

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

FLIK Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18C 0465

**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 January 9, 2019. Thomas H. Slack appeared telephonically at the hearing before the Commission. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). Without objection, 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 its jurisdiction to hear this appeal.

II. STANDARD OF REVIEW

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.¹ Any action of the County Board pursuant to § 77-1502 may be appealed to the Commission in accordance with Neb. Rev. Stat. § 77-5013 on or before August 24, 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. § 77-1502.² 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.³ In order to have standing to invoke a tribunal's

¹ Neb. Rev. Stat. § 77-5013 (Reissue 2018).

² Neb. Rev. Stat. § 77-1510 (Reissue 2018).

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

jurisdiction, one must have some legal or equitable, right, title, or interest in the subject of the controversy.⁴ The defect of standing is a defect of subject matter jurisdiction.⁵

III. ANALYSIS

Thomas H. Slack, signee of the appeal, is President of Property Tax Services, Inc. Mr. Slack testified that the property which is the subject of this appeal (the Subject Property) is owned by Flik, Inc., and leased to American Multi-Cinema, Inc. (AMC) who is the tenant. Pursuant to the lease provisions, AMC is the party responsible for paying the property taxes for the Subject Property. Mr. Slack further testified that Property Tax Services, Inc., performs property tax services for AMC on a contract basis. Neither Mr. Slack or Property Tax Services, Inc., have a power of attorney from AMC or Flik, Inc. Mr. Slack does not assert that he is an attorney licensed to practice in Nebraska, or a director, officer or full time employee of AMC or Flik, Inc.

Standing, a legal concept, is fundamental to the right to appeal. If the person bringing an appeal does not have standing, the appeal must be dismissed.⁶ In order to adhere to this requirement, the Commission has adopted rules specifying who may sign an appeal.⁷ An appeal form or petition must be signed by a party, legal counsel for a party, or a person authorized by law or the Commission's rules.⁸ The record demonstrates that Mr. Slack does not personally have standing to file an appeal of the determination of the county board regarding the Subject Property. An individual who is president of an unrelated corporation working under contract for the tenant of a property is not authorized by the Commission to sign an appeal or petition on behalf of another person or entity pursuant to Chapter 5, Section 001.05. Therefore, the Commission determines that the appeal was not properly perfected.

IV. CONCLUSION

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

⁴ *Douglas County Board of Commissioners v. Civil Service Commission*, 263 Neb. 455, 641 N.W.2d 55 (2002).

⁵ *In re Invol. Dissolution of Wiles Bros.*, 285 Neb. 920, 830 N.W.2d 474 (2012).

⁶ 442 Nebraska Administrative Code Ch. 2.001.36 (06/11).

⁷ The Commission has the authority to specify the requirements for the execution of an appeal or petition in the Commission Rules and Regulations. Neb. Rev. Stat. §77-5013(4) (2016 Cum. Supp.). Chapter 5, section 001.05 specifies the persons who may sign an appeal or petition.

⁸ 442 Nebraska Administrative Code Ch. 5.001.04 (06/11), Ch. 4.001.04 (06/11).

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. § 77-5018 (Reissue 2018), this decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Diane Battiato,
Douglas County Assessor/Register of Deeds
1819 Farnam Stre. Ste H09 Civic Center
Omaha, NE 68183-1000

John Ewing
Douglas County Treasurer
1819 Farnam St., Rm H03
Omaha, NE 68183

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

SIGNED AND SEALED: January 30, 2020

Seal

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner