

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Cardinal Industries, et al.)
 (See Attached Docket/Exhibit A)) Knox County
 Tax Year 1992)

INITIAL DECISION AND ORDER

Appeals were filed on behalf of the various property owners listed on the attached docket (exhibit A) by Caruthers & Associates, Inc. ("Caruthers"), a corporation registered with the State Board of Equalization pursuant to Tenn. Code Ann. Section 67-5-1514(c). In addition, the property owner also filed an appeal with respect to the property identified as Eagle III Knoxville, Inc. - Group 82BF, Parcel 2.02 ("Eagle III"). The property owner, Robert A. Hraborsky, indicated he would represent himself.

On November 30, 1992, the administrative judge issued notices of hearing scheduling the appeals on the attached docket (exhibit A) for hearing on January 7, 1993, at 9:30 a.m. in Knoxville, Tennessee. The administrative judge also sent a memorandum to Mr. Hraborsky, Caruthers and Knox County concerning the duplicate appeal.

In response to the memorandum, Mr. Hraborsky contacted the administrative judge by telephone. Mr. Hraborsky indicated that he had once responded to a solicitation from Caruthers, but had not since been contacted. The administrative judge advised Mr. Hraborsky that the issue of representation would have to be dealt with as a preliminary matter if he and Caruthers could not resolve the matter.¹ Except for that telephone call, none of the parties contacted the administrative judge about the scheduling of the

¹On occasion duplicate appeals are filed with the State Board of Equalization. For example, different partners and corporate officials will sometimes retain different representatives unbeknownst to each other.

appeals until the late afternoon or early evening of January 6, 1993.²

During the early evening hours of January 6, 1993, the administrative judge spoke by telephone with Mr. Jerry Caruthers. Mr. Caruthers requested that with the possible exception of the Eagle III appeal, the hearings scheduled for the next day be continued until a later time as the flight in question from Memphis to Knoxville which Caruthers planned to take was not scheduled to land until 11:00 a.m.. With respect to the Eagle III appeal, Mr. Caruthers requested that Mr. Hraborsky be given the opportunity to either represent himself at 9:30 a.m. or allow Caruthers to do so later in the day. Mr. Caruthers indicated that he had not spoken with Hraborsky,³ and offered no reason as to why adequate travel arrangements had not been made.

Recognizing the need to dispose of these matters and the fact that possible settlements on the next day's docket would make a later hearing time possible, the administrative judge agreed to continue the hearings until 12:30 p.m. or later in the day if agreed to by Knox County. The administrative judge instructed Mr. Caruthers to contact Knox County the following morning in order to enable their representatives to advise the administrative judge if the parties wished to convene at 12:30 p.m. or at some mutually agreed upon later time. According to Knox County's representatives, they were not contacted by anyone with Caruthers.⁴

In almost all other circumstances the administrative judge would have denied Mr. Caruthers' requested continuance for at least two reasons. First, the administrative judge finds that no explanation was given with respect to why adequate travel

²Due to a problem with the hotel's voice mail system, it is unclear if Caruthers first left a message for the administrative judge late that afternoon or early that evening.

³Mr. Caruthers declined the administrative judge's offer to provide him with Mr. Hraborsky's telephone number if needed.

⁴This occurred at 9:30 a.m. on January 7, 1993, when the administrative judge met with Mr. Hraborsky and Knox County.

arrangements had not been made. Second, the administrative judge finds that Caruthers habitually seeks continuances, withdraws appeals at the last minute, or simply fails to appear.

The administrative judge's last scheduled hearing with Caruthers is illustrative of this on-going problem. In a 1992 Washington County appeal identified as In Re: Cooper Realty (Dist. 9, Map 46AD, Parcels 1.12 & 1.12P), the administrative judge issued a default order after Caruthers failed to appear for the hearing. Caruthers simply responded by filing a letter dated September 10, 1992, which stated in pertinent part:

In accordance with applicable statutes, please show the above appeal as withdrawn by the taxpayer.

This on-going problem with Caruthers was previously summarized by the administrative judge in an order issued on August 1, 1991, in In Re: Shelby County Real & Personal Property Appeals Pending for 1990 and Prior Tax Years Involving Taxpayers Represented by Caruthers & Associates, Inc. That order, which is reproduced in exhibit B, denied Mr. Jerry Caruthers' request for an extension reasoning in pertinent part:

The administrative judge finds Mr. Caruthers' request for an extension puzzling. On July 31, 1991, Taylor Caruthers contacted the administrative judge regarding the format of the document(s) being prepared. It was the administrative judge's understanding from this conversation that the August 2, 1991, filing deadline did not pose a problem.

Given the lack of specificity in the memorandum, the amount of time requested, and the propensity of Caruthers and Associates, Inc. to almost regularly request extensions and postponements for less than compelling reasons, the administrative judge finds that the taxpayer's request for a ten (10) day extension should be denied.

[Emphasis supplied]

In any case, an employee of Caruthers, Mr. Roy Buffaloe, appeared at 12:30 p.m. on January 7, 1993. Assuming Mr. Buffaloe was a properly registered agent pursuant to Tenn. Code Ann.

67-5-1514(c),⁵ the administrative judge proceeded with the hearings. Mr. Buffaloe indicated that of the twelve (12) parcels under appeal, he wished to withdraw nine (9), settle two (2), and proceed with Eagle III.

Upon returning to the office on January 11, 1993, the administrative judge discovered that Mr. Buffaloe's name had been placed on the Comptroller's "Unapproved Agents List" which is reproduced in exhibit C. The administrative judge would also note that the State Board had previously notified those on the list of their status.

The administrative judge finds that since Mr. Buffaloe is not an approved agent he cannot represent taxpayers in hearings before the State Board.⁶ Given this fact and the obvious bad faith of Caruthers, the administrative judge finds that except for Eagle III, these appeals should be dismissed. With respect to Eagle III, the administrative judge finds that it would be fundamentally unfair to dismiss that appeal given what occurred. Moreover, the administrative judge finds that he inadvertently misled Mr. Hraborsky the morning of January 7, 1993, by assuming that a properly registered agent would be appearing.

ORDER

It is therefore ORDERED that with the exception of Eagle III, each of the appeals listed on the attached docket (exhibit A) are hereby DISMISSED.

It is FURTHER ORDERED that Eagle III be set for rehearing on March 17, 1993, at 1:00 p.m. in accordance with the enclosed notice of hearing. Mr. Hraborsky shall advise the administrative judge

⁵Mr. Buffaloe had previously been a properly registered agent.

⁶The administrative judge would note that even if Mr. Buffaloe were a properly registered agent, the proof offered at the hearing is flawed. For example, Mr. Buffaloe introduced a warranty deed, but had no personal knowledge about the sale. Similarly, no evidence was introduced in support of various components of his income approach.


and Knox County within fifteen (15) days of the entry of this order as to who will represent him at the hearing.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7th day of August, 1992.


MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

CARDINAL.DOC

THURSDAY, JANUARY 7, 1993, Room D, State Office Building, Knoxville, Tennessee

ADM. JUDGE: MARK J. MINSKY

TIME	APPELLANT/PROP. ADD.	REPRESENTATIVE	DESCRIPTION			PARCEL	SPEC. INT.	REMARKS/COUNTY
			DIST.	MAP NO.	GROUP			
9:30	Cardinal Industries 700 Inskip Road 8312 Gleason Rd.	Caruthers & Associates 2075 Madison Ave., Ste. 4 Memphis, TN 38104 (901) 726-1074 and/or Robert A. Hraborsky 1500 Cherry Street Knoxville, TN 37917 (615) 546-7110			069HF 120PB	004 005		Knox County Tax Year 1992
	Eagle III Knoxville, Inc. 1500 Cherry Street	Same as above			082BF	2.02		Knox County Tax Year 1992
	Cooper Company 525 Henley at Clinch	Same as above	094L	094LJ		1.00AP		Knox County Tax Year 1992
	American Municipal Bond Holding Company 520 Summitt Hill Drive	Same as above		094LC		18		Knox County Tax Year 1992
	Summitt Properties #4 Ltd. 525 Henley at Clinch	Same as above	094L	094LJ		1		Knox County Tax Year 1992
	Cooper Companies 525 Henley at Clinch	Same as above				P1283086		Knox County Tax Year 1992

E X H I B I T A

D O C K E T

THURSDAY, JANUARY 7, 1993, Room D, State Office Building, Knoxville, Tennessee

ADM. JUDGE: MARK J. MINSKY

TIME	APPELLANT/PROP. ADD.	REPRESENTATIVE	DESCRIPTION				PARCEL	SPEC. INT.	REMARKS/COUNTY
			DIST.	MAP NO.	GROUP	CONT. MAP			
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	Cooper Company 525 Henley at Clinch	Same as above		094L	094LJ		1.00AP		Knox County Tax Year 1992
	American Municipal Bond Holding Company 520 Summitt Hill Drive	Same as above			094LC		18		Knox County Tax Year 1992
	Summitt Properties #4 Ltd. 525 Henley at Clinch	Same as above		094L	094LJ		1		Knox County Tax Year 1992
	Cooper Companies 525 Henley at Clinch	Same as above					P1283086		Knox County Tax Year 1992

THURSDAY, JANUARY 7, 1993, Room D, State Office Building, Knoxville, Tennessee

ADM. JUDGE: MARK J. MINSKY

TIME	APPELLANT/PROP. ADD.	REPRESENTATIVE	DESCRIPTION			PARCEL	SPEC. INT.	REMARKS/COUNTY
			DIST.	MAP NO.	GROUP	CONT. MAP		
	Mutual Benefit Life Ins. 500 W. Sybuttt Hill 500 W. Summitt	Same as above			094LC 094LC	19 1900A		Knox County Tax Year 1992
	O'Neal Steel, Inc. 5910 Middlebrook Pike 5910 Middlebrook Pike 5900 Middlebrook Pike	Same as above			107HA	P1290118 2 P11161200		Knox County Tax Year 1992

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Shelby County Real & Personal Property)
 Appeals Pending for 1990 and Prior Tax) Shelby County
 Years Involving Taxpayers Represented)
 by Caruthers & Associates, Inc.)

ORDER

TO: Caruthers & Assoc., Inc.
 2075 Madison Avenue
 Memphis, TN 38104

Michael Hooks, Assessor of Property
Rm. 440, 160 N. Mid America Mall
Memphis, TN 38103

On August 1, 1991, the taxpayer filed the attached memorandum with the administrative judge. The administrative judge assumes that the memorandum refers to orders entered on July 2, 1991, setting prehearing conferences and requiring the filing of certain information by the close of business on August 2, 1991.

It appears that Shelby County was not served with a copy of the memorandum as required by Rule 1360-4-1-.03(4) of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. In order to expedite matters, the administrative judge has enclosed a copy of the memorandum along with this order for the assessor of property.


The administrative judge finds Mr. Caruthers' request for an extension puzzling. On July 31, 1991, Taylor Caruthers contacted the administrative judge regarding the format of the document(s) being prepared. It was the administrative judge's understanding from this conversation that the August 2, 1991, filing deadline did not pose a problem.

Given the lack of specificity in the memorandum, the amount of time requested, and the propensity of Caruthers and Associates, Inc. to almost regularly request extensions and postponements for less than compelling reasons, the administrative judge finds that the taxpayer's request for a ten (10) day extension should be denied.

It is therefore ORDERED that the request of Caruthers and Associates, Inc. for a ten (10) day extension be DENIED.

Since the administrative judge will not be in the office on Friday, August 2, 1991, and will be in Memphis on Monday, August 5, 1991, it is FURTHER ORDERED that Caruthers and Associates, Inc. be allowed to appear on August 5, 1991, at 1:30 p.m., in Room 1210, State Office Building, 170 N. Main, Memphis, Tennessee, to show cause why a default order should not be issued if the administrative judge's orders entered on July 2, 1991, have not been complied with in good faith.

ENTERED this 1st day of August, 1991.


MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Ann T. Ellis, Technical Assistant
Mr. William Thompson

E X H I B I T C

01/05/93

COMPTROLLER OF THE TREASURY Agent Registration System Unapproved Agents List

For comments: Check Agent's record.

<u>FIRSTNAME</u>	<u>LASTNAME</u>	<u>REG#</u>	<u>A</u>	<u>NAME OF FIRM</u>
PROPERTY	CONSULTING GROUP	A059	N	PROPERTY CONSULTING GROUP, INC.
		0001		
		0003		
		0004		
		0005		
		0006		
WILLIAM (BILL) E.	GRAHAM	0008	N	THE STALLINGS GROUP, LTD.
DAVID A.	LEACH	0015	N	KMART CORPORATION
CRAIG	JOHNSON	0021	N	THE HOLLINGSWORTH GROUP, INC.
CELIA A.	HALL	0030	N	
ROBERT (SKIP)	HANCOCK	0032	N	PROPERTY TAX REPRESENTATIVES, INC.
JOE.	WILLIAMS	0035	N	
JAMES D.	DAVIS	0037	N	?
DARRIN L.	MITCHELL	0040	N	GEORGE MCELROY AND ASSOCIATES
DAVID C.	YOUNG	0041	N	GEORGE MCELROY & ASSOC., INC.
MICHAEL J.	BLOINK	0046	N	R. B. MELLANDER & ASSOCIATES
JOSEPH R.	SHAW	0048	N	THE SOUTHLAND CORPORATION
GENE B.	MEADS	0063	N	DELOITTE & TOUCHE
JOHN R.	PARKER	0066	N	STRATEGIS ASSET VALUATION & MGT.
AL G.	LASATER	0067	N	SHELL OIL COMPANY
FORREST	PEARSON	0073	N	VENABLE REALTY COMPANY
GARY D.	BROWN	0074	N	REAL ESTATE TAX SERVICES
CLARENCE A.	MOORE	0075	N	CENTURY 21-DYERSBURG REALTY
DAVID D.	HUMPHREYS	0076	N	MCNAMARA ASSOC., INC.
RICHARD	BOTTS	0078	N	
ROY S.	BUFFALOE	0083	N	
THOMAS J.	ANDERSON	9000	N	
WALTER J.	LEMASURIER	9004	N	REALTAX, INC.