11-0248

RECEIVED
JAN 12 2011
JEFFERSON COUNTY
CIRCUIT COURT

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Circuit No. 23
Civil Case No. 10AA-1

Shenandoah Sales & Service, Inc.
David C. Tabb, Pro Se
107 Tabb Lane
Harpers Ferry, WV 25425
304-725-0423

FILED
JAN 24 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Petitioner

v.

Angie Banks
Assessor of Jefferson County
104 E. Washington Street
Charles Town, WV 25425

By counsel:

Stephanie F. Grove
Jefferson County Assistant Prosecutor
P. O. Box 729
110 N. George Street, 3rd Floor
Charles Town, WV 25414
304-728-3243

RECEIVED
JAN 12 2011
JEFFERSON COUNTY
CIRCUIT COURT

Supreme Court of Appeals of West Virginia
DOCKETING STATEMENT

Style of Case (use style from final order)

Shenandoah Sales & Service, Inc.

Petitioner,

vs. Case No. 10-AA-1

Angie Banks, Assessor

Assessor,

Type of Action:

Civil ☑
Criminal ☐

Petitioner(s):

Plaintiff(s) ☑
Defendant(s) ☐

Circuit Judge: David Sanders

County: Jefferson

Circuit Number: **23**

TIMELINESS OF APPEAL

Date of entry of judgment or order appealed from: **The 14th day of September, 2010**

Filing date of any post-judgment motion filed by any party pursuant to R. Civ. P. 50(b), 52(b), or 59: **The 20th day of September, 2010**

Date of entry of order deciding post-judgment motion: **No response from Circuit Court**

Date of filing of petition for appeal: **The 12th day of January, 2011**

Date of entry of order extending appeal period:

Time extended to:

FINALITY OF ORDER OR JUDGMENT

Is the order or judgment appealed from a final decision on the merits as to all issues and parties?

☐ YES ☑ NO

If no, was the order or judgment entered pursuant to R. Civ. P. 54(b)?

☐ YES ☑ NO ☐ N/A

Has the defendant been convicted? ☐ YES ☐ NO ☑ N/A

Has a sentence been imposed? ☐ YES ☐ NO ☑ N/A

Is the defendant incarcerated? ☐ YES ☐ NO ☑ N/A

Has this case previously been appealed? ☐ YES ☑ NO

If yes, give the case name, docket number, and disposition of each prior appeal on a separate sheet.

Are there any related cases currently pending in the Supreme Court of Appeals or Circuit Court?

☐ YES ☑ NO

If yes, cite the case and the manner in which it is related on a separate sheet

CASE INFORMATION

State generally the **nature of the suit**, the **relief sought**, and the **outcome below**. [Attach an additional sheet, if necessary.]

The Petitioner is asking this court to reverse the order of dismissal.

State the **issues to be raised on appeal**. [Attach an additional sheet, if necessary. Use carriage returns to number the issues in a manner corresponding with the petition for appeal.]

III, A, Of Petition for Appeal

The Honorable David Sanders, Judge of the Circuit Court of Jefferson County, committed reversible and prejudicial error when the court sua sponte and ex parte entered the order of September 14, 2010 dismissing petitioners appeal from the action of the Jefferson County Commission sitting as a Board of Review and Equalization, Thus dening the petitioner his absolute right to an appeal hearing pursuant to West Virginia Code 11-3-25.

Continued: State the **issues to be raised on appeal**. [Attach an additional sheet, if necessary. Use carriage returns to number the issues in a manner corresponding with the petition for appeal.]

III. B, Of Petition for Appeal

Petitioner says his right to Due Process of Law pursuant to the 5th and 14th amendments, Constitution Article III 10 of the West Virginia Constitution were violated by the Circuit Court of Jefferson County refusing to provide and denying to Petitioner his right to an Appeal Hearing Pursuant to West Virginia Code 11-3-25 from the March 8, 2010 order of the Jefferson County Commission sitting as a Board of Review and Equalization.

CASE MANAGEMENT INFORMATION

Do you wish to make an oral presentation of the petition?	☑ YES	☐ NO
Has the entire or only portions of the record been designated?	☑ ENTIRE	☐ PORTION
If the appeal is granted,do you desire reproduction of the record or that the case be heard on the original record?	☐ REPRODUCED ☑ ORIGINAL	

List counsel for each adverse party to the appeal. Include name, firm name, address, and telephone number. If unrepresented by counsel, provide the address and telephone number of the adverse party. Attach an additional sheet if necessary.

Stephanie F. Grove
Jefferson County Assistant Prosecutor
P O Box 729
110 N. George Street, 3d Floor
Charles Town, WV 25414
(304)728-3243

List the Petitioner(s) name: Shenandoah Sales & Service, Inc.

If incarcerated, provide institutional address:

Name of attorney or pro se litigant filing Docketing Statement:

☐ ATTORNEY ☑ PRO SE

Will you be handling the appeal? ☑ YES ☐ NO

If so, provide firm name, address, and telephone number:

If this is a joint statement by multiple petitioners, add the names and addresses of the other petitioners and counsel joining in this Docketing Statement on an additional sheet, accompanied by a certification that all petitioners concur in this filing.

Signature: _____

WV Bar No. _____

Date: 1/12/11

Remember to Attach:

1. Additional pages, if any, containing extended answers to questions on this form.
2. A copy of the order or judgment from which the appeal is taken.
3. A Certificate of Service.

RECEIVED
JAN 12 2011
JEFFERSON COUNTY
CIRCUIT COURT

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Circuit No. 23

Civil Case No. 10-AA-1

DESIGNATION OF RECORD

Shenandoah Sales & Service, Inc.
David C. Tabb, Pro Se
107 Tabb Lane
Harpers Ferry, WV 25425
304-725-0423

Petitioner

v.

Angie Banks
Assessor of Jefferson County
104 E. Washington Street
Charles Town, WV 25425

Respondent

I HEREBY DESIGNATE THE ENTIRE RECORD

SHENANDOAH SALES & SERVICE, INC.
David C. Tabb, Pro Se
107 Tabb Lane
Harpers Ferry, WV 25425
304-725-0423

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RECEIVED
JAN 12 2011
JEFFERSON COUNTY
CIRCUIT COURT

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON

SHENANDOAH SALES & SERVICE, INC

Petitioner,

Vs. **Case No. 10-AA-1**

ASSESSOR OF JEFFERSON COUNTY WV,

Respondent

PETITION FOR APPEAL

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

I. INTRODUCTION

COMES NOW the Petitioner, Shenandoah Sales & Service, Inc. by its duly nominated agent David C. Tabb, pursuant to *WV Code § 58-5-1* and *Rule 3 of the West Virginia Supreme Court Rules of Appellate Procedure,* and respectfully represents to the Court that your Petitioner is seeking an appeal from the order of September 14, 2010 whereby the Circuit Court of Jefferson County, West Virginia summarily dismissed without a hearing. Petitioners Petition for Review of the Jefferson County Commission sitting as Board of Review and Equalization order of March 8, 2010 denying Petitioners appeal of his 2010 real estate tax assessment.

Petitioner says because he believes the factual circumstances and procedural history of CA#09-AA-3, which is still pending in the Circuit Court of Jefferson County, are extremely relevant to the legal issues in this appeal, Petitioner is also including a

summary of the factual and procedural history in said proceedings.

Petitioner says because in neither CA #09-AA-3 nor CA #10-AA-1 was a hearing conducted in the Circuit Court of Jefferson County where testimony was taken from witnesses or evidence received by the Court, Petitioner has attached as exhibits those documents from both files which Petitioner believes they are relevant to this Court considering his appeal in the matter. Petitioner designates the entire record below.

II. PROCEDURAL AND FACTUAL HISTORY

A. *Case 09-AA-3*

1. On March 25, 2009, a Petition for Appeal of Real Estate Assessment, in accordance with WV Code §11-3-24 and 11-3-25 was filed from the February 2, 2009 Board of Review and Equalization [hereinafter BORE] hearing. **(Appeal, Exhibit I)**

2. On June 29, 2009, a *Status Conference* was held, for which Agent for the Petitioner, prepared the notification to all parties. At the conference, the first topic of discussion was Mr. David C. Tabb's authority to appear as an Agent for Shenandoah Sales & Service, Inc. The Jefferson County Prosecution Attorney, Ms. Stephanie Grove and the Court had no objection to wit:

THE COURT: The Petitioner is Shenandoah Sales & Service run by Mr. Tabb who is here with us today and who is representing -- it is a corporation but are you the principal officer of that corporation?
MR. TABB: Vice President
THE COURT: Are you an attorney, sir?
MR. TABB: No, sir.
THE COURT: You are not, okay, but you are representing a corporation.
MR. TABB: Yes, I am.
THE COURT: Okay,
(see transcripts page 2, line 5, Exhibit II)

3. On July 20, 2009 the Petitioner made a request for the transcripts of the June 29th, 2009 conference **(Exhibit III)**. There was no response to the request. The Petitioner filed a request to the Circuit Clerk **(Exhibit IV)** and called Sue Odell with the West Virginia Supreme Court on September 25th, 30th, 2009 and October 7, 2009. The actual transcript was not received until October 6, 2009. Upon receiving same Petitioner discovered the transcript was incomplete. On October 29, 2009 a *Notice of filing Transcript* was filed **(Exhibit V)**. On October 30, 2009 the Petitioner filed for : *Motion for Summary Judgment, Motion for Correcting the Transcripts, Motion to Schedule Hearing, Motion for Circuit Court to Request Circuit Clerk to Answer September 21, 2009* Request **(Exhibit VI)**. All these requests were denied and the transcripts are still incomplete.

4. Thereafter, David Tabb continued to serve in the capacity as the Agent for Shenandoah Sales & Service, Inc. in these proceedings pursuant to *WV Code § 11-3-25* and has filed hundreds of pages of Briefs, Motions, Requests and Orders for the Petitioner, one of which was signed by the Respondent the Honorable Judge Sanders. **(see Order, Exhibit VII)**

5. On January 19, 2010, the Honorable Judge Sanders signed a Trial Court Rule 22 Scheduling Order. **(see Scheduling Order, Exhibit VIII)**

6. On February 2, 2010, Agent for the Petitioner filed a Proposed Order in accordance with *Trial Court Rule 22, Scheduling Order*.

(see Letter, Exhibit IX)

7. On February 3, 2010, Counsel for the Respondent filed a request to deny Petitioners

request for the Scheduling Order. This filing occurred after the Respondent the Honorable Judge Sanders signed *Trial Court Rule 22, Scheduling Order* and the Agent for the Petitioner filed the proposed Orders.

8. On February 24, 2010, following the time period expiring in which the Respondents were to respond and after the Petitioner did not receive a response to the proposed order from Counsel for the BORE, Agent for the Petitioner filed two Amended Orders to wit (1) to grant *Summery Judgment* to Shenandoah Sales & Service, Inc., and (2) requesting a *De Novo Review Hearing*, due to the Counsel for the BORE submitting information in their Brief that was not introduced at the February 2, 2009 BORE Hearing. **(see Letter, Exhibit X)**

9. On March 15, 2010, Agent for the Petitioner sent the Honorable Judge Sanders a letter reminding him of the two amended orders and requesting that he please respond in accordance with the law. **(see Letter, Exhibit XI)**

10. On March 18, 2010 the Respondent the Honorable Judge Sanders responded in a letter, concluding that the Court would in the future, only accept Pleadings and Motions from a licensed practicing Attorney on behalf of Shenandoah Sales & Service, Inc. **(see Letter, Exhibit XII)**

11. On March 23, 2010, Agent for the Petitioner filed a letter in response to Judge Sanders March 18, 2010 letter, reminding the court that in both *Case No. 08-C-121* and *09-AA-3* it was determined to not be necessary or required, in accordance with *WV Code § 11-3-25* for Petitioner to be represented by a licensed, practicing Attorney. **(see Letter, Exhibit XIII)** Simultaneously Agent for the Petitioner filed a *Motion for Disqualification*, pursuant to *Rule 17.01 in WV Code Annotation of State Court Rules.*

(see Motion, Exhibit XIV)

12. On March 24, 2010, the Respondent the Honorable Judge Sanders filed a letter in response to the Honorable Chief Justice of the West Virginia Supreme Court.**(see Letter, Exhibit XV)**

13. On March 29, 2010 Agent for the Petitioner, filed a response to the Respondent the Honorable Judge Sanders filing. **(see Letter, Exhibit XVI)**

14. On March 31, 2010 Agent for the Petitioner, filed an additional response and documents with the Honorable West Virginia Supreme Court Chief Justice.

(see Letter, Exhibit XVII)

15. On April 1, 2010, the Honorable Chief Justice Davis entered an order in Case 09-AA-3, stating,

"The evidence set out in support of the disqualification motion is insufficient to warrant such disqualification. The Honorable Judge David H. Sanders hereby is directed to continue to preside in the above referenced case in accordance with the law". **(see Order, Exhibit XVIII)**

16. On April 8, 2010, the Respondent, the Honorable Judge Sanders, sent a letter to the Agent for the Petitioner informing said agent that the Court will continue to refuse to allow a Non-Lawyer to proceed in either *Case 09-AA-3* or *10-AA-1.* **(see Letter, Exhibit XIX)**

17. The Petitioner concludes that at all times in the legal proceedings pending before this Court, *WV Supreme Court of Appeals No. 082238, (08-C-121)* below and in the two proceedings pending in the Jefferson County Circuit Court, *Case No. 09-AA-3 and 10-AA-1,* said Corporation has been represented by a duly and properly nominated and appointed Agent pursuant to W.Va. Code § 11-3-25.

B. *Case 10-AA-1*

1. On March 18, 2010 a Petition for Appeal of Real Estate Assessment, in accordance with *WV Code §11-3-24* and *11-3-25* was filed from the February 23, 2010 BORE hearing. (Appeal, Exhibit XX)

2. On March 23, 2010, Agent for the Petitioner filed a letter in response to the Honorable Judge Sanders March 18, 2010 letter, reminding the Court that in both *Case No. 08-C-121* and *09-AA-3* it was determined not to be necessary or required, in accordance with *WV Code §11-3-25*, for Petitioner to be represented by a licensed, practicing Attorney. (see Letter, Exhibit XIII) and simultaneously therewith Agent for the Petitioner filed a *Motion for Disqualification*, pursuant to *Rule 17.01 in WV Code Annotated of State Court Rules.* (see Motion, Exhibit XIV)

3. On March 24, 2010, the Honorable Judge Sanders filed a response to the Honorable Chief Justice of the West Virginia Supreme Court.(see Letter, Exhibit XV)

4. On March 29, 2010 Agent for the Petitioner, filed a response to the Honorable Judge Sanders filing. (see Letter, Exhibit XVI)

5. On March 31, 2010 Agent for the Petitioner, filed an additional response with the Honorable West Virginia Supreme Court Chief Justice.

(see Letter, Exhibit XVII)

6. On April 1, 2010, the Honorable Chief Justice Davis entered an order in Case 09-AA-3, stating:

***"The evidence set out in support of the disqualification motion is insufficient to warrant such disqualification. The Honorable Judge David H. Sanders Hereby is directed to continue to preside in the above referenced case in accordance with the law".* (see Order, Exhibit XVIII)**

7. On April 8, 2010, the Respondent the Honorable Judge Sanders sent a letter to inform the Agent for the Petitioner that the Court will continue to refuse to allow a Non-Lawyer to proceed in either *Case 09-AA-3* or *10-AA-1.* **(see Letter, Exhibit XIX)**

8. On April 12, 2010 Agent for the Petitioner sent a letter to the Honorable Judge David Sanders requesting him to proceed with *Case 10-AA-1* in accordance with the law as was directed by the Supreme Court Chief Justice in *Case 09-AA-3.* **(see Letter, Exhibit XXI)**

9. May 17, 2010 Agent for the Petitioner filed a *Motion for Judgment By Default* in *Case 10-AA-1* due to the Respondents in this matter failure to appear, plead, or otherwise defend.**(see Motion, Exhibit XXII)**

10. On September 14, 2010 the Honorable David Sanders Judge of the Circuit Court of Jefferson County, West Virginia entered the order of September 14, 2010 that is the subject of this appeal. **(see Order Exhibit XXIII)**

III. LEGAL ISSUES

A. THE HONORABLE DAVID SANDERS JUDGE OF THE CIRCUIT COURT OF JEFFERSON COUNTY COMMITTED REVERSIBLE AND PREJUDICIAL ERROR WHEN THE COURT SUA SPONTE AND EX PARTE ENTERED THE ORDER OF SEPTEMBER 14, 2010 DISMISSING PETITIONERS APPEAL FROM THE ACTION OF THE JEFFERSON COUNTY COMMISSION SITTING AS A BOARD OF REVIEW AND EQUALIZATION THUS DENING TO PETITIONER HIS ABSOLUTE RIGHT TO AN APPEAL HEARING PURSUANT TO WEST VIRGINIA CODE §11-3-25

B. PETITIONER SAYS HIS RIGHT TO DUE PROCESS OF LAW PURSUANT TO THE 5TH AND 14TH AMENDMENTS CONSTITUTION ARTICLE III § 10 OF THE WEST VIRGINIA CONSTITUTION WERE VIOLATED BY THE CIRCUIT COURT OF JEFFERSON COUNTY REFUSING TO PROVIDE AND DENYING TO PETITIONER HIS RIGHT TO AN APPEAL HEARING PURSUANT TO W.VA. CODE §11-3-25 FROM THE MARCH 8, 2010 ORDER OF THE JEFFERSON COUNTY COMMISSION SITTING AS A BOARD OF REVIEW AND EQUALIZATION .

IV. ARGUMENT

A. THE HONORABLE DAVID SANDERS JUDGE OF THE CIRCUIT COURT OF JEFFERSON COUNTY COMMITTED REVERSIBLE AND PREJUDICIAL ERROR WHEN THE COURT SUA SPONTE AND EX PARTE ENTERED THE ORDER OF SEPTEMBER 14, 2010 DISMISSING PETITIONERS APPEAL FROM THE ACTION OF THE JEFFERSON COUNTY COMMISSION SITTING AS A BOARD OF REVIEW AND EQUALIZATION THUS DENING TO PETITIONER HIS ABSOLUTE RIGHT TO AN APPEAL HEARING PURSUANT TO WEST VIRGINIA CODE §11-3-25

WV Code § 11-3-24 provides to property owner's in West Virginia the right to appeal the County Assessors Assessment of Property to wit:

(The county commission shall annually, not later than the first day of February, meet for the purpose of reviewing and equalizing the assessment made by the assessor. It shall not adjourn for longer than three days at a time until this work is completed, and shall not remain in session for a longer period than twenty-eight days and shall not adjourn sine

die before the fifteenth day of February. At the first meeting, the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and his assistants shall attend and render every assistance possible in connection with the value of property assessed by them. The commission shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. They shall correct all errors in the names of persons, in the description and valuation of property, and they shall cause to be done whatever else may be necessary to make the valuation comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed.

If the commission determine that any property or interest is assessed at more or less than its true and actual value, it shall fix it at the true and actual value. But no assessment shall be increased without giving the property owner at least five days' notice, in writing, and signed by the president of the commission, of the intention to make the increase. Service upon the property owner shall be sufficient, or upon his agent or attorney in person, or if sent by registered mail to such property owner, his agent, or attorney, at the last known place of abode. If he be not found and have no known place of abode, then notice shall be given by publication thereof as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The date of the publication shall be at least five days prior to the increase. When it is desired to increase the entire valuation in any one district by a general increase, notice shall be given by publication thereof as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The date of the last publication shall be at least five days prior to the increase in valuation. When an increase is made, the same valuation shall not again be changed unless notice is again given as heretofore provided. The clerk of the county commission shall publish notice of the time, place and general purpose of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The expense of publication shall be paid out of the county treasury.

If any person fails to apply for relief at this meeting, he shall have waived his right to ask for correction in his assessment list for the current year, and shall not thereafter be permitted to question the correctness of his list as finally fixed by the county commission, except on appeal to the circuit court. After the county commission completes the review and equalization of the property books, a majority of the commission shall sign a statement that it is the completed assessment of the county for the year; then the property books shall be delivered to the assessor and the levies extended as provided by law.)

***WV Code §11-3-25* sets forth the procedure to appeal the decision of the County Commission sitting as the Board of Review and Equalization to the Circuit Court of the County:**

(a) Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation as provided in section twenty-four or twenty-four-a of this article, or whose assessment has been raised by the county commission sitting as a board of equalization and review above the assessment fixed by the assessor may, at any time up to thirty days after the adjournment of the board sitting as a board of equalization and review, or at anytime up to thirty days after the order of the board of assessment appeals is served on the parties, apply for relief to the circuit court of the county in which the property books are made out; but any person applying for relief in circuit court shall, before any application is heard, give ten days' notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interests of the state, county and district in the matter, and the prosecuting attorney shall give at least five days' notice of hearing to the Tax Commissioner.

(b) The right of appeal from any assessment by the board of equalization and review or order of the board of assessment appeals as provided in this section, may be taken either by the applicant or by the state, and in case the applicant, by his or her agent or attorney, or the state, by its prosecuting attorney or Tax Commissioner, *desires to take an appeal from the decision of the either board, the party desiring to take an appeal shall have the evidence taken at the hearing of the application before either board, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the board, certified by the county clerk and transmitted to the circuit court as provided in section four, article three, chapter fifty-eight of this code, except that, any other provision of this code notwithstanding, the evidence shall be certified and transmitted within thirty days after the petition for appeal is filed with the court or judge, in vacation.*

(c) If there was an appearance by or on behalf of the taxpayer before either board, or if actual notice, certified by the board, was given to the taxpayer, the appeal, when allowed by the court or judge, in vacation, shall be determined by the court from the record as so certified: Provided, That in cases where the court determines that the record made before the board is inadequate as a result of the parties having had insufficient time to present evidence at the hearing before the board to make a proper record, as a result of the parties having received insufficient notice of changes in the assessed value of the property and the reason or reasons for the changes to make a proper record at the hearing before the board, as a result of irregularities in the procedures followed at the hearing before the board, or for any other reason not involving the negligence of the party alleging that the record is inadequate, the court may remand the appeal back to the county commission of the county in which the property is located, even after the county commission has adjourned sine die as a board of equalization and review or a board of assessment appeals for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided. The county commission shall schedule a hearing for the purpose of taking additional evidence at any time within ninety days of the remand order that is convenient for the county commission and for the parties to the appeal. If, however, there was no actual notice to the taxpayer, and no appearance by or on behalf of the taxpayer before the board, or if a question of classification or taxability is presented, the matter shall be heard de novo by the circuit

court.
(d) If, upon the hearing of appeal, it is determined that any property has been assessed at more than sixty percent of its true and actual value determined as provided in this chapter, the circuit court shall, by an order entered of record, correct the assessment, and fix the assessed value of the property at sixty percent of its true and actual value. A copy of the order or orders entered by the circuit court reducing the valuation shall be certified to the Auditor, if the order or orders pertain to real property, by the clerk within twenty days after the entering of the same, and every order or judgment shall show that the prosecuting attorney or Tax Commissioner was present and defended the interest of the state, county and district. If it be ascertained that any property has been valued too high, and that the taxpayer has paid the excess tax, it shall be refunded or credited to the taxpayer in accordance with the provisions of section twenty-five-a of this article, and if not paid, he or she shall be relieved from the payment thereof. If it is ascertained that any property is valued too low, the circuit court shall, by an order entered of record, correct the valuation and fix it at sixty percent of its true and actual value. A copy of any order entered by any circuit court increasing the valuation of property shall be certified within twenty days, if the order pertains to real property, to the Auditor, the county clerk and the sheriff. However, if the order pertains only to personal property, then the copy shall be certified within twenty days to the county clerk and to the sheriff and it shall be the duty of the Auditor, the county clerk and the sheriff to charge the taxpayer affected with the increase of taxes occasioned by the increase of valuation by applying the rate of levies for every purpose in the district where the property is situated for the current year. The order shall also be filed in the office of the Auditor and clerk of the county commission. The circuit court shall review the record submitted from the board. If the court determines that the record is adequate, it shall establish a briefing and argument schedule that will result in the appeal being submitted to the court for decision within a reasonable time, but not to exceed eight months after the appeal is filed. All final decisions or orders of the circuit court shall be issued within a reasonable time, not to exceed ninety days, from the date the last brief is filed and the case is submitted to the court for decision. The state or the aggrieved taxpayer may appeal a question of valuation to the Supreme Court of Appeals if the assessed value of the property is $50,000 or more, and either party may appeal a question of classification or taxability.
(e) All persons applying for relief to the circuit court under this section shall be governed by the same presumptions, burdens and standards of proof as established by law for taxpayers applying for such relief.).

This issue was first addressed upon Petitioner filing an appeal to the Circuit Court of Jefferson County WV in *Case No. 08-C-121,* from the decision of the Jefferson County Commission sitting as a Board of Review and Equalization. A status hearing was conducted in said matter on May 12, 2008. Ms. Stephanie Grove, Esq. a Jefferson County Assistant Prosecuting Attorney, appeared as Counsel for the Board of Review and

Equalization and David C. Tabb, appeared as Agent for the Petitioner, Shenandoah Sales & Service, Inc. At the commencement of the proceedings before the presiding judge the Honorable Judge Thomas Steptoe, now retired, the Court inquired whether Mr. David C. Tabb could appear in the Circuit Court of Jefferson County as the agent for Shenandoah Sales and Service, Inc. to wit:

THE COURT: Okay. And, sir, you're here for Shenandoah Sales & Service?

MR. TABB: David Tabb.
THE COURT: Yes, sir. Is it a corporation?
MR. TABB: Yes, sir.
THE COURT: Do you have--
MR. TABB: 11-3-25 of the West Virginia Code --
THE COURT: Yes, sir.
MR. TABB: Allows me to do so, and I also have a --
THE COURT: Yes, sir. I'm just concerned about the provision that -- there is a provision in the law that suggests that a corporation must be represented by an attorney
MR. TABB: There's also regulations within the legal process, again 11-3-25, that allows me to do it myself, and if so, then it should have been recommended that I do that at the time of the hearing before the Board of Review and Equalization.
THE COURT: Well, do you or does the County object to the corporation appearing without an attorney?
Ms. Grove: No, your Honor.
THE COURT: Okay. Well, that kind of solves that I guess.
(see Transcript page 3, line 20, Exhibit XXIV)

Agent for Petitioner says thereafter in case 09-AA-3, the Honorable David Sanders also agreed that pursuant to *WV Code §11-3-25,* David C. Tabb could appear as the duly nominated Agent for the Petitioner, Shenandoah Sales & Service, Inc., a Corporation.

THE COURT: The Petitioner is Shenandoah Sales & Service run by Mr. Tabb who is here with us today and who is representing -- it is a corporation but are you the principal officer of that corporation?
MR. TABB: Vice President
THE COURT: Are you an attorney, sir?
MR. TABB: No, sir.
THE COURT: You are not, okay, but you are representing a corporation.

MR. TABB: Yes, I am.
THE COURT: Okay,
.(see transcripts page 2, line 5, Exhibit II)

Petitioner and its Agent says following the above verbal exchange on June 29, 2009 that the Honorable Judge David Sanders *sua sponte* and without notice to the Petitioner and its Agent wrote the letter dated April 8, 2010 designated **(Exhibit XIX)**. Petitioner surmises that the sending of the letter by Judge Sanders to Petitioner and the Courts refusal to proceed in *Case 09-AA-3* was triggered by the Petitioner filing an appeal of the February 23, 2010 decision of the Jefferson County BORE, *action i.e. 10-AA-1*. Petitioner notes that the date of the letter to the Petitioner from the Honorable Judge David Sanders, Respondent, is the same day Petitioners filed *Civil Action 10-AA-1*. Petitioner believes that the Respondent, the Honorable Judge David Sanders, took the position set forth in said letter of April 8, 2010 in both cases because he no longer desires or wants to participate as Judge in these two pending matters. Petitioner bases the belief on the following language that appeared in **(Exhibit XIX)**.

"While both of us may have been disappointed that the Supreme Court denied your motion to have me disqualified in 09-AA-3".

Petitioner and its Agent, acknowledge that although it is the GENERAL RULE OF LAW that a corporation must be represented by a licensed attorney when appearing in Courts of record in the United States this does not appear to be the rule in several jurisdictions most importantly not in West Virginia. This Court in Quarrier vs. Peabody Ins. Co. (1877) 10 W. Va. 507; Woodell v. W. Va. Imp. Co. (1893) 38 W. Va. 23, 17 SE 386; Swartzwelder v. Freeport Coal Co. (1948) 131 W.Va. 276, 46 SE2d 813 this court took the position that it was not mandatory that a corporation be represented by an

attorney. These three cases lend credence to Petitioners argument West Virginia has long held there are exceptions that corporations may only appear in Court through an attorney. Petitioner acknowledges none of these three cases are directly on point as to their facts and those in your Petitioners case, but clearly support his position that according to West Virginia case law since 1877 and by statue since 1907 (See amendments to WV Code §11-3-25 Acts of Legislature 1907) a corporation may appear in Court by a non-attorney officer or agent.

Petitioner says the Courts in several other jurisdictions agree with and supports his position. See Dixon v. Reliable Loans, Inc. (1965) 112 GaApp 618, 145 SE2d 771; Knickerbocker Tax Systems, Inc. v. Texaco, Inc. (1973) 130 GaApp 383, 203 Se2d 290; Margaret Manuder Associates, Inc. v. A-Copy, Inc. (1985) 40 Conn Supp 361, 499 Ad 1172; North Miami General Hospital, Inc. v. Plaza (1982, Fla App D3) 425 So 2d 1140; Idaho State Bar, Assoc. v. Idaho Public Utilities Commission (1981) 102 Idaho 672, 637 P2d 1168; State Bar of Michigan v. Galloway (1983) 422 Mich 188, 369 N. W. 2d 839; United States v. Priority Products, Inc. (1985) 9 CIT 392, 615 Fsupp 593; Finn Hill Masonary, Inc. v. Department of Labor and Industries, 128 Wash. App. 543, 116 P. 3d 1033 (2005)

Petitioner believes the decision of Finn, supra, is extremely important as it makes clear that in a jurisdiction that would normally require a corporation to be represented in Court by an attorney said rule may be waived by the action of the opposing party or the Court itself. Petitioner and its Agent thus submit that upon the Circuit Court electing to ignore and refusing to follow, not only an unambiguous and clearly worded statute but one that his predecessor Circuit Court judge, and the attorney representing the

Respondent agreed should be followed, error was committed.

The final case Petitioner relies on in support of his position. State ex, rel. Frieson v. Isner Magistrate 285 SE2d 641 168 W.Va. 758 (1981) this Court held in Court

"Syllabus 3. A non-lawyer who undertakes, for pay, to bring lawsuits on the claims of third persons and to perform the necessary legal services incident to such lawsuit, ... is engaged the unauthorized practice of law; Court Syllabus 4 W. Va. Code § 50-4-4a authorizing appearance of parties to civil litigation in magistrate court by lay agent, does not permit the unauthorized practice of law. Rather the statue anticipate the appearance of a party by a non-lawyer agent on a casual, non-recurring, non-pay basis as a means of assisting the party appearing pro se".

This Court went on to further hold that "Acts of the Legislature are presumed to be constitutional, and Courts will interpret legislation in any reasonable way which will sustain its constitutionality ....We conclude therefore, that W. Va. Code § 50-4-4a, authorizing appearance of parties to civil litigation in magistrate court by lay agent does not permit the unauthorized practice of law. Rather the statue anticipates the appearance by a non-lawyer agent on a casual, non-recurring, non-pay basis as a means of assisting the party appearing pro se". 285 SE2d at 655.

It is Petitioner contention that this Courts determination that W. Va. Code § 50-4-4a was not an intrusion on this Courts power to regulate the practice of law supports his position that W.Va. Code §11-3-25 is a valid statute that should have been followed by the Honorable David Sanders Judge of the Circuit Court of Jefferson County. Petitioner further says his actions on behalf of his closely held corporation are surely no different than "...the appearance of a party by a non-lawyer agent on a casual, non-recurring, non-pay basis as a means of assisting a party appearing pro se". To summarize the grounds on which he relies to support his argument that the order of September 14, 2010 should be reversed Petitioner and its Agent rely not only the above cited cases but also on the failure of the Circuit Court to (1) set forth findings of fact (2) discuss West Virginia Law (3) merely cite a U.S. Supreme Court case from 1912 and several case

from Minnesota (4) fail to permit Petitioner and its Agent to appear and argue to the Court the applicability of the above cited cases from this Court relevant to this issue.

In Argument IV-B Petitioner and it's Agent submit that the ultimate denial to your Petitioner and it's Agent of a hearing pursuant to WV Code 11-3-25, upon the Courts entry of the order of September 14, 2010 **(See Exhibit XXIII)** violated Petitioner right to due process of law pursuant to Articles III § 10 of the West Virginia Constitution and the 14th Amendment to the United States Constitution. In addition to setting forth said argument in Argument IV-B, Petitioner also submit's its right to due process of law was violated when the Court sua sponte entered the order of September 14, 2010 without affording to your Petitioner and it's Agent, their right to appear and argue at a hearing whether said order should be entered.

For all of these reasons your Petitioner believes if this Court elects not vacate and reverse the order of September 14, 2010 and order the Circuit Court to proceed with Petitioners appeal of the 2010 decision of the Jefferson County Commission sitting as a Board of Review and Equalization, this Court should at a minimum remand this matter to the Circuit Court to conduct a hearing on this issue and at the conclusion of the hearing set forth in an order appropriate Finding of Fact and Conclusion of Law to support whatever decision the Court renders.

B. PETITIONER SAYS HIS RIGHT TO DUE PROCESS OF LAW PURSUANT TO THE 5TH AND 14TH AMENDMENTS CONSTITUTION ARTICLE III § 10 OF THE WEST VIRGINIA CONSTITUTION WERE VIOLATED BY THE CIRCUIT COURT OF JEFFERSON COUNTY REFUSING TO PROVIDE AND DENYING TO PETITIONER HIS RIGHT TO AN APPEAL HEARING PURSUANT TO W.VA.

CODE §11-3-25 FROM THE MARCH 8, 2010 ORDER OF THE JEFFERSON COUNTY COMMISSION SITTING AS A BOARD OF REVIEW AND EQUALIZATION .

If this Court agrees that the Honorable David Sanders, Judge of the Circuit Court of Jefferson County should have conducted a hearing before the entry of the order of September 14, 2010, and committed error in the entry of said order with or without a hearing, said action of the Court violated Petitioners right to Due Process of Law.

Petitioner relies on the following decisions of this Court and decisions of divers Federal Courts in making this argument. In Bell v. Robert 402 F. Supp. 2d 938 (N.D.Illinois 2005).

"In order to demonstrate a due process violation, Petitioner must demonstrate both the existence of a state law providing for a direct appeal as a matter of right and state action depriving him of due process of law...See Evitts 469 U.S. at 393, 105 S.Ct. 830".

This Court in the following decisions, none of which specifically involved an appeal pursuant to W.Va. Code 11-3-25 all recognize that when one is denied their right to a hearing their right to due process is violated. See North v. W. Va. Bd. of Regents 160 W.Va. 248 233 S.E. 2d 411 (1977); Randal v. Fairmont City Police Department 412 S.E. 2d 737 186 W.Va. 336 (1991); White v. Todt 475 S.E. 2d 426 197 W.Va. 334 (1996); Overfield v. Collins 483 S.E. 2d 27 199 W.Va. 27 (1997); Jeanette H., the Pancake 529 S.E. 2d 865 207 W.Va. 154 (2000); White v. Barill 557 S.E. 2d 374 210 W.Va. 320 (2001);

Petitioner will next discuss the decisions of this Court which recognize the parameters of the right to due process of law when one is challenging pursuant to W.Va. Code § 11-3-24 and 11-3-25 that the assessment of the real estate taxes was improperly

conducted or calculated. This Court recognized first in Assessment of Certain Real Estate of Eastern Associated Coal Corp. 204 S.E.2d 71 157 W.Va. 749 (1974) and then in Purple Turtle, LLC. v. Gooden 679 S.E.2d 587 (2009) that erroneous calculation of ones real estate tax assessment which results in an excessive and incorrect real estate tax assessment is a deprivation of property and constitute a violation of ones right to due process of law. More specifically in Eastern Associated Coal Corp. supra this Court held

"Tax provisions penal in nature, denying a taxpayer a right to a hearing on the question of whether the provisions apply to him, have been held unconstitutional. Central of Georgia Railway Company v. Wright 207 U.S. 127, 28 S.Ct. 47, L.Ed. 134...no person shall be deprive of life. liberty, or property without due process of law..."

See also Chief Justice Benjamin's concurring opinion further supporting this argument but on a different underlying factual basis.

The final case from this Court upon which your Petitioner relies is Tax Assessments Against Pocahontas Land Company 303 S.E.2d 691 172 W.Va. 53 (1983). This Court made clear that although "it must be remembered that property assessment proceedings have historically been treated as not being subject to rigorous due process requirements... nevertheless, the right be to heard belongs under the same general constitutional umbrella regardless of the procedural law involved. The right to be heard is fundamental to due process". 303 S.E.2d at 697, 699.

V. CONCLUSION AND RELIEF PRAYED FOR

In conclusion it is your Petitioners position that his right to due process of law pursuant to the 5th and 14th Amendments to the U.S. Constitution and Article III § 10 was violated when the Circuit Court sua sponte and ex parte and in direct contravention of W.Va. Code § 11-3-25 entered the order of September 14, 2010 dismissing Petitioners

appeal from the Jefferson County Commission acting as a Board of Review and Equalization.

Petitioner therefore prays that this Court reverse the order of September 14, 2010 and direct the Circuit Court proceed with Petitioner's appeal or order the Circuit Court to conduct a hearing on the issues raised in this appeal and at the conclusion of the hearing set forth in an order appropriate findings of fact and conclusions of law to support what ever decision the Court renders as to whether Petitioner may proceed by its agent David C. Tabb and not be required to proceed by counsel.

Respectfully Submitted,

David C. Tabb, Vice-President and Agent

Shenandoah Sales & Service, Inc.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Shenandoah Sales and Service, Inc.
Agent David C. Tabb, pro se
Petitioner

Case No. 10-AA-1

v.

Jefferson County Assessor/or Successor
Angie Banks
Respondent

CERTIFICATE OF SERVICE

I, David C. Tabb, Agent pro se, Shenandoah Sales and Service, Inc. do hereby certify that on this 12th day of January 2011, that I have served a true copy of the foregoing *Petition for Appeal* upon the following: (SEE ATTACHED)

Shenandoah Sales and Service, Inc.
David C. Tabb, Agent
107 Tabb Lane
Harpers Ferry, WV 25425
304-725-0423
304-725-8472

CERTIFICATE OF DELIVERY-ATTACHMENT

West Virginia Supreme Court of Appeals Rory L. Perry, II Clerk of Court State Capitol, Rm. E-317 Charleston, WV 25305 304-558-2601 (phone) 304-558-3815 (fax)	**Delivered to Circuit Clerk of Jefferson County**
Jefferson County Prosecuting Attorney Stephanie Grove P. O. Box 729 Charles Town, WV 25414 304-728-3243	**Hand Delivered**
Judge David Sanders Jefferson County Court House 100 E. Washington Street Charles Town, WV 25414 304-728-3201	**Hand Delivered**
Assessor of Jefferson County 104 E. Washington Street Charles Town, WV 25414 304-725-8472	**Hand Delivered**
Circuit Clerk of Jefferson County 100 E. Washington Street Charles Town, WV 25414 304-728-3231	**Hand Delivered**