

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

Lizbeth Post,
Appellant,

v.

Sarpy County Board of
Equalization,
Appellee.

Case No. 24R 1516

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held jurisdictional show cause hearings on December 3, 2024 at 1:00PM Central Time and January 17, 2025, at 1:00PM Central Time. Lizbeth Post and William Post (the Taxpayer) appeared telephonically on December 3, 2024, but neither appeared on January 17, 2025. Andrea Gosnold-Parker, Deputy Sarpy County Attorney, appeared telephonically on behalf of the Sarpy County Board of Equalization (the County Board) at both hearings. The Commission took notice of its case files, received testimony, 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

¹ Neb. Rev. Stat. § 77-5013 (2024 Cum Supp.).

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 In cases where August 24 falls on a non-business day, a filing will still be considered timely if performed or postmarked on the next business day.³

III. FINDINGS OF FACT

The County Board decision under appeal was made June 23, 2024 and mailed to the Taxpayer July 29, 2024. The deadline for filing appeals from the Sarpy County Board of Equalization was August 26, 2024, the next business day following August 24, 2024.⁴ The Taxpayer's appeal form was signed and postmarked on October 5, 2024.⁵ The Commission received the form on October 15, 2024.

The Commission issued an Order to Show Cause and mailed it to the Taxpayer by certified mail to an address in Wasilla, Alaska, but it was returned to the Commission unsigned. The Commission contacted the Taxpayer by telephone to confirm the correct address before sending out an Amended Order to Show Cause. The Amended Order was mailed on November 20, 2024, setting the telephonic hearing for December 3, 2024.

On December 3, 2024, Lizabeth Post testified by telephone. She asserted she had been called on June 14, 2024, by someone she understood was from the Sarpy County Assessor's Office, but that she had not received notice of a protest hearing before the June 14, 2024, phone call. Ms. Post testified that during the June 14, 2024, phone call she requested the telephonic hearing be rescheduled so that her husband, William Post, could also participate. Ms. Post stated the

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

³ Neb. Rev. Stat. § 49-1203 (Reissue 2018).

⁴ Because the August 24, 2024, deadline set by Neb. Rev. Stat. § 77-1510 fell on a Saturday, Neb. Rev. Stat. § 49-1203 provides the deadline shall be the next business day, here August 26, 2024.

⁵ Case file.

person she spoke with assured her that a new time could be obtained and the new time would be provided to her via email. She testified she received the protest hearing notice the next day, on June 15, 2024. She asserted she received no follow-up email to reschedule the telephonic protest proceeding.

As a result, no protest proceeding was conducted other than the June 14, 2024 phone call. Evidence received during the January 17, 2025 hearing revealed that the June 14, 2024 phone call to Ms. Post was initiated by James Anderson, who was functioning as a referee on behalf of the Douglas County Board per Neb. Rev. Stat. § 77-1502.01. Anderson testified he did not recall making any arrangements for an additional telephonic hearing after June 14, 2024.

Anderson's recommendation to the County Board stated that the Taxpayer "did not provide any information and did not attend the hearing for testimony," and he recommended the County Board "maintain the current assessed value."⁶ The County Board accepted the recommendation. The notice sent by the County Board to the Taxpayer indicated that the protest was heard June 14, 2024; that the County Board decision was made July 23, 2024; and that the notice was being mailed to the Taxpayer on July 29, 2024.⁷

Ms. Post testified on December 3, 2024, that she was unsure when she received the County Board's decision at her mailbox in Wasilla, Alaska, but that it was sometime prior to August 25, 2024, when she sent an email to the Sarpy County Board detailing her complaints with the protest procedure. She testified she received a reply email from the County Board that same day indicating the County Board would review the matter. Ms. Post testified she received a further email on August 26, 2024, stating she could appeal to the Commission. Ms. Post testified that mail from Omaha, Nebraska to Wasilla, Alaska typically was delivered within ten days in the

⁶ "Sarpy County Board of Equalization Final Determination Action," Case File.

⁷ Id.

summertime. She did not file an appeal with the Commission until October 5, 2024,⁸ which reached the Commission on October 15, 2024.

Because of the unusual circumstances relating to notice in this appeal, after taking testimony and argument at the December 3, 2024, hearing, the Commission ordered a resumption hearing that was completed on January 17, 2025. The purpose of the hearing was to determine whether the circumstances of the protest proceedings might provide authority for the Commission to exercise jurisdiction despite the late filing of the appeal. The Order for Resumption of Hearing was issued and mailed to the parties on December 11, 2024.

At the telephonic hearing on January 17, 2025, the Taxpayer did not appear. The County Board offered testimony of David Wellsandt and James Anderson, the referee coordinator and referee of the protest proceedings respectively. Wellsandt and Anderson provided no explanation as to why the Taxpayer was not afforded a telephonic protest hearing after June 14, 2024.

IV. ANALYSIS

The Taxpayer had a statutory right to appeal the protest decision made by the Sarpy County Board on July 23, 2024 and mailed to the Taxpayer on July 29, 2024. To timely perfect her appeal, the envelope containing the appeal documents and filing fee needed to be postmarked or received by August 26, 2024. The Taxpayer's appeal was signed and postmarked on October 5, 2024, forty-one days after the deadline. Therefore, the Commission determines the appeal was not timely filed.

The record raises concern as to whether the Taxpayer was denied due process in the protest proceedings. We conclude that while the protest procedure and its related circumstances resulted in the Taxpayer not effectively participating, the statutory right to a timely appeal was an adequate remedy. The Taxpayer did not avail herself of this right. Because the timely filing of an appeal or petition is a

⁸ Her appeal was signed and postmarked on October 5, 2024.

necessary element for the Commission’s jurisdiction,⁹ the Commission may not exercise jurisdiction over the Taxpayer’s appeal.

For the sake of completeness, we find the Taxpayer was not prevented from timely filing a protest or appeal, as contemplated by Neb. Rev. Stat. § 77-1507.01, which would otherwise give rise to a right to file a petition by December 31, 2024. The notice issues arose after the protest had been filed, and the County Board’s notice of its decision met the statutory requirements.¹⁰ There was adequate time to file an appeal, as the notice was mailed on July 29, 2024, and the appeal needed to be mailed by the Taxpayer by August 26, 2024. Even though the County Board’s notice had to travel from Omaha, Nebraska to Wasilla, Alaska, the Taxpayer testified that this process typically took ten days in the summertime. The testimony indicates that there was sufficient time for the Taxpayer to receive and respond to the notice, but she did not do so within the allotted time and was not prevented from filing the appeal timely.

V. CONCLUSION

The Commission does not have jurisdiction to hear the above-captioned appeal because the appeal was not timely filed.

THEREFORE, IT IS ORDERED:

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. § 77-5018 (2024 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the Sarpy County Treasurer, and the officer charged with preparing the tax list for Sarpy County as follows:

Jeff Mikesell
Sarpy County Treasurer
1102 E 1st Street
Papillion, NE 68046

Dan Pittman
Sarpy County Assessor
1102 E 1st St, Ste 2
Papillion, NE 68046

⁹ Neb. Rev. Stat. 77-5013(1)(b) (Reissue 2018).

¹⁰ Notice of the County Board’s decision was required to be made by August 2, 2024. Neb. Rev. Stat. § 77-1502(6).

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

SIGNED AND SEALED: January 30, 2025



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner