

IN THE SUPREME COURT OF OHIO

DiFiore Family Properties, LLC, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Cuyahoga County Board of Revision, )  
 Cuyahoga County Fiscal Officer, )  
 Warrensville Heights )  
 City School District Board of Education, )  
 And the Tax Commissioner of Ohio, )  
 )  
 Appellees. )

14-0944

CASE NO. \_\_\_\_\_

Appeal from the Ohio Board of Tax Appeals

BTA Case No. 2012-1963

**FILED**  
 JUN 06 2014  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

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**NOTICE OF APPEAL OF DIFILORE FAMILY PROPERTIES, LLC**

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J. Kieran Jennings (0065453)  
 Counsel of Record  
 Jason Lindholm (0077776)  
 Deborah Papushak (0016087)  
 Siegel Jennings Co. LPA  
 23425 Commerce Park Drive, Suite 103  
 Cleveland, OH 44122  
 (216) 763-1004  
 (216) 763-1016  
 kjennings@siegeltax.com  
 jlindholm@siegeltax.com  
 dpapushak@siegeltax.com

Reno J. Oradini, Jr. (0039848)  
 Cuyahoga County Assistant Prosecutor  
 1200 Ontario Street  
 8th Floor  
 Cleveland, OH 44113  
 (216) 443-7769  
 (216) 443-7602  
 roradini@prosecutor.cuyahogacounty.us

Counsel for Appellant  
 DiFiore Family Properties LLC

Counsel for Appellees  
 Cuyahoga County Board of Revision and  
 Cuyahoga County Fiscal Officer

**FILED**  
 JUN 06 2014  
 BOARD OF TAX APPEALS  
 COLUMBUS, OHIO

**HAND DELIVERED**

Thomas Kondzer (0017096)  
Kolick & Kondzer  
24650 Center Ridge Road, Suite 110  
Westlake, OH 44145  
(440) 835-1200  
(440) 835-5878  
TKondzer@kolick-kondzer.com

Counsel for Appellee  
Warrensville Heights City School District  
Board of Education

Michael DeWine (0009181)  
Ohio Attorney General  
30 E. Broad Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-3428  
(614) 466-4320

Counsel for Appellee  
Joseph W. Testa, Tax  
Commissioner of Ohio

**IN THE SUPREME COURT OF OHIO**

DiFiore Family Properties, LLC,	)	
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Appellant,	)	CASE NO. _____
	)	
vs.	)	Appeal from the Ohio Board of Tax Appeals
	)	
Cuyahoga County Board of Revision,	)	
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Warrensville Heights	)	
City School District Board of Education,	)	
And the Tax Commissioner of Ohio,	)	
	)	
Appellees.	)	

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**NOTICE OF APPEAL OF DIFILORE FAMILY PROPERTIES, LLC**

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Appellant, DiFiore Family Properties, LLC ("DiFiore"), hereby gives notice of an appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals (BTA), journalized in case number 2012-1963, which was decided on May 9, 2014.

A true copy of the Decision and Order of the Ohio Board of Tax Appeals being appealed is attached hereto and incorporated herein by reference as Exhibit "A."

The appellant complains of the following errors in the Decision and Order of the Ohio Board of Tax Appeals:

**ASSIGNMENT OF ERROR NO. 1:**

The Decision and Order of the BTA is unreasonable and unlawful and an abuse of discretion for failing to grant the continuance request of DiFiore's counsel to permit the taxpayer to appear as a witness.

**ASSIGNMENT OF ERROR NO. 2:**

The Decision and Order of the BTA is unreasonable and unlawful and an abuse of discretion for failing to grant the continuance request of DiFiore's counsel and asserting that prior continuances were excessive when counsel was newly retained counsel which first entered an appearance in the matter less than three months before the scheduled hearing.

**ASSIGNMENT OF ERROR NO. 3:**

The Decision and Order of the BTA is unreasonable and unlawful and an abuse of discretion for failing to grant the continuance request of DiFiore's counsel, particularly when the BTA no longer schedules fixed times for hearings, but sets them all at 9:00 a.m. and hears them in succession, and counsel for both parties are regularly before the BTA. Thus, a continuance would have produced minimal administrative inconvenience.

**ASSIGNMENT OF ERROR NO. 4:**

The Decision and Order of the BTA is unreasonable and unlawful for failing to adopt as value the sale price in a sale which occurred less than 13 months after tax lien date when no evidence tending to rebut the presumption of the sale was submitted by the Board of Education which opposed the sale.

**ASSIGNMENT OF ERROR NO. 5:**

The Decision and Order of the BTA is unreasonable and unlawful for failing to adopt as value the sale price in a sale which occurred less than 13 months after tax lien date when the opponent of the sale offered no evidence, but only made arguments against the sale based upon speculation.

**ASSIGNMENT OF ERROR NO. 6:**

The Decision and Order of the BTA is unreasonable and unlawful for failing to adopt as value the sale price in a sale which occurred less than 13 months after tax lien date in a public, advertised auction, presented by a broker, and instead accepted the speculation of the Board of Education as grounds for rejecting the sale, when no evidence tending to rebut the presumption of the validity of the sale was presented.

**ASSIGNMENT OF ERROR NO. 7:**

The Decision and Order of the BTA is unreasonable and unlawful for failing to find that the sale of the subject property was an arms' length transaction, when no

evidence tending to rebut the presumption of the validity of the sale was presented.

**ASSIGNMENT OF ERROR NO. 8:**

The Decision and Order of the BTA is unreasonable and unlawful for determining that the sale of the property involved in this appeal which occurred less than 13 months after tax lien date in a public, advertised auction, presented by a broker, was involuntary, when no evidence of a forced sale was presented by the opponent of the sale, and instead accepted the speculation proposed by the Board of Education as grounds for rejecting the sale, when no evidence tending to rebut the presumption of the validity of the sale was presented.

**ASSIGNMENT OF ERROR NO. 9:**

The Decision and Order of the BTA is unreasonable and unlawful because it ignored the presumption of validity which the law accords to evidence of a recent sale.

**ASSIGNMENT OF ERROR NO. 10:**

The Decision and Order of the BTA is unreasonable and unlawful because it ignored the duty which the law imposes upon the opponent of a sale to rebut the presumption of validity which the law accords to evidence of a recent sale.

**ASSIGNMENT OF ERROR NO. 11:**

The Decision and Order of the BTA is unreasonable and unlawful for failing to identify and consider all of the evidence before it.

**ASSIGNMENT OF ERROR NO. 12:**

The Decision and Order of the BTA is unreasonable and unlawful and not supported by the evidence of record.

Respectfully submitted,



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J. Kieran Jennings (0065453)  
Counsel of Record  
Jason Lindholm (0077776)  
Deborah Papushak (0016087)  
Siegel Jennings Co. LPA

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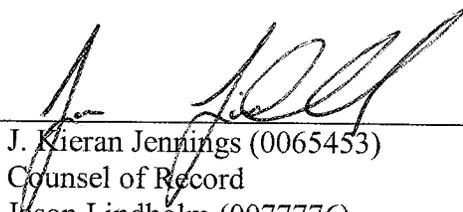
23425 Commerce Park Drive, Suite 103  
Cleveland, OH 44122  
(216) 763-1004  
(216) 763-1016  
kjennings@siegeltax.com  
jlindholm@siegeltax.com  
dpapushak@siegeltax.com

Counsel for Appellant, DiFiore Family Properties,  
LLC

**PROOF OF SERVICE UPON  
OHIO BOARD OF TAX APPEALS**

This is to certify that the Notice of Appeal of DiFiore Family Properties, LLC was filed with the Ohio Board of Tax Appeals, State Office Tower, 24th Floor, 30 East Broad Street, Columbus, Ohio, as evidenced by its date stamp as set forth hereon.

Respectfully submitted,



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J. Kieran Jennings (0065453)  
Counsel of Record  
Jason Lindholm (0077776)  
Deborah Papushak (0016087)  
Siegel Jennings Co. LPA  
23425 Commerce Park Drive, Suite 103  
Cleveland, OH 44122  
(216) 763-1004  
(216) 763-1016  
kjennings@siegeltax.com  
jlindholm@siegeltax.com  
dpapushak@siegeltax.com

Counsel for Appellant  
DiFiore Family Properties, LLC

**CERTIFICATE OF SERVICE**

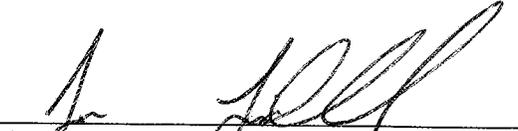
This is to certify that on this 6<sup>th</sup> day of June, 2014, a copy of the Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to:

Thomas Kondzer  
Kolick & Kondzer  
24650 Center Ridge Road, Suite 110  
Westlake, OH 44145

Reno J. Oradini, Jr.  
Cuyahoga County Assistant Prosecutor  
1200 Ontario Street  
8th Floor  
Cleveland, OH 44113

Michael DeWine  
Ohio Attorney General  
30 E. Broad Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-3428

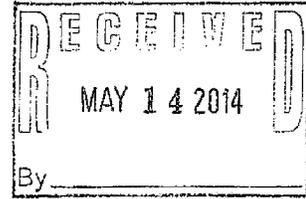
Respectfully submitted,



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J. Kieran Jennings (0065453)  
Counsel of Record  
Jason Lindholm (0077776)  
Deborah Papushak (0016087)  
Siegel Jennings Co. LPA  
23425 Commerce Park Drive, Suite 103  
Cleveland, OH 44122  
(216) 763-1004  
(216) 763-1016  
kjennings@siegeltax.com  
jlindholm@siegeltax.com  
dpapushak@siegeltax.com

Counsel for Appellant  
DiFiore Family Properties, LLC



6425-10

**OHIO BOARD OF TAX APPEALS**

DiFiore Family Properties, LLC,	)	CASE NO. 2012-1963
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Cuyahoga County Board of Revision and	)	
Cuyahoga County Fiscal Officer,	)	
	)	
Appellees.	)	

**APPEARANCES:**

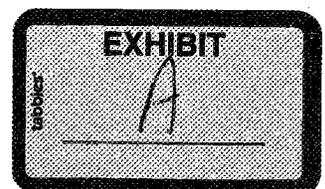
- For the Appellant - Siegel Jennings Co., LPA  
Deborah Papushak  
23425 Commerce Park Drive, Suite 103  
Cleveland, OH 44122
- For the County Appellees - Timothy J. McGinty  
Cuyahoga County Prosecuting Attorney  
Reno J. Oradini, Jr.  
Assistant Prosecuting Attorney  
Courts Tower - 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, OH 44113
- For the Board of Education - Kolick & Kondzer  
24650 Center Ridge Road, Suite 110  
Westlake, OH 44145

Entered **MAY 09 2014**

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

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 762-05-020, for tax year 2010. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearing and any written argument submitted by the parties.

For tax year 2010, the subject's total true value was initially assessed at \$5,096,900. A decrease complaint was filed with the BOR seeking a reduction in value to \$139,700. The affected board of education ("BOE") filed a counter-complaint objecting to the request. At the hearing before the BOR, the appellant and BOE were represented by counsel who appeared to submit argument and evidence in support of their respective positions. Neither



party introduced any witness testimony. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

Before we address the merits of this appeal, we must first address a continuing objection raised at this board's hearing. When the appellant's witness failed to appear at hearing, counsel for the appellant requested a third postponement. The underlying notice of appeal was filed on July 3, 2012 and was scheduled for an initial merit hearing on July 9, 2013. Based upon the appellant's requests for "additional time to prepare for the hearing," the hearings for this matter were then twice continued, each time for approximately thirty days consistent with this board's practice, to a final hearing date on September 11, 2013. Despite requesting and receiving two continuances in this matter, at this board's hearing, counsel argued that this board should continue the matter once again because her "client misunderstood our communications of yesterday in which I was expecting him to be here at 9:00 for today's hearing." Hearing Record at 8. The attorney examiner denied the request because it failed to demonstrate good cause and was untimely made. Despite the attorney examiner's ruling, counsel registered her continuing objection to the denial.

In *Coats v. Limbach* (1989), 47 Ohio St.3d 114, the court found that the BTA had abused its discretion in denying a continuance, in part, because "the transcript demonstrates that Henderson was ill and that his absence was understandable," however, in this matter, no such circumstance exists. *Id.* at 117. Unlike the scenario presented in *Coats*, supra, the continuance requested in this appeal was based upon a miscommunication between counsel and her client. The court also noted that "unreasonable delays are intolerable, and continuances are justifiable according to the circumstances." *Id.* at 116. Here, based upon the circumstances, we conclude that a third postponement of the hearing would have been intolerable and unjustifiable and once again deny counsel's continuance request. See, also *LCL Income Properties v. Hamilton Cty. Bd. of Revision* (1995), 71 Ohio St.3d 652.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. 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.”<sup>1</sup> *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. As the Supreme Court has pointed out, “such [sale] information is not usually available, and thus an appraisal becomes necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412.

In this matter, in support of its opinion of value, the appellant relies on its purchase of the subject property from 18525 Miles Road Holdings, LLC for \$139,700 on January 10, 2011. However, both parties assert that the transfer was a short sale. The record indicates that the subject property was the subject of foreclosure proceedings in federal district court, transferred between a number of entities until the appellant's eventual purchase nearly five months later.

In *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680, the court stated that

“[a] sale price from a short sale raises suspicion about the voluntary character of the sale because a short sale is a transaction in which the sale generates less than the amount owed on the mortgage note. See *Cattel v. Lake Cty. Bd. of Revision*, 11<sup>th</sup> Dist. No. 2009-L-161, ¶ 23. A short sale often occurs in the context of a mortgage-loan default, which is a distressed situation.”

“\*\*\* Moreover, a mortgage default raises the specter of imminent foreclosure, which is evidence the seller is not typically motivated participant.” *Id.* ¶¶ 29-30.

Here, it is undisputed that the subject property transferred to the appellant through a short sale, which “raises the inference of distress and duress.” *Id.* at ¶31. As such, as the proponent of the sale, the appellant bore “an initial burden to offer evidence that the sale [was] voluntary.” *Id.* at ¶35. Because the record is void of any evidence highlighting the voluntary/involuntary nature of the sale, we must conclude that the appellant failed to satisfy its burden before the BOR and this board.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd.*

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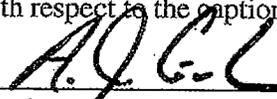
<sup>1</sup> *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23, outlines the following elements which comprise an arm's-length sale: 1) the sale is voluntary; 2) it generally takes place in an open market; and 3) the parties act in their own self interests.

*of Revision* (1998), 81 Ohio St.3d 47, 49 (“Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision’s valuation, without the board of revision’s presenting any evidence.”). It is therefore the order of this board that the subject property’s true and taxable values, as of January 1, 2010, were as follows:

TRUE VALUE	TAXABLE VALUE
\$5,096,900	\$1,783,920

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

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

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 And the Tax Commissioner of Ohio, )  
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 Appellees. )

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**DEMAND TO CERTIFY TRANSCRIPT OF RECORD OF PROCEEDINGS**

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J. Kieran Jennings (0065453)  
Counsel of Record  
Jason Lindholm (0077776)  
Deborah Papushak (0016087)  
Siegel Jennings Co. LPA  
23425 Commerce Park Drive, Suite 103  
Cleveland, OH 44122  
(216) 763-1004  
(216) 763-1016  
kjennings@siegeltax.com  
jlindholm@siegeltax.com  
dpapushak@siegeltax.com

Counsel for Appellant  
DiFiore Family Properties, LLC

Reno J. Oradini, Jr. (0039848)  
Cuyahoga County Assistant Prosecutor  
1200 Ontario Street  
8th Floor  
Cleveland, OH 44113  
(216) 443-7769  
(216) 443-7602  
roradini@prosecutor.cuyahogacounty.us

Counsel for Appellees  
Cuyahoga County Board of Revision and  
Cuyahoga County Fiscal Officer

Thomas Kondzer (0017096)  
Kolick & Kondzer  
24650 Center Ridge Road, Suite 110  
Westlake, OH 44145  
(440) 835-1200  
(440) 835-5878  
TKondzer@kolick-kondzer.com

Counsel for Appellee  
Bedford City School District Board of  
Education

Michael DeWine (0009181)  
Ohio Attorney General  
30 E. Broad Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-3428  
(614) 466-4320

Counsel for Appellee  
Joseph W. Testa, Tax  
Commissioner of Ohio

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**DEMAND TO CERTIFY TRANSCRIPT OF RECORD OF PROCEEDINGS**

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To: The Secretary of the Ohio Board of Tax Appeals:

Pursuant to R.C. 5717.04, the Appellant, who has filed a Notice of Appeal with the Supreme Court of Ohio, hereby make this written demand upon the Secretary of the Ohio Board of Tax Appeals to certify the records of its proceedings including any original papers and the statutory transcript of the Board of Revision in *DiFiore Family Properties, LLC, et al., v.*

*Cuyahoga County Board of Revision, et.al.* BTA Case No. 2012-1963, decided on May 9, 2014.

Respectfully submitted,



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J. Kieran Jennings (0065453)  
Counsel of Record  
Jason Lindholm (0077776)  
Deborah Papushak (0016087)  
Siegel Jennings Co. LPA  
23425 Commerce Park Drive, Suite 103  
Cleveland, OH 44122  
(216) 763-1004  
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kjennings@siegeltax.com  
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dpapushak@siegeltax.com

Counsel for Appellant  
DiFiore Family Properties, LLC