

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW  
COMMISSION**

Screaming Meadows LLC,  
Appellant,

Case No. 22C 0950

v.

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

Douglas County Board of  
Equalization,  
Appellee.

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on November 8, 2022 at 1:00 PM. Derick Lewin appeared telephonically on behalf of Screaming Meadows LLC (the Taxpayer). 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.<sup>1</sup> 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

---

<sup>1</sup> Neb. Rev. Stat. § 77-5013 (Reissue 2018).

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### III. FINDINGS OF FACT

On September 19, 2022, the Commission received an envelope with a postage meter stamp dated September 12, 2022, and a postal cancellation mark dated September 15, 2022. That envelope contained a copy of a decision of the County Board, an appropriate filing fee, and an appeal form signed by Derick Lewin as Realtor/Consultant.

Legal Counsel for the Commission sent a letter dated September 19, 2022, to Lewin as well as the principal office address for the Taxpayer, explaining that the postal cancellation mark of September 15, 2022, raised an issue as to the timeliness of the filing. The letter further explained that per Nebraska law, if the owner of a property is an LLC or other entity, a director, officer, full-time employee, LLC member or manager, licensed attorney, or other legally authorized individual must sign the appeal form, and that Lewin, signing as a Realtor/Consultant, did not appear to have authority to sign the appeal form. The letter also explained the Taxpayer's right to request a hearing to determine if the Commission has authority to hear the merits of the appeal.

---

<sup>2</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>3</sup> See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>4</sup> *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

<sup>5</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

The Commission received a further letter from the Taxpayer and Lewin on October 20, 2022, containing a new appeal form signed by both Lewin and Scott Maupin, Owner. This form was accompanied by a letter from Lewin requesting the Commission to accept the appeal as timely and correctly filed. The Commission construed this request as a request for a hearing to determine whether the Commission has authority to hear the appeal on the merits.

#### **IV. ANALYSIS**

##### **A. Timeliness of the Appeal.**

On September 19, 2022, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. § 77-1502. The Douglas County Board adopted a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2022 was September 10, 2022. As September 10, 2022, fell on a non-business day, the deadline to file an appeal for decisions of the Douglas County Board was extended to September 12, 2022.

At the November 8, 2022, hearing, Lewin stated that it is the regular business practice in his office that once the support staff place the postal meter mark upon any envelope, that envelope is placed in a U.S. Postal Service mailbox for pickup. Lewin states that to his knowledge, the appeal was mailed out on September 12, 2022, and does not know why the U.S. Postal Service did not place its cancellation mark on the appeal envelope until September 15, 2022. No evidence or testimony was presented by the County Board to rebut Lewin's testimony.

Nebraska Revised Statute § 77-5013(2) provides that an appeal is timely received "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..." The Commission, therefore, finds that the appeal was placed in the U.S. Postal Service mailbox on September 12, 2022. The Commission further finds the appeal timely filed.

## **B. Authority to sign the Appeal.**

The Commission has the authority to specify the requirements for the execution of an appeal or petition in the Commission Rules and Regulations.<sup>6</sup> Chapter 5, section 001.05 of the Nebraska Administrative Code specifies the persons who may sign an appeal or petition. Derick Lewin, signee of the appeal, is a “Realtor/Consultant”. Lewin further explained his relationship to the taxpayer, stating that he was not a member or manager of the LLC, but was instead hired as a consultant due to his expertise in property assessment. Lewin admitted on cross-examination that he is not an attorney licensed to practice in Nebraska.

An individual who is a realtor or consultant is not authorized by the Commission to sign an appeal or petition pursuant to 442 Neb. Admin. Code, Chapter 5, Section 001.05. That regulation clearly sets forth the classes of persons authorized by the Commission to sign and perfect an appeal to the Commission. Subsection 001.05D provides:

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 through a director, an officer, a full-time salaried employee, a member or manager of a limited liability company, or other individual authorized by law or the governing documents of the entity, association, or organization.

Subsection 001.05I states “Legal Counsel for a party may sign an appeal or petition.” Nowhere in the regulation is there any provision for a realtor or consultant to sign an appeal to the Commission on behalf of another person or entity.

The legal maxim “*expressio unius est exclusio alterius*” (the expression of one thing is the exclusion of others), is applicable here as the regulation affirmatively states who may sign an appeal, which

---

<sup>6</sup> Neb. Rev. Stat. § 77-5013(4) (Reissue 2018).

means that persons who do not fit those categories do not have the authority to sign appeals. Therefore, to the extent Lewin argues that the regulation does not expressly forbid an agent of the owner from signing the appeal form, we find this argument unpersuasive.

Standing relates to a court or the Commission's power, that is, jurisdiction, to address issues presented and serves to identify those disputes that are appropriately resolved through the judicial process.<sup>7</sup> Under the doctrine of standing, a court may decline to determine the merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination.<sup>8</sup> The focus is on the party, not the claim itself.<sup>9</sup> Standing requires that a litigant have a personal stake in the outcome of a controversy that warrants invocation of a court's jurisdiction and justifies exercise of the court's remedial powers on the litigant's behalf.<sup>10</sup> To have standing, a litigant must assert the litigant's own rights and interests."<sup>11</sup> Lewin did not demonstrate that he himself had legal rights or interests in the Subject Property or standing to bring the appeal.

Lastly, Lewin's request for the Commission to consider Scott Maupin's life circumstances, which Lewin claims prevented him from signing the appeal form, are not appropriate as the statute does not provide for any tolling of the jurisdictional filing date, and the Commission lacks any equitable power to toll the filing date<sup>12</sup>.

Therefore, the Commission determines that the appeal was not properly perfected because, while it was timely received, the appeal form was not signed by a person authorized by law to sign the form.

---

<sup>7</sup> *Butler Cty. Sch. Dist. v. Freeholder Petitioners*, 283 Neb. 903, 814 N.W.2d 724 (2012).

<sup>8</sup> *Latham v. Schwerdtfeger*, 282 Neb. 121, 802 N.W.2d 66 (2011).

<sup>9</sup> *Id.*

<sup>10</sup> *Butler Cty. Sch. Dist. v. Freeholder Petitioners*, *supra*; *Latham v. Schwerdtfeger*, *supra*.

<sup>11</sup> *In Re. Invol. Dissolution of Wiles Bros.*, 285 Neb. 920, 925-26, 830 N.W.2d 474, 478-79 (2013) (citations omitted).

<sup>12</sup> *Archer Daniels Midland Co. v. State*, 290 Neb. 780, 861 N.W.2d 733 (2015)(finding "no statutory language that would have allowed TERC to deviate from the mandatory deadline clearly set forth in the Act).

## V. 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.
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 H02  
Omaha, NE 68183

Diane Battiato  
Douglas County Assessor  
1819 Farnam St, Ste H09 and  
4th Floor  
Omaha, NE 68183

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

**SIGNED AND SEALED:** November 22, 2022

---

Steven A. Keetle, Commissioner

---

James D. Kuhn, Commissioner