

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

MARILYN DERING, TRUSTEE,)	
MARILYN DERING TRUST,)	
)	Case No. 08A 246
Appellant,)	
)	DECISION AND ORDER
v.)	DISMISSING FOR WANT OF
)	JURISDICTION
LANCASTER COUNTY BOARD OF)	(Filing Defect)
EQUALIZATION,)	(Unauthorized Signing of Appeal)
)	(Standing)
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) to determine whether the appeal by Marilyn Dering, Trustee, Marilyn Dering Trust ("the Taxpayer") and the appeal by Austin Co. Agt., Bill White, on behalf of Marilyn Dering to the Tax Equalization and Review Commission ("the Commission") should not be dismissed. 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 December 29, 2008, pursuant to an Order to Show Cause (Jurisdiction Authorized to File and Untimely Filing) issued November 7, 2008 and amended December 12, 2008. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Wickersham was the presiding hearing officer.

Commissioner Warnes was excused from participation by the presiding hearing officer. A panel of three commissioners was created pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07).

Marilyn Dering, Trustee of Marilyn Dering Trust, was not present at the hearing. No one appeared as legal counsel for the Taxpayer.

Michael E. Thew, a Deputy County Attorney for Lancaster County, Nebraska, was present by telephone as legal counsel for the Lancaster County Board of Equalization (“the County Board”).

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006). The final decision and order of the Commission in this case is as follows.

I. ISSUES

Whether the appeal should be dismissed for failure to timely file the appeal.

Whether the appeal should be dismissed for failure of a proper party to sign the appeal.

II. FINDINGS OF FACT

The Commission finds and determines that:

1. An appeal captioned above with the required filing fee and documentation signed by Austin Co. Agt., Bill White, on behalf of Marilyn Dering was received on August 28, 2008. (Case File).
2. An appeal captioned above with the required filing fee and documentation signed by Marilyn Dering, Trustee, was received on September 15, 2008. (Case File).
3. The envelope in which the appeal by Marilyn Dering, Trustee, filing fee, and documentation was delivered is postmarked September 12, 2008. (Case File)

4. The appeal in this case was filed based on an action of the County Board pursuant to section 77-1502 of Nebraska Statutes.
5. Lancaster County has adopted a resolution extending the date for hearing protests pursuant to section 77-1502 of Nebraska Statutes.

III. APPLICABLE LAW

1. The Commission obtains jurisdiction over an appeal when it 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. Neb. Rev Stat. §77-5013 (Cum. Supp. 2006).
2. An appeal is deemed 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.
3. An appeal from an action of a county board of equalization pursuant to section 77-1502 of Nebraska Statutes must be filed on or before August 24, or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.
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 5 §001.04 (10/07).
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 §001.37 (10/07).

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 §001.05C (10/07).
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 §001.05D (10/07).
8. If a party is a trustee that party, as trustee, may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.05E (10/07).
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 §001.05H (10/07).
10. Legal counsel for a party may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.05I (10/07).
11. If the appeal/petition is not signed by an authorized person it is a nullity.
12. The appeal must have been brought by a person with standing.
13. A person without standing may not maintain an appeal.

14. 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).

IV. ANALYSIS

Two appeals were filed in this case. The first filing was of an appeal signed by Austin Co. Agt., Bill White, on behalf of Marilyn Dering. It appears from that filing that Austin Co is authorized in some respects to act on behalf of Marilyn Dering and that Bill White has some authority to act on behalf of Austin Co. It is clear that the owner of the property to which the appeal pertains is Marilyn Dering. There is no evidence that Bill White or Austin Co. has any interest in the property to which that appeal pertains. There is no evidence that Bill White is legal counsel for Marilyn Dering. There is no evidence that Bill White or Austin Co. are parties who could file an appeal with the Commission pertaining to the property described in the appeal.

The second appeal in this case was filed by Marilyn Dering, Trustee, on September 15, 2008. The envelope mailing that appeal was postmarked September 12, 2008. The statutory deadline for filing the appeal was September 10, 2008. The second appeal was not timely filed

V. CONCLUSIONS OF LAW

1. The Commission does not have subject matter jurisdiction in this case.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeals in Case No. 08A 246 are dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 8, 2009.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

Wm. R. Wickersham, 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.