

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Christina Kerby-Kessinger,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 17R 0639

**ORDER FOR DISMISSAL WITH  
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

**I. PROCEDURAL HISTORY**

A jurisdictional show cause hearing was held on December 12, 2017. Appearing by telephone were Christina Kerby-Kessinger (person who signed the appeal), George Kerby (owner of the Subject Property), and Andrea Gosnold-Parker, Deputy Sarpy County Attorney, on behalf of the Sarpy County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal jurisdiction, and subject matter jurisdiction. The Commission received evidence and heard argument regarding the jurisdiction of the Commission to hear this appeal. The only issue before the Commission in this proceeding is whether the person who signed the appeal had standing to sign the appeal

**II. STANDARD OF REVIEW**

Neb. Rev. Stat. 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when the appeal form is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.<sup>1</sup> The same statute provides, “The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.”<sup>2</sup> Any action of the County Board pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013 on or before August 24

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2016 Cum. Supp.).

<sup>2</sup> *Id.*

or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.<sup>3</sup> Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.<sup>4</sup>

### III. APPLICABLE LAW

The Rules of the Commission state, in relevant part, “An Appeal Form or Petition must be signed by a party, legal counsel for a party, or a person authorized by law or these rules.”<sup>5</sup> The rules provide a list of persons who may sign an appeal. When the person signing the appeal is not authorized to sign the appeal, there is a lack of standing. Standing is fundamental to the right to appeal. If the person bringing an appeal does not have standing, the appeal must be dismissed.<sup>6</sup>

The Nebraska Supreme Court has stated,

[S]tanding requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court’s jurisdiction and justify exercise of the court’s remedial powers on the litigant’s behalf. Thus, generally, a litigant must assert the litigant’s own rights and interests, and cannot rest a claim on the legal rights or interests of third parties.<sup>7</sup>

The defect of standing is a defect of subject matter jurisdiction.<sup>8</sup>

### IV. ANALYSIS

In sworn testimony, Christina Kerby-Kessinger testified that she was the daughter of George Kerby, the owner of the property. She stated that she filled out the appeal form and signed the appeal form. Ms. Kerby-Kessinger signed the appeal form using the name Christina Kessinger. She testified at the hearing that her legal name was Christina Kerby-Kessinger. On the appeal form, she checked the box on the line that states, “I am signing as,” and typed, “Daughter of the owner.” When asked whether she had an obligation to pay the property taxes on the Subject Property, Ms. Kerby-Kessinger answered the question affirmatively and testified that she lived at

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<sup>3</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

<sup>4</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>5</sup> 442 Nebraska Administrative Code (NAC), Chapter 5, Section 001.04 (6/11).

<sup>6</sup> 442 NAC Ch. 2 §001.36.

<sup>7</sup> *In re Application A-18503, Water Division 2-D.*, 286 Neb. 611, 615, 838 N.W.2d 242, 246 (2013).

<sup>8</sup> *Citizens Opposing Industrial Livestock v. Jefferson County Bd. of Adjustment*, 274 Neb. 386, 390, 740 N.W.2d 362, 365 (2007).

the Subject Property, paid rent to Mr. Kerby, and that a portion of the rent went towards the payment of the property taxes on the Subject Property. She testified that this rental agreement was unwritten.

Ms. Kerby-Kessinger also testified that the appeal form instructions were inadequate. She asserted that she had no way of knowing that she was not allowed to sign and file an appeal for Mr. Kerby. The Commission notes that the Commission's appeal form instructions are found on the front and back sides of the appeal form. The first instruction on the back side of the appeal form is paragraph 6, which states, "6. **CAUTION** This appeal form must be signed by an owner or other person described in Chapter 5 of the Commission's rules and regulations or legal counsel for a person who could appeal." (emphasis in original).

George Kerby also provided sworn testimony to the Commission. Mr. Kerby stated that he owned the property and paid the mortgage and property taxes for the property. Of great concern to the Commission is the substantial inconsistency in the sworn testimony of Ms. Kerby-Kessinger and Mr. Kerby relating to Ms. Kerby-Kessinger's testimony that she lived at the Subject Property, paid rent to Mr. Kerby, and had an obligation to pay a portion of the property taxes. But Mr. Kerby testified that Ms. Kerby-Kessinger did not pay rent and did not have any obligation to pay property taxes relating to the Subject Property. If Ms. Kerby-Kessinger had an obligation to pay a portion of the property taxes, then she would have a "personal stake in the outcome" of the issues relating to the taxable value of the Subject Property and related property tax obligation.<sup>9</sup> We find that Mr. Kerby's testimony was credible. We find that Ms. Kerby-Kessinger's testimony regarding having a property tax obligation for the Subject Property was without credibility.

Ms. Kerby-Kessinger does not fall into any of the categories of persons listed in the Commission's Rules who are authorized to sign an appeal. The Commission's Rules require that the appeal be dismissed due to a lack of standing on the part of the person bringing the appeal.

No evidence was adduced that Ms. Kerby-Kessinger had any other basis for standing or for having the right to sign the appeal relating to Mr. Kerby's property. Based upon the evidence

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<sup>9</sup> See, *In re Application A-18503, Water Division 2-D.*, 286 Neb. 611, 615, 838 N.W.2d 242, 246 (2013).

presented and received at the hearing, we find that Ms. Kerby-Kessinger does not have standing to bring the appeal.

Therefore, the Commission determines that it does not have jurisdiction over the appeal.

**V. CONCLUSION**

The Commission does not have jurisdiction to hear the above captioned appeal.

**ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeal is dismissed with prejudice.

This decision, if no appeal is filed, shall be certified within thirty days to the Sarpy County Treasurer, and the officer charged with preparing the tax list for Sarpy County as required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

Dan Pittman  
1210 Golden Gate Dr. Ste 1200  
Papillion, NE 68046

Rich James  
1210 Golden Gate Dr. #1120  
68046

2. Each party is to bear its own costs in this matter.

**SIGNED AND SEALED** December 15, 2017

**Seal**

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner