

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Quadtech LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 20C 0176

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 20, 2020 at 3:00 p.m. Edward Fuxa, who signed the appeal on behalf of Quadtech LLC, appeared telephonically. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). The Commission took notice of its case files, received evidence, and heard argument regarding its jurisdiction to hear this appeal.

II. APPLICABLE LAW

The Commission obtains jurisdiction over an appeal when the Commission has the authority to hear the appeal, the appeal 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 Neb. Rev. Stat. § 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 When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.³ Parties cannot confer subject matter

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

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

³ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.⁴

III. FINDINGS OF FACT

The County Board extended the protest hearing deadline for 2020.⁵ On August 31, 2020, the Commission received a completed appeal form, an appealable decision of the County Board relating to real property owned by Quadtech LLC (the Subject Property), and the applicable filing fee. The appeal form was signed by Edward Fuxa, who indicated that he was an “officer, director, full-time employee, LLC member, etc.,” of “Goldenrod Capital Advisors, Manager of Quadtech LLC.” On September 14, 2020, the Commission received a second appeal form via email; this form was signed by Zachary Weigert, who identified himself as “owner” of the Subject Property. Based upon these filings, the Commission issued an Order to Show Cause.

At the jurisdictional show cause hearing, Fuxa testified to explain the relationship between the various business entities related to the appeal and the Subject Property. Quadtech LLC owns the Subject Property. The majority owner of Quadtech LLC is Goldenrod Companies LLC. Goldenrod Capital Advisors LLC is the asset manager for Quadtech LLC. Wiegert is a member of Goldenrod Companies LLC, as well as owner of Tetrad Property Group LLC. Fuxa is CFO of Tetrad Property Group. Goldenrod Companies LLC engaged Tetrad Property Group LLC to manage various properties, including onsite management of the Subject Property. Quadtech LLC pays the property taxes on the Subject Property; Fuxa is authorized to co-sign the checks for payments. Fuxa is not an attorney.

IV. ANALYSIS

Standing is fundamental to the right to appeal. The defect of standing is a defect of subject matter jurisdiction.⁶ If the person bringing the appeal does not have standing, the appeal must be dismissed.⁷ The form and requirements for the execution of an appeal may be specified by the Commission in its rules and regulations.⁸ An Appeal Form or Petition must be signed by a party,

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

⁵ Case file.

⁶ *Citizens Opposing Indust. Livestock v. Jefferson County*, 274 Neb. 386, 740 N.W.2d 362 (2007).

⁷ 442 Neb. Admin. Code, Ch. 2 § 001.36 (2011).

⁸ Neb. Rev. Stat. § 77-5013(5) (Reissue 2018).

legal counsel for a party, or a person authorized by law or these rules.⁹ The name of the person signing the appeal or petition may not be amended nor may a party be substituted by amendment.¹⁰ If a party is a corporation, limited liability company, partnership, limited partnership, or other legal entity, association, union, or organization, the entity or organization may sign an appeal or petition through a director, an officer, a full-time salaried employee, member, or manager of a limited liability company, or other individual authorized by law or the governing documents of the entity, association, or organization.¹¹

The only issue addressed at the hearing was whether Fuxa was authorized to sign the Commission's appeal form on behalf of Quadtech LLC. The evidence and testimony adduced at the hearing indicates that Fuxa is CFO of Tetrad Property Group LLC, but is not an employee or member of Quadtech LLC, Goldenrod Capital Advisors LLC, or Goldenrod Companies LLC; the appeal form indicates that he is an officer or employee¹² of Goldenrod Capital Advisors, but that was inconsistent with his testimony. Neither Fuxa nor Tetrad Property Group LLC is responsible for payment of property taxes on the Subject Property. The record does not show that Fuxa has a real interest in the appeal or a legal or equitable right, title, or interest in the Subject Property. And finally, Fuxa is not an attorney who might be authorized to sign an appeal for Quadtech LLC in that role. Fuxa did not have standing to file the appeal on behalf of Appellant.

It appears that Wiegert had standing to sign the appeal because Fuxa's testimony established that Wiegert is a member of Goldenrod Companies LLC, which is a member of (or has some other direct ownership interest in) Quadtech LLC, which owns the Subject Property and is responsible for paying the property taxes. However, Appellant did not submit the appeal form signed by Wiegert until September 14, 2020. Because the County Board extended the protest hearing deadline, the deadline for filing appeals with the Commission on this type of valuation protest was September 10, 2020. The Commission's duly promulgated regulations prohibit amendment of the name of the person signing the appeal form, so even if Wiegert could have filed an appeal on his own authority prior to September 10, 2020, he cannot substitute his signature for Fuxa's after that date. Thus, Fuxa did not have standing to file the appeal, and Wiegert filed after the deadline.

⁹ 442 Neb. Admin. Code, Ch. 5 § 001.04 (2011).

¹⁰ 442 Neb. Admin. Code, Ch. 4 § 001.06A (2011).

¹¹ 442 Neb. Admin. Code, Ch. 5 § 001.05D.

¹² Nebraska LLCs are not corporations and do not have officers; however, we are aware that many LLCs adopt structures and titles resembling those which are proper to corporations.

V. CONCLUSION

The Commission does not have jurisdiction to hear the appeal.

THEREFORE IT IS ORDERED:

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:

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

Diane Battiato
Douglas County Assessor
1819 Farnam Street, Ste H09 Civic Center
Omaha, NE 68183-1000

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

SIGNED AND SEALED: November 2, 2020

Steven A. Keetle, Commissioner

Robert W. Hotz, Commissioner