

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Martin M. Liphardt,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No. 21R 0913

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 21, 2021. No one appeared on behalf of Appellant Martin M. Liphardt. Daniel J. Zieg, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster 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

III. FINDINGS OF FACT

The Commission received this appeal on September 13, 2021, in an envelope without a legible postmark. In order to determine whether the appeal was placed in the mail prior to the filing deadline, the Commission issued an order on September 17, 2021, scheduling the appeal

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

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

for a jurisdictional show cause hearing on October 21, 2021 at 2:00 p.m. An affidavit in the Commission's case file establishes that the order was sent to the address listed on the appeal form signed by Martin M. Liphardt. The envelope containing the order was returned to the Commission as unclaimed. Liphardt did not appear at the hearing.

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.³ This appeal was received after the applicable September 10 deadline in an envelope without a legible postmark. Any tax appeal filed or made to the State of Nebraska, or to any political subdivision thereof, which is received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the appeal was deposited in the United States mail on or before the date for filing or paying.⁴ If service by certified mail, postage prepaid, is returned by the United States Postal Service as unclaimed, a reasonable attempt at service is deemed to have been made.⁵ If an appellant or petitioner fails to appear at a jurisdictional show cause hearing ordered by the Commission, the Commission may dismiss the appeal.⁶ Because Liphardt failed to appear at the jurisdictional show cause hearing ordered by the Commission, he was unable to establish by competent evidence that the appeal was deposited in the United States mail on or before the date for filing. The record does not establish that the Commission has jurisdiction to hear the appeal. The appeal must be dismissed.

IV. CONCLUSION

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

THEREFORE IT IS ORDERED:

1. The above captioned appeal is dismissed with prejudice.

³ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

⁴ Neb. Rev. Stat. § 49-1201 (Reissue 2010).

⁵ 442 Neb. Admin. Code, Ch 5. § 029.02B (2021).

⁶ 442 Neb. Admin. Code, Ch. 5 § 002.08 (2021).

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 Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster County as follows:

Rachel Garver
Lancaster County Treasurer
555 S 10th St
Lincoln, NE 68508

Rob Ogden
Lancaster County Assessor
555 S 10th St
Lincoln, NE 68508

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

SIGNED AND SEALED: November 10, 2021

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner