

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

MAE E. LESLIE,)	
)	
Appellant,)	CASE NO. 07H-001
)	
vs.)	FINDINGS AND ORDER DISMISSING
)	APPEAL FOR WANT OF JURISDICTION
CHEYENNE COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on January 9, 2008, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdiction: Unauthorized Signing of Appeal) issued November 16, 2007, and amended November 26, 2007. Commissioners Wickersham, Warnes, Salmon and Hotz were present. Commissioner Wickersham presided at the hearing.

May E. Leslie ("the Taxpayer") was present at the hearing by telephone without legal counsel. Mr. Paul Schaub, County Attorney, for Cheyenne County, Nebraska was present by telephone as legal counsel for The Cheyenne County Board of Equalization ("the County Board").

The Commission took statutory notice, received and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing.

II. FINDINGS

The Commission finds and determines that:

1. The High Plains Trust is the owner of record of certain real property described in the appeal as Lot 46, Sidney Valley View Addition, Sidney, Cheyenne County, Nebraska (“the subject property”).
2. The Taxpayer indicated on the appeal form that it was being signed by an owner occupant per statute 77-3511.
3. The Taxpayer’s appeal was signed by Mae E. Leslie, Owner and Manager Beneficiary. (Case File).
4. An Order to Show Cause and Notice of Hearing (Jurisdiction: Unauthorized Signing of Appeal) was issued by the Commission on November 16, 2007, directing the Taxpayer to show why the captioned appeal should not be dismissed.
5. The order of November 16, 2007 was amended by an order entered on November 26, 2007.

II. APPLICABLE LAW

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commissions rules and regulations or Neb. Rev. Stat. §77-5016(3) (Supp 2005).

2. 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. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).
3. The Commission has authority to promulgate rules and regulations necessary to regulate persons and proceedings within the commission's jurisdiction and authority. Neb.. Rev. Stat. 77-5021. (Reissue 2003).
4. An appeal form must be signed by a party, legal counsel for a party or a person authorized by law or the Commission's rules and regulations to sign an appeal. 442 Neb. Admin. Code, ch 2 §001.03 (01/07).
5. Only a person who will be directly affected by the outcome of an appeal is one who has a real interest in the appeal or has a legal or equitable right, title, or interest in the subject of the appeal may be a party. 442 Neb. Admin. Code, ch 2 §001.35 (01/07).
6. If a party is a natural person, only that person or the "guardian" "conservator" or "next friend" (as those terms are defined in Nebraska State Law and Nebraska Supreme Court decisions) of that person may sign a petition/appeal. 442 Neb. Admin. Code, ch 5 §001.04C (01/07).
7. 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/petition through a director, an officer, a full-time salaried employee, member or manager of a limited liability company, or other individual authorized by law or the

- governing documents of the entity, association or organization. 442 Neb. Admin. Code, ch 5 §001.04D (01/07).
8. If a party is a trustee that party as trustee may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.04E (01/07).
 9. Any other person who is a party including but not limited to a successor in interest, lessee, licensee, any bankruptcy trustee, receiver, personal representative or any other person appointed by a Nebraska Court or a Court of the United States, may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.04H (01/07).
 10. Legal counsel for a party may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.04I (01/07).
 11. No person, other than a party, legal counsel for a party, or a person authorized by law or by the Commission's rules may sign an appeal/petition. 442 Neb. Admin. Code, ch 5, §001.04K (01/07).
 12. An application for homestead exemption must be signed by an owner of the property to which the exemption will be applicable. Neb. Rev. Stat. §77-3511 (Reissue 2003).
 13. An owner for purposes of the homestead exemption is the owner of record or surviving spouse, the vendee in possession under a land contract or surviving spouse, one of the joint tenants or tenants in common or surviving spouse, or the beneficiary of a trust of which the trustee is the record title owner and the beneficiary-occupant (1) has a specific right to occupy the premises as stated in the trust instrument, (2) has the right to amend or revoke the trust to obtain such power of occupancy or of title, or (3) has the power to withdraw the homestead premises from the trust and place the record title in such

occupant's name. Owner shall also mean a resident of a dwelling complex, the record title owner of which is a not-for-profit corporation, who has by purchase for fair market value secured a life tenancy in a taxable unit of the complex. Neb. Rev. Stat. §77-3503 (Reissue 2003).

14. The deed, trust instrument, contract, or memorandum showing that the criteria of section 77-3503 must be on file on the appropriate public record as of January 1 of the year for which exemption is sought, except that if such instrument is not on file as of January 1, a copy of such instrument shall be attached to such application before the homestead exemption shall be granted. Neb. Rev. Stat. §77-3503 (Reissue 2003).

III. ANALYSIS

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer. The subject property is held by a trustee. The trustee is Alice Jean Logan. There is no evidence that Mae E. Leslie has any authority to act on behalf of the Trustee to file an appeal with the Commission. Whatever authority Mae E. Leslie may have as “manager” is unknown and the Commission will not speculate.

A great deal of testimony was taken at the hearing that pertained to the basis for the County Assessor’s recommendation to reject the application for homestead exemption. In general that testimony concerned compliance with the requirements of Neb. Rev. Stat. 77-3503. An application for homestead exemption must be signed by the owner of the property to which the exemption will be applicable. Neb. Rev. Stat. §77-3511 (Cum. Supp. 2004). When property is held by a trustee a beneficiary-occupant may be deemed to be an owner. Neb. Rev. Stat. §77-

3503 (Reissue 2003). A beneficiary-occupant must meet one of three conditions to be deemed an owner. Neb. Rev. Stat. §77-3503 (Reissue 2003). The three conditions are having 1) a specific right to occupy the stated premises as stated in the trust instrument; 2) the right to amend or revoke the trust to obtain such power of occupancy or of title; or 3) the power to withdraw the homestead premises from the trust and place the record title in the occupant's name. Neb. Rev. Stat. §77-3503 (Reissue 2003). The required showing may be made through a copy of the trust instrument or a memorandum. Neb. Rev. Stat. §77-3503 (Reissue 2003). The required showing must be of public record as of January 1 or the year for which the exemption is sought or attached to the application for exemption. Neb. Rev. Stat. §77-3503 (Reissue 2003).

The Taxpayer testified that a deed transferring the property for which the homestead exemption is being sought, was recorded in the county clerk's office but that no other information concerning the trust was recorded. The Taxpayer testified that in September of 2007, a memorandum intended to comply with section 77-3503 of Nebraska Statutes was furnished to the County Board. There is no evidence that the requirements of section 77-3503 were met by the filing of an attachment to the application form or by a filing that was a public record. The Taxpayer has not meet the requirements of section 77-3503 of Nebraska Statutes and could not be deemed an owner of the property to which the homestead exemption was to be applicable. Because the homestead exemption application was not signed by an owner as described in section 77-3503 of Nebraska Statutes the County Board did not have jurisdiction to consider the complaint filed with it and therefore the Commission does not have jurisdiction to consider an appeal from its decision. See, e.g. *Lane v. Burt County Rural Public Power Dist.*, 163 neb. 1, 77 N.W.2d 773 (1956). The Commission must order dismissal of the appeal.

**IV.
CONCLUSION OF LAW**

The Commission does not have jurisdiction over the Taxpayer's appeal.

**IV.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The appeal of Mae E. Leslie is dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer, and the Cheyenne County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Each party is to bear its own costs in this matter.
4. This decision shall only be applicable to tax year 2007.

Dated January 14, 2008.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.