

[Cite as *Lyndhurst v. Testa*, 2018-Ohio-5239.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107083

CITY OF LYNDHURST

PLAINTIFF-APPELLANT

vs.

**JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Ohio Board of Tax Appeals
Case Nos. 2017-1409, 2017-1410, and 2017-1411

BEFORE: Laster Mays, J., Blackmon, P.J., and Jones, J.

RELEASED AND JOURNALIZED: December 20, 2018

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ANITA LASTER MAYS, J.:

{¶1} Appellant, city of Lyndhurst (“Lyndhurst”), appeals the Ohio Board of Tax Appeals (“BTA”) dismissal of Lyndhurst’s consolidated appeal for failure to comply with Section 5717.02(B) of the Ohio Revised Code. More specifically, Lyndhurst’s failed to send notice to the tax commissioner, Joseph Testa (“Testa”), that an appeal had been filed on his decision. Lyndhurst asks this court to reverse the BTA’s decision and remand to the BTA for further proceedings. We affirm the BTA’s decision to dismiss Lyndhurst’s appeal.

I. Facts

{¶2} Lyndhurst filed three appeals with the BTA on August 29, 2017, arguing that Testa’s June 30, 2017 decision regarding the amount of real estate taxes due on three parcels of property, that was purchased for the city’s use, was in error. Lyndhurst electronically filed the appeals and received three letters from the BTA regarding the appeals. The first letter was a copy of a

letter from the BTA to Testa indicating that Lyndhurst filed a notice of appeal. The second letter was addressed to the Assistant Ohio Attorney General. The third letter was addressed to Lyndhurst's counsel. All three letters contained all of the pertinent information regarding the appeals. The three appeals were subsequently consolidated. Lyndhurst acknowledged that they did not personally transmit a copy of the notice to appeal to Testa until November 17, 2017, 79 days later. Testa moved to dismiss the consolidated appeal on the grounds that the proper procedure for notifying the tax commissioner was not followed by Lyndhurst. The BTA granted the motion and dismissed Lyndhurst's appeal on March 19, 2018. Lyndhurst filed this timely appeal assigning one error for our review:

- I. The Board of Tax Appeals erred in dismissing the city's appeal on the basis of failure to comply with Section 5717.02(B) of the Ohio Revised Code.

II. Law and Analysis

{¶3} When we review the decisions from the BTA,

we look to see if they are reasonable and lawful. *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, 856 N.E.2d 954, ¶ 14. Because the BTA is responsible for determining factual issues, we will affirm the BTA's findings if they are supported by reliable and probative evidence. *Id.* But the jurisdictional issues presented in this case raise questions of law, which we review de novo. *Toledo v. Levin*, 117 Ohio St.3d 373, 2008-Ohio-1119, 884 N.E.2d 31, ¶ 26, fn. 3; *Akron Centre Plaza, L.L.C. v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035, 942 N.E.2d 1054, ¶ 10.

Abraitis v. Testa, 137 Ohio St.3d 285, 2013-Ohio-4725, 998 N.E.2d 1149, ¶ 17.

{¶4} The BTA dismissed Lyndhurst's appeal because Lyndhurst failed to file a copy of the notice of appeal with Testa, in accordance with R.C. 5717.02(B).

R.C. 5717.02 sets forth the procedures required for bringing a proper appeal to the BTA from a final determination of the tax commissioner. It states, in relevant part:

[A]ppeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal * * *. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner * * *.

W. Res. Historical Soc. v. Testa, 9th Dist. Summit No. 27223, 2014-Ohio-5020, ¶6.

{¶5} Lyndhurst argues that Testa received notice of the appeal from the BTA when it filed the original online notice of appeal. Additionally, Lyndhurst argues that the notice requirement is procedural and not jurisdictional. Lyndhurst further argues that because Testa received notice from the BTA, the filing notice mandated by R.C. 5717.02 had been fulfilled.

The requirements of R.C. 5717.02 are legislatively mandated and must be strictly complied with before the subject matter jurisdiction of the BTA may be invoked. *American Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 149-150, 70 N.E.2d 93 (1946); *Clippard Instrument Laboratory, Inc. v. Lindley*, 50 Ohio St.2d 121, 122, 363 N.E.2d 592 (1977); *Craftsman Type, Inc. v. Lindley*, 6 Ohio St.3d 82, 85, 6 Ohio B. 122, 451 N.E.2d 768 (1983); *Gen. Motors Corp. v. Wilkins*, 102 Ohio St.3d 33, 42, 2004-Ohio-1869, ¶ 68, 806 N.E.2d 517. R.C. 5717.02 specifically requires that a notice of appeal be filed with both the BTA and the tax commissioner within sixty days after the service of final determination.

Id. at ¶ 7.

{¶6} Lyndhurst further argues that their failure to file notice with Testa should not have resulted in their appeal being dismissed. However,

the courts have repeatedly held that an appellant must timely file its notice of appeal with the tax commissioner, as well as the BTA, in order to invoke the jurisdiction of the BTA. *Zephyr Room, Inc. v. Bowers*, 164 Ohio St. 287, 130 N.E.2d 362 (1955); *Fineberg v. Kosydar*, 44 Ohio St.2d 1, 2, 335 N.E.2d 705 (1975). The failure to comply with this requirement properly leads to a dismissal of the appeal. *Akron Standard Div. v. Lindley*, 11 Ohio St.3d 10, 12, 462 N.E.2d 419 (1984).

Id. at ¶ 8.

{¶7} Additionally, upon submitting an online filing of the notice of appeal, a window pops up as an “Important Reminder of Service Requirement” stating “You are registered to serve

(send a copy of) the Notice of Appeal you just created to all other parties of this appeal. Failure to do so may result in a dismissal of your appeal.” We find that Lyndhurst was placed on notice that they were required to personally transmit a copy of the notice of appeal to Testa or its appeal would be dismissed. They did not adhere to the requirements of R.C. 5717.02(B), and their appeal was properly dismissed by the BTA.

{¶8} Therefore, we find that the BTA did not err in dismissing Lyndhurst’s appeal.

{¶9} Judgment affirmed.

It is ordered that the appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Ohio Board of Tax Appeals to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

PATRICIA ANN BLACKMON, P.J., and
LARRY A. JONES, SR., J., CONCUR