

**IN THE SUPREME COURT OF OHIO**

MDM HOLDINGS, LLC,	)	CASE NO. 2015-1065
	)	
Appellant,	)	
	)	Appeal from the Ohio Board of Tax Appeals
-vs-	)	
	)	
CUYAHOGA COUNTY BOARD OF	)	Board of Tax Appeals Case No.
REVISION, THE CUYAHOGA COUNTY	)	2015-60
FISCAL OFFICER, CLEVELAND	)	
MUNICIPAL SCHOOL DISTRICT	)	
BOARD OF EDUCATION AND TAX	)	
COMMISSIONER OF OHIO	)	
	)	
Appellees.	)	

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**MDM HOLDINGS, LLC'S REPLY BRIEF**

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Karen H. Bauernschmidt #0006774  
(Counsel of Record)  
Stephen M. Nowak #0078349  
KAREN H. BAUERNSCHMIDT CO., LPA  
1370 West 6<sup>th</sup> Street, Suite 200  
Cleveland, Ohio 44113  
T: 216-566-8500 / F: 216-566-0942  
karen@khbtaxlaw.com

**Attorneys for Appellant MDM Holdings, LLC**

Joseph W. Testa  
Tax Commissioner of Ohio  
Department of Taxation  
30 East Broad Street  
Columbus, OH 43215  
T: 614-466-2166 / F: 614-466-6401

**Tax Commissioner of Ohio**

Sandra Curtis-Patrick #0027907  
(Counsel of Record)  
Assistant Prosecuting Attorney  
CUYAHOGA COUNTY  
1200 Ontario Street, 8th Floor  
Cleveland, OH 44113  
T: 216-443-7800 / F: 216-443-7602  
scurtispatrick@prosecutor.cuyahogacounty.com

**Attorney for Appellees Cuyahoga County  
Board of Revision and the Cuyahoga County  
Fiscal Officer**

David H. Seed #0066033  
(Counsel of Record)  
BRINDZA, MCINTYRE & SEED, LLP  
1111 Superior Avenue, Suite 1025  
Cleveland, OH 44114  
T: 216-621-5900 / F: 216-621-5901  
dseed@bms-law.com

**Attorney for Appellee Cleveland Municipal  
School District Board of Education**

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## INTRODUCTION

The County and the Property Owner agree that “continuing complaints” are generally permitted by R.C. 5715.19(D). The dispute before the Court centers on whether a board of revision and/or the Board of Tax Appeals (“BTA”) can retroactively divest jurisdiction on continuing complaints when there is no statutory authority to do so.

The Cuyahoga County Board of Revision (“BOR”) determined that its jurisdiction to hear a continuing complaint ended thirty days after a matter is finally determined. Appx. p. 14-16. The BTA separately determined that a board of revision’s jurisdiction to hear a continuing complaint ends on December 31 of the year in which a matter is finally determined. Appx. p. 12. Given the differences in the BOR’s and the BTA’s decision to revoke jurisdiction, the case before the Court raises a similar “discretionary authority” issue raised and addressed by the Court in *Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St.3d 340, 2015-Ohio-2571, 37 N.E.3d 1207.

As in *Ginter*, the empowering statutes do not specifically confer a power to dismiss a continuing complaint for failure to request a hearing by a certain date. “Logic dictates, therefore, that boards of revision lack authority to dismiss” a continuing complaint for a complainant’s failure to request a hearing by a specified date not set forth in statute. *Id.* at ¶6.

Neither the BOR nor the BTA’s creation of a deadline rule regarding continuing complaints has any basis in law. Moreover, both rules are premised on flawed readings of this Court’s cases that interpret R.C. 5715.19(D). Accordingly, the Court must vacate the BTA’s decision and order and remand this matter to the BOR for a hearing on the merits so that the BOR can make a determination of value.

## ARGUMENT

R.C. 5715.19(D), which creates jurisdiction for the continuing complaint rule, does not contain a deadline. The Property Owner and the BTA agree on this essential fact. Appx. p. 12. The County Appellees' assert that there must be a deadline. Otherwise, the County argues, a complainant could request a hearing many years after a tax valuation complaint is finally determined.

To establish a deadline, which creates a cut-off date to invoke the continuing complaint jurisdiction, the County (and the BTA) misinterpreted the authorizing statute—R.C. 5715.19(D)—as well as the Court's decision in *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, 936 N.E.2d 472. Appx. 29-30.

Further, the County fails to address this Court's holding and rationale in *1495 Jaeger L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 222, 2012-Ohio-2680, which was decided two years after *AERC Saw Mill Village*.

In *1495 Jaeger L.L.C.*, the Court indicated that the property owner continued to have the authority to request a hearing at the board of revision level for the 2009, 2010 and 2011 tax years. *Id.* at ¶22. It is important to note that the Court's opinion addressing the property owner's request for continuing complaint was issued on June 21, 2012.

Applying the BTA's newly-created rule to the *1495 Jaeger L.L.C.* fact pattern would dictate that the *1495 Jaeger L.L.C.* property owner would have had until December 31, 2011 (since the property valuation aspect of the matter was finally determined in February 2011) to invoke the continuing complaint jurisdiction. Yet, as of June 21, 2012, the Supreme Court indicated that the *1495 Jaeger L.L.C.* property owner still had the authority to request a hearing at the board of revision level.

Under the BOR's newly-created rule, the *1495 Jaeger L.L.C.* property owner would have had until March 3, 2011 (i.e., thirty (30) days after the matter was finally determined on February 1, 2011). While not directly addressing the issue, the Court's language in *1495 Jaeger L.L.C.* supports the Property Owner's contention that there is no time limit for a R.C. 5715.19(D) complaint. Thus, the BOR and BTA rules conflict with *1495 Jaeger L.L.C.*

Justice Pfeifer's concurring opinion provides further support that there is no time limit. J. Pfeifer stated "Based on my understanding of the law, Jaeger [still, as of the June 21, 2012 issuance of this decision,] has an opportunity *to pursue* its claim [at the board of revision] for the later years," i.e., 2009, 2010 and 2011. *Id.* at ¶29. It is reasonable to conclude from Justice Pfeifer's statement that the board of revision retained jurisdiction to consider *1495 Jaeger L.L.C.* property owner's continuing complaint as of the June 21, 2012 issuance of the Court's decision.

In the matter presently before the Court, the BOR dismissed the Property Owner's request for a hearing on its continuing complaint for tax years 2012 and 2013. The BOR held that the Board of Revision lost jurisdiction to hear any continuing complaint thirty days after the 2011-tax-year complaint was finally determined (i.e., May 17, 2014). Thus, the BOR's rule<sup>1</sup> would end the continuing-complaint jurisdiction on June 16, 2014. The BTA agreed that a board of revision's jurisdiction over a continuing complaint had expired. However, instead of using the BOR's "30-day rule," the BTA created a much different deadline. R.C. 5715.19 contains neither the BOR's nor the BTA's deadline.

In their merit brief, the County Appellees appear to ask that the Court adopt the BTA's limitation on jurisdiction. The County Appellees quote *AERC Saw Mill Village* that "Once the

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<sup>1</sup> The BOR's ruling fails to consider the parties have thirty days to appeal a decision from a board of revision.

continuing-complaint provision has been triggered, the original complaint... continues as a valid complaint *through the year in which the final decision*... is rendered.” County Merit Brief, p. 3. Focusing on the emphasized language, the County asserts that jurisdiction over a continuing complaint at the board of revision level ends on December 31<sup>st</sup> of the *year in which the final decision* is rendered. County Merit Brief, p. 4.

MDM’s 2011-tax-year complaint was not finally determined until February 19, 2014. Thus, using the BTA’s argument and logic, the continuing-complaint doctrine authorized jurisdiction over tax-years 2012, 2013 and 2014, which needed to be invoked on or before December 31, 2014 after which date the BOR would lose jurisdiction. County Merit Brief, p. 4.

The flaw in the County’s logic and deadline becomes apparent when you apply it to the following three hypothetical fact patterns where a 2012-tax-year complaint (and assuming the county in the hypothetical is required to revalue all property as of January 1, 2014) is finally determined on three separate dates in the same year:

- (1) January 10, 2015,
- (2) December 28, 2015, and/or
- (3) December 31, 2015.

If the Court were to adopt the BTA’s position (now the County Appellees’ position), the complainant with a 2012-tax-year complaint must invoke the continuing-complaint doctrine over the 2014 tax year (the first year in a new triennium) by December 31, 2014. Under the three hypotheticals, the complainant would have three vastly different lengths of time to request a hearing on tax year 2014:

- (1) A January 10, 2015 determination gives the complainant three-hundred-fifty-five (355) days,

- (2) A December 28, 2015 determination gives the complainant three (3) days, and
- (3) A December 31, 2015 determination gives the complainant zero (0) days.

In the third scenario, the complainant is effectively prevented from ever establishing jurisdiction under the continuing complaint doctrine if the BTA's rule were applied. Such an unfair and disparate range in the "invocation" period shows that the "end of year" rule is unjust and untenable just as the "30-day" rule is unjust and untenable. Due to the unpredictable timing of decisions, any deadline would be difficult.

Regardless, the BOR and the BTA's rules are equally flawed. Both have no basis in law. Both are premised on a misreading of the Court's caselaw and R.C. 5715.19(D). Both are improperly adopted rules not properly promulgated.

The Property Owner's argument regarding the BOR and the BTA's improper "rule making" was extensively briefed in the Property Owner's merit brief in its third and fourth assignments of error. The County's brief fails to make any substantive response. Instead, the County makes a conclusory statement that the deadlines established by either the BOR or the BTA are not rules.

R.C. 5715.19(D) does not contain a deadline. *AERC Saw Mill Village* does not establish a deadline. *AERC Saw Mill Village* only established the years over which a continuing complaint establishes jurisdiction.

Since jurisdiction over MDM's 2012-tax-year complaint was automatic and since there is no statutory provision authorizing either the BOR or the BTA to divest jurisdiction by a certain date, both the BOR's and the BTA's decisions are unreasonable and unlawful.

## CONCLUSION

Neither the BOR nor the BTA can unilaterally create a jurisdictional rule.<sup>2</sup> Likewise, neither the BOR nor the BTA can create a deadline when the authorizing statute contains no such deadline. Accordingly, the BTA's affirmation of the BOR's dismissal of the Property Owner's 2012 continuing complaint was unreasonable and unlawful. Therefore, the Property Owner asks the Court "to set aside the extrastatutory dismissal power [exercised by the BOR and the BTA] and enforcing the statutory duty of boards of revision to hear and decide complaints by determining value." *Ginter, supra* at ¶18.

Thus, the Court should 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 2012-tax-year complaint. Anything less would result in a violation of the Property Owner's due process rights, and an unlawful taking of Property Owner's property.

Respectfully submitted,



Karen H. Bauernschmidt #0006774 (Counsel of Record)  
Stephen M. Nowak #0078349

*Attorneys for Appellant MDM Holdings, LLC*

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<sup>2</sup> The BTA's own website states "Welcome to the Ohio Board of Tax Appeals' Rules page. The BTA works in tandem with the Joint Committee on Agency Rule Review (JCARR) **for the submission, approval, and adoption of new administrative rules**. JCARR was created in 1977 by the Ohio General Assembly, and consists of five State Representatives and five State Senators. JCARR's primary function is to review proposed, new, amended, and rescinded rules from over 120 agencies **to ensure they do not exceed their rule-making authority granted to them by the General Assembly**. The BTA's current rules are provided at this top of this page." See <http://bta.ohio.gov/Rules> (last accessed January 5, 2016) [emphasis added].

**PROOF OF SERVICE**

I hereby certify that a copy of the *Appellant MDM Holdings, LLC's Reply Brief* was sent this 15<sup>th</sup> day of January, 2016 by email to:

Saundra Curtis-Patrick  
Assistant Cuyahoga County Prosecutor  
8th Floor - Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

***Attorneys for Appellees  
Cuyahoga County Board of Revision and the Cuyahoga County Fiscal Officer***

David H. Seed  
Brindza, McIntyre & Seed, LLP  
1111 Superior Avenue, Suite 1025  
Cleveland, OH 44114

***Attorneys for Appellees  
Cleveland Municipal School District Board of Education***

Joseph W. Testa  
c/o Christine Mesirow  
Tax Commissioner of Ohio  
Department of Taxation  
30 East Broad Street  
Columbus, OH 43215  
christine.mesirow@ohioattorneygeneral.gov

***Tax Commissioner of Ohio***



Karen H. Bauernschmidt #0006774  
(Counsel of Record)  
Stephen M. Nowak #0078349

***Attorneys for Appellant MDM Holdings, LLC***

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