

## IN THE SUPREME COURT OF OHIO

Board of Education of the Groveport  
Madison Local Schools

Appellee,

v.

Franklin County Bd. of Revision, et al.,

and

Public Storage/Public Storage Business  
Trust (Successor to Hamilton-33  
Partnership and John W. Messmore, Tr.)

Appellant.

Supreme Court Case No. 2012-1476

Appeal from the Ohio Board of Tax Appeals  
Case No. 2010-A-1290

---

**BRIEF OF APPELLEE GROVEPORT MADISON  
LOCAL SCHOOLS BOARD OF EDUCATION**

---

Mark H. Gillis Esq. (0066908)  
COUNSEL OF RECORD  
Karol C. Fox (0041916)  
Rich & Gillis Law Group, LLC  
6400 Riverside Dr., Suite D  
Dublin, OH 43017  
(614) 228-5822

Attorneys for Appellee  
Board of Education of the  
Groveport Madison Local  
School District

Mike DeWine  
Ohio Attorney General  
30 East Broad St., 17<sup>th</sup> Floor

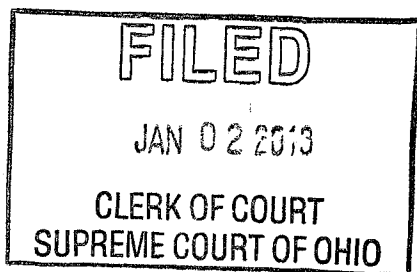
Attorney for Appellee Tax Commissioner

Todd W. Sleggs (0040921)  
COUNSEL OF RECORD  
Sleggs, Danzinger & Gill, Co. LPA  
820 W. Superior Ave., 7<sup>th</sup> Fl.  
Cleveland, OH 44113  
(216) 771-8990

Attorneys for Appellant,  
Public Storage/Public Storage  
Business Trust

William Stehle (0077613)  
Assistant County Prosecutor  
373 South High Street, 20th Floor  
Columbus, Ohio 43215  
(614) 462-7519

Attorney for Appellee Franklin  
County Auditor and Board of  
Revision



## TABLE OF CONTENTS

Statement of the case and facts .....	2
Law and Argument .....	3
<u>Appellee's Proposition of Law No. 1:</u>	
<b>THE JURISDICTIONAL REQUIREMENTS OF R.C. 5715.13 AND 5715.19 ARE DISTINCT AND SEPARATE FROM THE STANDING REQUIREMENTS. FAILURE TO MEET THE JURISDICTIONAL REQUIREMENTS REQUIRES DISMISSAL OF THE COMPLAINT REGARDLESS OF THE STANDING OF THE FILING COMPLAINANT.</b>	
R.C. 5175.13 .....	3
R.C. 5715.19 .....	3
<i>Stanjim Co. v. Mahoning Cty. Bd. of Revision</i> (1974), 38 Ohio St. 2d 233 at 236, 67 Ohio Op. 2d 296, 313 N.E.2d 14 .....	3
<i>Akron Standard Div. v. Lindley</i> (1984), 11 Ohio St.3d 10, 11 Ohio B. 9, 462 N.E.2d 419.....	3
<i>Renner v. Tuscarawas Cty. Bd. of Revision</i> (1991), 59 Ohio St.3d 142, 572 N.E.2d 56.....	3
<i>Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision</i> (1998), 80 Ohio St.3d 591, 1998 Ohio 179, 687 N.E.2d 723 .....	3
<i>Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision</i> (June 30, 1997), BTA No. 1995-S-1282, unreported .....	6
<i>Brockman v. Montgomery County Bd. of Revision</i> , (Oct. 6, 2010) B.T.A. No. 2008-M-2797, 2010 Ohio Tax LEXIS 1660, unreported .....	7
<i>Bonfiglio v. Cuyahoga Cty. Bd. of Revision</i> (November 6, 2012), BTA No. 2012-X-1241, 2012 Ohio Tax LEXIS 5414, unreported .....	7
<i>South-Western City Schools v. Franklin Cty. Bd. of Revision</i> (March 15, 2011), BTA No. 2008-M-1995, 2011 Ohio Tax LEXIS 469, unreported .....	7
<i>City of Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision.</i> (Jan. 22, 1999), BTA No. 1998-L-138, 1999 Ohio Tax LEXIS 29, unreported .....	7
<i>Cedar Heights Co. v. Cuyahoga Cty. Bd. of Revision</i> (July 20, 2001), BTA Nos. 2000-J-1714, 2002-J-1774, 2001 Ohio Tax LEXIS 1225, unreported .....	7

## TABLE OF AUTHORITIES

### Cases

<i>Akron Standard Div. v. Lindley</i> (1984), 11 Ohio St.3d 10, 11 Ohio B. 9, 462 N.E.2d 419.....	3
<i>Bonfiglio v. Cuyahoga Cty. Bd. of Revision</i> (November 6, 2012), BTA No. 2012-X-1241, 2012 Ohio Tax LEXIS 5414, unreported .....	7
<i>Brockman v. Montgomery County Bd. of Revision</i> , (Oct. 6, 2010) B.T.A. No. 2008-M-2797, 2010 Ohio Tax LEXIS 1660, unreported .....	7
<i>Cedar Heights Co. v. Cuyahoga Cty. Bd. of Revision</i> (July 20, 2001), BTA Nos. 2000-J-1714, 2002-J-1774, 2001 Ohio Tax LEXIS 1225, unreported .....	7
<i>City of Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision</i> . (Jan. 22, 1999), BTA No. 1998-L-138, 1999 Ohio Tax LEXIS 29, unreported .....	7
<i>Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision</i> (1998), 80 Ohio St.3d 591, 1998 Ohio 179, 687 N.E.2d 723 .....	3-7
<i>Renner v. Tuscarawas Cty. Bd. of Revision</i> (1991), 59 Ohio St.3d 142, 572 N.E.2d 56.....	3-7
<i>Stanjim Co. v. Mahoning Cty. Bd. of Revision</i> (1974), 38 Ohio St. 2d 233 at 236, 67 Ohio Op. 2d 296, 313 N.E.2d 14 .....	3-7
<i>South-Western City Schools v. Franklin Cty. Bd. of Revision</i> (March 15, 2011), BTA No. 2008-M-1995, 2011 Ohio Tax LEXIS 469, unreported .....	7
<i>Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision</i> (June 30, 1997), BTA No. 1995-S-1282, unreported .....	6

### Statutes

R.C. 5175.13 .....	3
R.C. 5715.19 .....	3

## STATEMENT OF THE CASE AND FACTS

This case was initiated by the filing of a Board of Revision complaint (DTE Form 1) with the Franklin County Board of Revision on March 31, 2009. At the time of the filing of the complaint, and until the property was sold in 2010, Hamilton-33 Partnership held legal title to the property at issue. (BTA Decision p. 2 & Appellee BOE's Supplement Exh. 1) The complaint form failed to name Hamilton-33 Partnership as the owner in response to Line 1 of the complaint form, or anywhere else on the form. Instead, John W. Messmore Living Trust was listed as the owner/complainant in response to Lines 1 and 2 of DTE Form 1. (BTA Decision p. 2)

Although the BOR was seemingly aware of the defect of the complaint, it held a hearing and reduced the value of the property. (See BOR Hearing Worksheet in Appellant's Supplement Exh. 3) There is nothing in the record that indicates the Owner of the property, Hamilton-33 Partnership, ever received notice from the BOR of the filing of the complaint, the BOR hearing, or the BOR's decision.

On appeal at the Board of Tax Appeals (BTA), the Board of Education (BOE) raised the jurisdictional issue in a motion and the BTA granted the motion based upon the jurisdictional defect created by the complainant's failure to name the correct property owner on the complaint form. Although counsel for the new owner made standing arguments in response to the BOE's motion, the BTA did not even address the issue of standing in its decision as it based its decision solely upon the jurisdictional defect of the complaint. (BTA Decision p. 4)

Again, before this Court, Appellant has raised only **standing** arguments in its brief, none of which apply to the actual decision from which Appellant appeals because the BTA did not address the standing issues.

**Proposition of Law No. 1:**

**THE JURISDICTIONAL REQUIREMENTS OF R.C. 5715.13 AND 5715.19 ARE DISTINCT AND SEPARATE FROM THE STANDING REQUIREMENTS. FAILURE TO MEET THE JURISDICTIONAL REQUIREMENTS REQUIRES DISMISSAL OF THE COMPLAINT REGARDLESS OF THE STANDING OF THE FILING COMPLAINANT.**

R.C. Sections 5715.13 and 5715.19 set forth the statutory requirements for filing requests for a decrease in value for real property tax purposes. This Court confirmed long ago that complainants must fully comply with R.C. 5715.19 and 5715.13 before a county board of revision may act on their claims, that the Board of Revision (BOR) Complaint form (formerly BTA Form 1 and now DTE Form 1) was created for the purpose of satisfying these requirements and, that "Form 1 represents a lawful interpretation of the **minimal, data requirements** of R. C. 5715.19 and 5715.13" (emphasis added) *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974), 38 Ohio St. 2d 233 at 236, 67 Ohio Op. 2d 296, 313 N.E.2d 14.

Subsequently, this Court expounded upon its *Stanjim* decision by adopting a substantial compliance test when reviewing BOR complaints for jurisdictional purposes. In order to determine whether there has been substantial compliance it must be determined whether the inclusion or omission of particular information thereon "runs to the core of procedural efficiency." *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10, 11 Ohio B. 9, 462 N.E.2d 419. "If the omitted requirement runs to the core of procedural efficiency, then the requirement is essential, the omission is not substantial compliance with the statute, and the appeal is to be dismissed." *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142, 144, 572 N.E.2d 56.

In *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591, 1998 Ohio 179, 687 N.E.2d 723, this Court had to determine whether or not the information requested in Lines 7 and 8 of DTE Form 1 had to be fully provided in order for a complaint to be jurisdictionally valid. In considering the Line 8 issue, the Court distinguished between factual information as requested by the form in *Stanjim* and information that consists of opinion or argument finding that “no specific, verifiable information is requested in Question 8. It seeks not so much fact as opinion or theory. In this case, appellants fully answered the factual questions that remained from the *Stanjim* form...” With respect to R.C. 5715.13 the Court went on to hold that “Question 8 of the DTE Form 1 used in this case does not elicit information required by R.C. 5715.13.... Question 8 does not seek data, it seeks an argument. As such, it seeks much more than the minimal amount of information required by the *Stanjim* form. We find that R.C. 5715.13 does not require a response to Question 8 on the DTE Form 1 used in this case.” *Cleveland Elec. Illum. at 595.*

In the subject case the information requested by Line one of DTE Form 1 consisted of the most basic and essential type of factual information required by *Stanjim* – the name and address of the owner of the property. Line one did not request opinion or provide a place for argument. Line one required verifiable objective data regarding the ownership of property subject to the complaint. This information is required by *Stanjim*, R.C. 5715.13, and R.C. 5715.19 for a complaint to invoke the jurisdiction of the Board of Revision.

The requested Line 7 information in the *Cleveland* case pertained to the complainant’s opinion of value and requested decrease amount and the Court examined the Line 7 information under R.C. 5715.19 due to the notice requirements in that statute and the fact that notice requirements “go to the core of procedural efficiency.” The *Cleveland* Court considered the

importance of the information requested on Line 7 of DTE Form 1 because that information triggered when boards of education had to be notified of complaints. The Court recognized the required Line 7 information was “a key point for the orderly administration of an overvaluation claim. The statute, in requiring notice to school boards, identifies them as an integral part of the determination of a claim. **Anything that would affect that notice being given, therefore, goes to the core of procedural efficiency....** The case cannot go forward if that information is insufficient.” (Emphasis added.) *Cleveland Elec. Illum.* at 597.

But the notice requirements of R.C. 5715.19 also apply to property owners. R.C. 5715.19(B) states that “the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner...” And 5715.19(C) requires Boards of Revision to provide hearing notification to any complainant and the property owner when the complaint has been filed “by one other than the property owner.” Certainly the owner of property for which a complaint has been filed is as “integral a part of the determination of the claim” as the board of education and anything that affects the furnishing of the required notice to the owner “goes to the core of procedural efficiency.”

Line 1 of DTE Form 1 asks for the name and address of the owner of the property at the time the complaint is filed. Line 2 asks for the name and address of the complainant if the complainant is someone other than the owner. This information must be provided so that 1) Boards of Revision know that someone other than the owner has filed the complaint, thereby triggering the need for notice to the owner, and 2) Boards of Revision have the name and address of the owner for purposes of providing the required notice. In addition to violating the most

basic jurisdictional requirements of *Stanjim*, failing to properly identify the owner of the property on DTE Form 1 “runs to the core of procedural efficiency” and violates the substantial compliance test set forth in *Akron, Renner, and Cleveland Elec., supra*. The requirement of the information requested by Lines 1 and 2 is “essential” and “the omission is not substantial compliance with the statute, and the appeal is to be dismissed.” *Renner* at 144

In this case the owner of the property at the time of the filing of the BOR complaint was Hamilton-33 Partnership as confirmed by the County’s property record card. (BTA decision p. 2) But Hamilton-33 Partnership was not listed as the owner on Line one of the complaint, nor was Hamilton-33 Partnership listed anywhere on the complaint. Instead, the response to Lines 1 and 2 combined read “John W. Messmore Living Trust.” (BTA Decision p. 2) In this case the complainant failed to both correctly identify the owner of the property and to clearly establish that the complainant was someone other than the owner, thereby requiring notification to the owner under R.C. 5715.19. Both of these errors violate *Stanjim* and the later established substantial compliance test because the omission directly affected the BOR’s ability to provide the notice required by R.C. 5715.19. The original Board of Revision complaint filed in this case was jurisdictionally defective and the BTA reasonably and lawfully determined that the case should be remanded with orders for the BOR to dismiss.

Although this Court has not ruled on this specific jurisdictional issue, the BTA has consistently relied upon this Court’s decisions in *Stanjim and Cleveland Elec. Illum., supra*, to determine that the failure to properly name the owner in line 1 of a BOR complaint renders the complaint jurisdictionally defective. The BTA has properly recognized that “(a)s the auditor is statutorily obligated to notify the owner that a challenge to the property value has been made, the owner of a subject property must be listed on the face of a complaint. *Trotwood-Madison City*



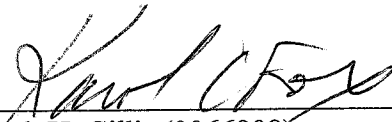
*School Dist. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported and *Brockman v. Montgomery County Bd. of Revision*, (Oct. 6, 2010) B.T.A. No. 2008-M-2797, 2010 Ohio Tax LEXIS 1660, unreported.

In numerous cases, the BTA has specifically concluded that “a complaint must name at least one owner of the property on the face of the complaint form in order to satisfy the core jurisdictional requirements of 5715.19.” *Bonfiglio v. Cuyahoga Cty. Bd. of Revision* (November 6, 2012), BTA No. 2012-X-1241, 2012 Ohio Tax LEXIS 5414, unreported; *South-Western City Schools v. Franklin Cty. Bd. of Revision* (March 15, 2011), BTA No. 2008-M-1995, 2011 Ohio Tax LEXIS 469, unreported; *City of Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*. (Jan. 22, 1999), BTA No. 1998-L-138, 1999 Ohio Tax LEXIS 29, unreported; *Cedar Heights Co. v. Cuyahoga Cty. Bd. of Revision* (July 20, 2001), BTA Nos. 2000-J-1714, 2002-J-1774, 2001 Ohio Tax LEXIS 1225, unreported; *Trotwood-Madison, supra*; and *Brockman, supra*. The BTA made all of these decisions properly relying upon this Court’s holdings in *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974), 38 Ohio St. 2d 233, 67 Ohio Op. 2d 296, 313 N.E.2d 14. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591, 1998 Ohio 179, 687 N.E.2d 723; *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142, 572 N.E.2d 56; and *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10, 11 Ohio B. 9, 462 N.E.2d 419.

## CONCLUSION

The basis for the BTA's decision in this case was jurisdictional. All of the arguments raised by Appellant pertain to the issue of standing. Appellant claims that John w. Messmore Living Trust had standing to file the underlying complaint because it had an ownership interest in the owner Hamilton-33 Partnership. Appellee BOE submits that the complainant failed to prove that relationship and that evidence of that relationship does not exist in the record. Regardless, the BTA did not address that issue and it is, therefore, improper for Appellant to base its appeal up[on an issue not addressed by the trier of fact. The jurisdictional defect of the complaint prevented the BTA from considering whether or not the evidence demonstrated that the complainant had standing to file the complaint so, if this Court were to overturn the BTA on its jurisdictional finding, the BOE respectfully requests that the case be remanded back to the BTA for consideration of the standing issue.

Respectfully submitted,



---

Mark H. Gillis (0066908)

Karol C. Fox (0041916)

Attorneys for Appellee Board of Education of the  
Groveport Madison Local School District


CERTIFICATION OF SERVICE

I hereby certify that a true and complete copy of the foregoing brief was served upon the following counsel of record by regular U.S. Mail, postage prepaid, this 2<sup>nd</sup> day of January, 2013.

William Stehle  
Asst. Prosecuting Attorney – Attorney for Appellees  
County Auditor and Board of Revision

Todd W. Sleggs  
Attorney for Appellant Public Storage/Public  
Storage Business Trust (Successor to Hamilton-33  
Partnership and John W. Messmore, Tr.)

Mike DeWine  
Ohio Attorney General  
Attorney for Tax Commissioner

  
Karol C. Fox