. 494 (1936), and its progeny are inapplicable.

Nor is this a situation where the matter can be "swept under the rug" with an abuse of discretion review. The statutory standard of review is whether the Board of Tax Appeals acted unreasonably or unlawfully. R. C. § 5717.04. The board did, when it

believed the Auditor's word over the taxpayer's; there was "evidence to the contrary" that the Auditor acted properly. (*See* Board of Tax Appeal Decision and Order, filed May 9, 2013, p. 4.)

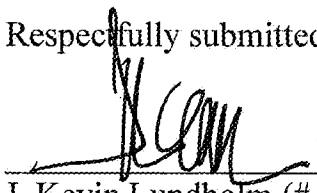
Amy Guy's affidavit supplies ample evidence that the complaint was mailed and received by the Auditor. The Auditor's affidavit does not deny that the complaint was received. In carefully chosen words, it says that the complaint was not "filed."

In a statutory proceeding, the public official cannot open a file on a taxpayer complaint, call the parties together for settlement discussions and thereafter issue a ruling, believing that the parties "agreed" on an amount. The taxpayer should not suffer because the Auditor failed to meet his statutory requirements, particularly at the most basic level of time-stamping the initial filing.

CONCLUSION

The Appellant renews its request that the matter should be remanded to the Board of Revision for further proceedings in accordance with Ohio Revised Code Chapter 5715; specifically, for a hearing and decision on the complaint submitted on March 18, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply Brief of Appellant L. J. Smith, Inc.*, was sent by regular U.S. mail, on this 18th day of November, 2013, to the following:

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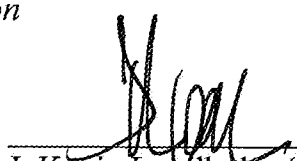

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