

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

KIRAN GANGAHAR,)	
)	
Appellant,)	Case No. 09R 815
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DOUGLAS COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	
Appellee.)	

The above-captioned case was called for a hearing on an Order to Show Cause (Filing Defect) why the appeal by Kiran Gangahar ("the Taxpayer") 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 February 16, 2010, pursuant to an Amended Order to Show Cause (Filing Defect) issued February 3, 2010. Commissioner Warnes, Vice-Chairperson of the Commission was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission was absent. Commissioner Warnes as Vice-Chairperson acting in the absence of the Chairperson designated, Commissioners Warnes, Salmon and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

Kiran Gangahar did not appear at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, participated in the hearing by telephone, as legal counsel for the Douglas County Board of Equalization ("the County Board").

The Commission took statutory notice, and heard testimony.

The Commission noted that the owner of the subject property is Kiran Gangahar.

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. 2008). 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 required documentation.

II. FINDINGS OF FACT

The Commission finds and determines that:

1. An appeal was mailed to the Commission and received on December 3, 2009. (Case File).
2. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.
3. Douglas 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. 2008).

2. The documentation required by Section 77-5013 of Nebraska Statutes 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. (Supp. 2009).
4. 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

The Commission was unable to reach the Taxpayer by telephone and no one appeared on behalf of the Taxpayer nor did the Taxpayer appear. Telephone calls were placed to the telephone number appearing on the Taxpayer's appeal, 402-677-2884 at 1:00 p.m., 1:08 p.m., and 1:15 p.m. A recorded voice mail answering machine with the Taxpayer's name was heard.

The Commission dismisses the appeal of the Taxpayer for reason that the Taxpayer has failed to appear at the Show Cause Hearing and present evidence as to why the Commission has jurisdiction in this matter. The Commission finds that the appeal of the Taxpayer was not timely

filed under Neb. Rev. Stat. §77-1502 (Supp. 2009). The Taxpayer's appeal was received by the Commission on December 3, 2009. The appeal alleged that notice had not been given to her and filed under Neb. Rev. Stat. §77-1507.01 which allows filing through December 31, 2009. No evidence was present to support Taxpayer's alleged failure to receive notice. Appeals taken under Neb. Rev. Stat. §77-1502 (Supp. 2009) must be filed with the Commission on or before September 10.

**V.
CONCLUSIONS OF LAW**

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

**VI.
ORDER**

IT IS ORDERED THAT:

1. The caption of this appeal is reformed to reflect the interest of Kiran Gangahar.
2. The appeal in Case No. 09R 815 is dismissed.
3. Each party is to bear its own costs in this proceeding.

Signed and Sealed February 24, 2010.

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2008), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.