

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Oak Hills Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos. 20C 0585, 20C 0586, 20C 0587,
20C 0588

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission scheduled a jurisdictional show cause hearing to be held on November 17, 2020. At the time of the hearing, the Commission continued the hearing to December 10, 2020, on its own motion. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board) at the December 10, 2020 hearing. No one authorized to represent Oak Hills Inc. (Oak Hills) appeared on November 17, 2020, or December 10, 2020, as discussed further below. The Commission took notice of the contents of its case files.

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 An appellate tribunal, such as the Commission, cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.² If the body from which an appeal was taken lacked jurisdiction, then the appellate tribunal acquires no jurisdiction. When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.³

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

² See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

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

The Commission’s rules and regulations limit who may sign an appeal on behalf of a party.⁴ Legal counsel may sign an appeal on behalf of any party.⁵ If a party is a corporation, the party may sign an appeal through an officer, director, a full-time salaried employee, or another individual authorized by law or the governing documents of the corporation.⁶ Any pleading, including the appeal form, must be signed by a party, legal counsel for a party, or a person authorized by law or through rules.⁷ Only a person authorized to sign a pleading may appear before the Commission as a party or on behalf of a party.⁸

If a party to a proceeding at a Show Cause Hearing does not appear within fifteen minutes of the time for the hearing, the proposed order may be issued if the record demonstrates that notice has been provided to the party against whom the Order to Show Cause is issued, or a reasonable attempt to provide notice has been issued.⁹

III. FINDINGS OF FACT

The appeal forms in these matters were signed by Mike Zadalis, who identified himself as an “officer, director, full-time employee, LLC member, etc.,” of Oak Hills Inc.¹⁰ The appeal forms were accompanied by a letter signed by Ryan J. Gibbs on the letterhead of The Gibbs Firm LPA, National Property Tax Appeals and Litigation. The letterhead listed an address of 2355 Auburn Avenue, Cincinnati, Ohio, and a telephone number of (513) 381-3890. The appeal forms signed by Zadalis listed Oak Hills’ mailing address as “c/o The Gibbs Firm LPA” at the same address in Cincinnati; the telephone and fax numbers listed on the appeal forms also correspond to the telephone and fax numbers listed on the Gibbs Firm’s cover letter.

The jurisdictional issue originally identified in these appeals was whether the appeals were beyond the statutory scope of the Commission’s powers or whether the County Board lacked jurisdiction or authority to make the decisions being appealed.¹¹ The Commission issued an Order to Show Cause and Notice of Hearing on October 30, 2020; this order stated that “Appellant must show cause why an order dismissing the appeals for lack of jurisdiction should not be entered,” and further advised that “[a]n order dismissing the appeals will be issued if

⁴ See generally 442 Neb. Admin. Code, Ch. 5 § 001.05 (2011).

⁵ 442 Neb. Admin. Code, Ch. 5 § 001.05I (2011).

⁶ 442 Neb. Admin. Code, Ch. 5 § 001.05D (2011).

⁷ 442 Neb. Admin. Code, Ch. 4 § 001.04 (2011).

⁸ 442 Neb. Admin. Code, Ch. 4 § 010.10 (2011).

⁹ 442 Neb. Admin. Code, Ch. 5 § 029.03 (2011).

¹⁰ The facts in this paragraph are derived from the Commission’s case file.

¹¹ Case file, Order to Show Cause and Notice of Hearing.

Appellant fails to appear at the hearing.”¹² The order scheduled the hearing for November 17, 2020, and it was sent by certified mail to the mailing address listed on the appeal form.¹³

When the Commission convened the hearing on November 17, 2020, it attempted to contact Oak Hills at the number listed on the appeal form and the order to show cause. The call was answered by Geoff Byrne, an employee of the Gibbs Firm, who is not licensed to practice law in Nebraska.¹⁴ After explaining to Byrne that only an officer, director, or employee of Oak Hills, or an attorney licensed in Nebraska, could appear before the Commission on behalf of Oak Hills, the Commission continued the hearing on its own motion to allow time for the appellant to arrange suitable representation for Oak Hills.

On November 18, 2020, the Commission issued a second Order to Show Cause and Notice of Hearing, rescheduling the hearing for December 10, 2020.¹⁵ This order was sent by certified mail to the address listed on the appeal form.¹⁶ On December 10, 2020, the Commission called the number listed on the second order to show cause. Byrne again answered the call, but he was not joined by anyone authorized to appear on behalf of Oak Hills within fifteen minutes of the time set for hearing. The Commission opened the hearing but no one authorized to present evidence on behalf of Oak Hills had appeared, and the County Board did not offer any evidence.

IV. ANALYSIS

The Commission’s rules explain who may appear before the Commission on behalf of another person or party; these rules are consistent with Nebraska law regarding the practice of law.¹⁷ Byrne was not authorized to appear on behalf of Oak Hills because he is neither a Nebraska attorney nor an officer, director, or employee of Oak Hills. When no one authorized to represent Oak Hills appeared on November 17, the Commission continued the hearing until December 10 for the purpose of allowing Oak Hills to arrange suitable representation. However, when the hearing convened on December 10, Oak Hills still did not have an authorized representative present, and no authorized representative appeared within fifteen minutes of the time set for hearing.

¹² *Id.*

¹³ Case file.

¹⁴ Because no one authorized to represent Oak Hills appeared on November 17, the Commission engaged in a pre-hearing conversation with Byrne, but no recording was made of the discussion.

¹⁵ Case file.

¹⁶ Case file.

¹⁷ See Neb. Rev. Stat. § 7-101, et. seq.

The record demonstrates that notice was mailed to Oak Hills at the address listed on the appeal form signed by Zadalis, but no one authorized to represent Oak Hills appeared within fifteen minutes of the time set for hearing. Accordingly, the proposed order dismissing the appeals for lack of jurisdiction should be entered and the appeals should be dismissed.

V. CONCLUSION

The Commission does not have jurisdiction to hear the captioned appeals.

THEREFORE IT IS ORDERED:

1. The captioned appeals are 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: December 16, 2020

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner