

IN THE SUPREME COURT OF OHIO

15-1065

MDM HOLDINGS, LLC, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 CUYAHOGA COUNTY BOARD OF )  
 REVISION, THE CUYAHOGA COUNTY )  
 FISCAL OFFICER, CLEVELAND )  
 MUNICIPAL SCHOOL DISTRICT BOARD )  
 OF EDUCATION AND TAX )  
 COMMISSIONER OF OHIO )  
 )  
 Appellees. )

CASE NO.

Appeal from the Ohio Board of Tax Appeals

Board of Tax Appeals Case No.  
2015-60

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NOTICE OF APPEAL OF MDM HOLDINGS, LLC

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 SUPREME COURT OF OHIO

## NOTICE OF APPEAL OF APPELLANT

Appellant MDM Holdings, LLC hereby gives notice of its appeal as of right under R.C. § 5717.04 to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals journalized in Case No. 2015-60 on June 2, 2015. A true copy of the Decision and Order of the Board being appealed is attached hereto as Exhibit A and incorporated herein by reference. Appellant hereby complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals' decision affirming the Cuyahoga County Board of Revision's decision is unreasonable and unlawful since the Board of Revision improperly denied a hearing on the Property Owner's continuing complaint for the 2012 tax year.
2. The Board of Tax Appeals' decision is unreasonable and unlawful since it incorrectly interpreted R.C. 5715.19(D) and *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, 936 N.E.2d 472 to deny the Property Owner a hearing on the merits of its continuing complaint.
3. The Board of Tax Appeals' decision is unreasonable and unlawful since the Board of Tax Appeals while acknowledging R.C. 5715.19 does not establish an outer deadline for requesting a continuing complaint, lacks the statutory authority to create a "deadline" that is not expressly set forth in R.C. 5715.19(D), et seq.
4. The Board of Tax Appeals' decision is unreasonable and unlawful since the Board of Tax Appeals first found that the Board of Revision had jurisdiction over the 2012 tax year, but then arbitrarily found that the Property Owner's request for a hearing was barred by the Board of Tax Appeals' newly-created "deadline," (December 31, 2014 in this case) which is not set forth in R.C. 5715.19(D).
5. The Board of Tax Appeals' decision is unreasonable and unlawful since it advances the Board of Tax Appeals interpretation of the policy and wisdom of R.C. 5715.19(D), which is the exclusive jurisdiction of the legislative branch of the government.
6. The Board of Tax Appeals' decision is unreasonable and unlawful since any interpretation of R.C. 5715.19(D) by the Board of Tax Appeals—to the extent such interpretation is found to be lawful—cannot be applied retroactively.
7. The Board of Tax Appeals' decision is unreasonable and unlawful since any interpretation of R.C. 5715.19(D) by the Board of Tax Appeals—to the extent such interpretation is found to be lawful—cannot deny a hearing when the Board of Tax Appeals expressly found that the Board of Revision had jurisdiction over the continuing complaint.

8. The Board of Tax Appeals' decision violates the Property Owner's right to due process under the Ohio and U.S. Constitutions and, as a result, is unreasonable and unlawful.

For these reasons, Appellant requests that the Court vacate the Board of Tax Appeals' Decision and Order and instruct the Board of Tax Appeals to remand the underlying matter to the Board of Revision so that the Board of Revision can render a decision on the merits of the Property Owner's continuing complaint.

Respectfully submitted,



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Stephen M. Nowak #0078349

**Attorneys for Appellant**

**OHIO BOARD OF TAX APPEALS**

MDM HOLDINGS, LLC, (et. al.),

CASE NO(S). 2015-60

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

CUYAHOGA COUNTY BOARD OF REVISION,  
(et. al.),

Appellee(s).

**APPEARANCES:**

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CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF  
EDUCATION

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Entered Tuesday, June 2, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

Appellant appeals the board of revision's ("BOR") denial of its request to conduct a hearing on the valuation of the subject property, i.e., parcel number 028-23-009, for 2012. The county appellees move this board to dismiss the matter for lack of jurisdiction, arguing that appellant has failed to appeal a final, appealable decision by the BOR. Appellant, on the other hand, moves this board to remand the matter to the BOR with instructions to decide the underlying complaint on its merits. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the motions, and the response thereto.

The underlying facts are as follows. MDM Holdings, LLC ("MDM"), the appellant in this matter, timely

filed a tax year 2011 complaint against the valuation of the subject property in March 2012. The BOR issued a decision on May 13, 2013, which MDM then appealed to this board. On February 19, 2014, this board issued an order dismissing the appeal at MDM's request. Nearly a year later, on January 15, 2015, MDM made a written request to the BOR to conduct a hearing on the value of the property for tax year 2012 pursuant to its continuing complaint jurisdiction under R.C. 5715.19(D). Through an email on January 16, 2015, the BOR denied the request to continue the complaint, stating: "We have been advised by the Cuyahoga County Prosecutor that the Board of Revision should deny a request for a continuing complaint hearing **received more than 30 days after the Board of Revision, Board of Tax Appeals or Common Pleas Court decision date, including a decision on appeal through the court system.**" Appellant's Brief in Opposition at Ex. B (emphasis sic). In response to MDM's request for a legal basis for such decision, the county prosecutor's office sent a letter dated January 23, 2015 to MDM citing the Supreme Court's decision in *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, as the basis for the BOR's decision. The letter further stated that, "[a]pplying the Court's liberal interpretation of the continuing complaint jurisdiction to the present matter, at the very latest, the end of 2014 terminated the BOR's continuing complaint jurisdiction." Appellant's Brief in Opposition at Ex. D. On January 23, 2015, MDM filed a notice of appeal with this board, citing the January 16, 2015 email and January 23, 2015 letter as the "decision" from which it appealed.

The county appellees assert that neither the email nor the letter were decisions of the BOR from which MDM could properly appeal under R.C. 5717.01. Through its motion, the county cites this board's decision in *Kinlock EG v. Bd. of Revision of Perry Cty.* (May 12, 1995), BTA No. 1994-N-1236, unreported, finding that a letter rescheduling a BOR hearing was not an appealable decision, and the 10th District Court of Appeals' decision in *Singh v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 03AP-795, 2004-Ohio-1139, affirming this board's holding that a BOR's mistakenly sending a letter scheduling a hearing on a matter over which it did not properly have jurisdiction was not an appealable decision. In response, MDM argues that both cases are readily distinguishable and that the BOR's denial of a hearing on tax year 2012 "is a de facto dismissal for lack of jurisdiction." Appellant's Brief in Opposition at 5.

Given the unique facts of this case, we find the BOR's denial of MDM's request for a hearing on tax year 2012 to be an appealable decision of the BOR. While the BOR argues that the BOR did not render a *decision* on a 2012 complaint, the email and letter denying MDM's request to conduct proceedings on 2012 was just that – a decision *not* to hear the complaint. In *Kinlock*, supra, this board noted the interim nature of the letter issued; here, it is clear that the BOR would take no further action on MDM's request. We agree with MDM's characterization of the BOR's email and subsequent letter as a "de facto dismissal for lack of jurisdiction." Accordingly, the county's motion to dismiss is not well taken and is hereby denied.

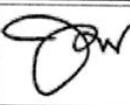
Turning to the merits of the appeal, MDM moves to remand this matter to the BOR with instructions to conduct proceedings on tax year 2012 pursuant to continuing complaint jurisdiction under R.C. 5715.19(D). That section states, in pertinent part:

"If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination [(90 days)], the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal \*\*\*. In such case, the original complaint shall continue in effect without further filing by the original taxpayer \*\*\*."

As explained above, a final decision on MDM's tax year 2011 complaint was issued by this board on February 19, 2014. Nearly a year later, on January 15, 2015, MDM requested that its 2011 complaint be deemed continuing for tax year 2012. MDM's position is that it can request that its 2011 complaint be deemed continuing in perpetuity. We cannot agree with such a reading of the statute and relevant case

law. We acknowledge that the statute does not establish an outer deadline for requesting that a complaint be deemed continuing; however, in *AERC*, supra, the court stated that the original complaint “continues as a valid complaint *through the year in which the final decision\*\*\* is rendered.*” *AERC*, supra, at ¶12. We concur with the county appellees’ conclusion that the BOR’s continuing complaint jurisdiction ended at the end of 2014 – the year in which the tax year 2011 complaint was finally decided. Accordingly, because MDM failed to request that its tax year 2011 complaint be deemed continuing prior to December 31, 2014, the BOR lacks jurisdiction to consider MDM’s request for tax year 2012.

Based upon the foregoing, MDM’s motion to remand is hereby denied and the decision of the BOR is hereby affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary

**PROOF OF SERVICE**

I hereby certify that a copy of this Notice of Appeal was sent this 25<sup>th</sup> day of June, 2015 by certified mail, return receipt requested to:

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