

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

ADRIANA M. PINA,)	
)	
Appellant,)	Case No. 10C 578
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DOUGLAS COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	(Untimely Filing)
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Adriana M. Pina 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 November 30, 2010, pursuant to an Order to Show Cause (Filing Defect) issued October 27, 2010. Commissioner Wickersham, Chairperson of the Commission was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the proceeding. Commissioner Salmon was excused. Commissioner Hotz was present. The proceeding was heard by a quorum of a panel of the Commission.

Adriana M. Pina and Salvador Pina ("Taxpayers") were present. 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, 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 (Reissue 2009). 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 an appeal with the Commission.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The appeal captioned above with the required filing fee on October 13, 2010. (Case File).
3. The appeal in this case was filed based on an action of the County Board pursuant to section 77-1502 of Nebraska Statutes.
4. Douglas County has adopted a resolution extending the date for hearing protests pursuant to section 77-1502 of Nebraska Statutes.

APPLICABLE LAW

1. The Commission obtains jurisdiction over an appeal or petition when it is timely filed.

Neb. Rev Stat. §77-5013 (Reissue 2009).

2. An appeal or petition 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. Neb. Rev. Stat. §77-5013 (2) (Reissue 2009).
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. Neb. Rev. Stat. §77-1510 (Reissue 2009).
4. Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31, of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510. Neb. Rev. Stat. §77-1507.01 (Reissue 2009).
5. On or before June 1, the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at value different than in the previous year. Such notice shall be given by first class mail addressed to such owner's last-known address. It shall identify the item of real property and state the old and new valuation, the date of convening of the county board of equalization, the dates for filing a protest, and the average level of value of all classes and subclasses of real property in the county as determined by the Tax Equalization and Review Commission. Neb. Rev. Stat. §77-1315 (2) (Reissue 2009).

6. Absent evidence to the contrary it may be presumed that public officers faithfully performed their official duties and that absent evidence showing misconduct or disregard of the law, the regularity of official acts is presumed. *State v. Hess*, 261 Neb. 368, 622 N.W.2d 891 (2001).
7. The presumption of faithful performance of official duties is rebuttable. *Ludwig v. Board of Commissioners of Sarpy County*. 170 Neb. 600, 103 N.W.2d 838 (1960).
8. An increase in assessment is void if the requirements of section 77-1315 (2) of Nebraska Statutes are not met. *Reed v. County of Hall*, 199 Neb. 134, 256 N.W.2d 861 (1977).

IV. ANALYSIS

An appeal form was filed with the Commission on October 13, 2010. The appellant alleged on the appeal form that no notice of an increase in valuation had been given for the year 2010. Attached to the appeal form was a portion of a property record showing that taxable value of the parcel of real property described in the appeal had increased from \$143,700 for the tax year 2009 to \$481,100 for the tax year 2010. At the hearing called by the Commission to determine whether it had jurisdiction, two owners of the property described in the appeal testified that they had not received notice of an increase in value for tax year 2010. The property owners testified that tax notices were sent to the address shown on the property record and that those notices were received. One of the Taxpayer's testified that he learned of the increase in value for the year 2010 while making payment of a portion of the tax stated in a notice they had received for the tax year 2009.

A county assessor is required to mail a notice of a change in valuation to the record owner of real property on or before June 1 of each year. Neb. Rev. Stat. §77-1315 (2) (Reissue 2009). In the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties and that absent evidence showing misconduct or disregard of law, the regularity of official acts is presumed. *State v. Hess*, 261 Neb. 368, 622 N.W.2d 891 (2001). The starting point for further analysis is the presumption that the County Assessor mailed notice as required by section 77-1315 of Nebraska Statutes. The presumption of faithful performance of official duties may be rebutted. *Ludwig v. Board of Commissioners of Sarpy County*. 170 Neb. 600, 103 N.W.2d 838 (1960).

Presumptions arise in other contexts. A presumption arises that preliminary acts necessary to support further lawful action have been taken. *See School District No 49 v. School District No. 65*, 159 Neb. 262, 66 N.W.2d 561 (1954). The preliminary act in this instance is the mailing of notice of a valuation change to the property owner. The secondary act was the recording of an increase in valuation in the assessment records of the county as shown in the attachment to the appeal. There is nothing to indicate the recording the valuation increase was unlawful and the existence of that record raises the presumption that notice of the increase was given. The presumption that a preliminary act, giving notice, was taken cannot be overcome by a lack of evidence that it in fact occurred. *Id.* The complaining party must present affirmative evidence that an action was not taken. *Id.*

A presumption of receipt of mail may arise. *See, e.g., National Masonic Accident Ass'n v. Burr*, 57 Neb. 437, 77 N.W. 1098 (1899). The presumption that mail was received is not rebutted solely by testimony that mail was not received. *Sherrod v. State Department of*

Correctional Services, 251 Neb. 355, 557 N.W.2d 634 (1997).

A presumption that a county board of equalization faithfully performed its duties may be overcome with competent evidence. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987). An assessment cannot, however, be overcome based solely on the testimony of one or more persons interested in its valuation. *Le Doyt v. Keith County*, 161 Neb. 615, 74 N.W.2d 455 (1954).

The presumption that a prosecutor properly discharged his or her duties may be overcome with clear evidence. *State v. Sandoval*, 280 Neb. 309, 788 N.W.2d 172 (2010).

It is clear that the burden is on the Taxpayers to overcome the presumption that notice of a valuation change was mailed by the county assessor as required by section 77-1315. See, e.g. *Reed v. County of Hall*, 199 Neb. 134, 256 N.W.2d 861 (1977). The cases noted impose various burdens of proof on parties asserting a failure to discharge a duty. Whether the Taxpayers must meet that burden with competent evidence, clear evidence, a preponderance of the evidence or some other standard has not been determined by a Nebraska Court.

The Taxpayers testified that no notice was received showing a change in valuation. The Taxpayers also testified that another notice concerning taxes, that is the amount due for the tax year 2009, was received. The Taxpayers' evidence is conflicting, one important tax notice was received and another was not.

In other contexts, as noted above, presumptions are not overcome solely on the basis of testimony by a complaining party. The Commission concludes that the Taxpayers' burden has not been met.

If the filing of October 13, 2010 is considered a petition, the Taxpayers have not shown a

basis on which the petition could be filed. If the filing of October 13, 2010 is considered an appeal, it was filed out of time. In either case, the Commission does not have jurisdiction.

**V.
CONCLUSIONS OF LAW**

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

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 10C 578 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed February 9, 2011.

Wm. R. Wickersham, Commissioner

Robert W. Hotz, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (Reissue 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.