

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Hoang Nguyen,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 20R 0598

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on November 17, 2020. Hoang Nguyen (the Taxpayer) 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 the case file, 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 passed a resolution extending the protest hearing deadline for tax year 2020.⁵ On September 16, 2020, the Commission received the Taxpayer's appeal in an envelope postmarked September 14, 2020. This enveloped contained a completed appeal form, a copy of an appealable decision by the County Board made on August 10, 2020, pursuant to Neb. Rev. Stat. § 77-1502, the required filing fee, and a copy of a letter from the County Board dated September 1, 2020. The September 1 letter stated that, due to the COVID-19 pandemic, "more than 400 Douglas County protests were not reviewed. [...] In fairness, the [County Board] set the property's 2020 valuation *for un-reviewed protests* as the same final valuation set for the property in 2019."⁶

The Subject Property in this appeal is Douglas County parcel no. 2037840000.⁷ The Subject Property was assessed at a higher value for 2020 than for 2019, and the County Board's August 10, 2020, decision did not reduce the 2020 assessed value. At the jurisdictional show cause hearing, the Taxpayer testified that he filed his appeal late because he was confused by the County Board's September 1, 2020, letter. He misunderstood the impact of the letter and believed that the value of the Subject Property would be reset to its 2019 value. On or about September 14, 2020, the Taxpayer contacted county officials to make sure that the value of the Subject Property had been reset to its 2019 value; they informed him that it was not reset. The Taxpayer then filed this appeal.

IV. ANALYSIS

An appeal or petition to the Commission is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission, or received by the Commission, on or before the date specified by law for filing the appeal or petition.⁸ Because the County Board extended the protest hearing deadline, the deadline to file an appeal with the

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 Case file, emphasis added.

⁷ Case file.

⁸ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

Commission was September 10, 2020. The Taxpayer's appeal was received on September 16, 2020, in an envelope postmarked September 14, 2020. The Taxpayer does not dispute that he received the County Board's August 10, 2020, decision on the value of the Subject Property. Although we recognize that the County Board's subsequent letter confused the Taxpayer, the plain language of the letter states that the return to 2019 assessments applied to un-reviewed protests, and the August 10 decision upholding the new 2020 value shows that the Taxpayer's protest was reviewed. Moreover, the rule in Nebraska is that subject matter jurisdiction cannot be created by waiver, estoppel, consent, or conduct of the parties.⁹ The Taxpayer's appeal was not filed by the statutory deadline and the Commission does not have jurisdiction to hear the appeal.

V. CONCLUSION

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

THEREFORE IT IS ORDERED:

1. The 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 23, 2020

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁹ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).