

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chadron Apartments I, Limited Partnership,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case No. 11C-023

Decision and Order Dismissing Appeal

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

The above-captioned case was called for a hearing on July 26, 2012, pursuant to an Order to Vacate Single Commissioner Designation and Amended Order for Hearing and Notice by the Tax Equalization and Review Commission (“Commission”). The hearing was held in the Hampton Inn & Suites Conference Center, 301 W. Hwy. 26, Scottsbluff, Nebraska, on July 26, 2012.

Chadron Apartments I, Limited Partnership, (“Taxpayer”), was not represented at the hearing. Craig Reid, a partner of Perry Reid Properties, which managed the Subject Property for the Taxpayer during the 2011 protest period and 2011 protest appeal period, was present at the hearing.

Joe W. Stecher, Deputy County Attorney for Dawes County, Nebraska, appeared as legal counsel for the Dawes County Board of Equalization (“County Board”).

At the hearing, Mr. Stecher orally motioned to dismiss the case based on absence of subject matter jurisdiction.

The Commission is required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

Whether the appeal in this case was signed by a person authorized to sign an appeal filed with the Commission.

II.
FINDINGS OF FACT

The Commission finds and determines that:

1. The owner of the parcel subject to dispute on the date of the appeal was Chadron Apartments I, Limited Partnership.
2. The appeal in this case was signed by Phil L. Perry on August 10, 2011. (Case File.)
3. Phil L. Perry is the CEO of Perry Reid Properties, the property manager for the Taxpayer, Chadron Apartments I, Limited Partnership. (Case File.)
4. Phil L. Perry is the CEO of Perry Reid Properties, but is not an officer, partner, general partner, member, manager, or other person holding similar authority or a full-time salaried employee of the Taxpayer, Chadron Apartments I, Limited Partnership.
5. Perry Reid Properties has not at any pertinent time had an ownership interest in the parcel whose taxable value is in dispute.
6. Perry Reid Properties is not obligated to pay, without reimbursement, any portion of the taxes that might be levied on the taxable value of the parcel for the year 2011.
7. Craig Reid is a partner of Perry Reid Properties, but is not an officer, partner, general partner, member, manager, or other person holding similar authority or a full-time salaried employee of Chadron Apartments I, Limited Partnership.

III.
APPLICABLE LAW

1. 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 (06/11).
2. 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 (06/11).
3. 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 (06/11).

4. Legal counsel for a party may sign an appeal/petition. 442 Neb. Admin. Code, ch. 5, §001.05I (06/11).
5. 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, §001.04 (06/11).
6. Only a person authorized to sign a pleading may appear before the Commission as a party or on behalf of a party, except as may be allowed by these rules or decisions of the Nebraska Supreme Court. (See, Chapter 5, Section 001.04). 442 Neb. Admin. Code, ch. 4, §010.10 (06/11).

IV. ANALYSIS

The parcel subject to appeal was, at the times relevant to the filing of this appeal, owned by Chadron Apartments I, Limited Partnership. Perry Reid Properties' sole interest in the parcel for which taxable value is in dispute was as a property manager.

Exhibit 7 received in evidence at the hearing indicates that Liberty Holdings, L.L.C. purchased the Subject Property on October 20, 2011. Exhibit 7 also indicates that Phil L. Perry and Craig Reid are managing members of Pac Holdings, LLC, which is a managing member of the purchaser, Liberty Holdings, L.L.C. Under Neb. Rev. Stat. §77-1510 (Reissue 2009), this purchase by Liberty Holding, L.L.C was consummated after the August 24th deadline for filing an appeal for tax year 2011 with the Commission.

Craig Reid's testimony at the hearing before the Commission indicates that neither he nor Phil L. Perry is a person that will be directly affected by the outcome of this appeal or 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. Mr. Reid's testimony also indicates that Perry Reid Properties is not a person or entity that will be directly affected by the outcome of this appeal, nor is it a party that has a real interest in the appeal, or has a legal or equitable right, title, or interest in the subject of the appeal.

The testimony at the hearing indicates there is no evidence that Craig Reid was at any time pertinent to this proceeding a director, an officer, a full-time salaried employee, member or manager of Chadron Apartments I, Limited Partnership, nor was he an individual authorized by law or the governing documents of Chadron Apartments I, Limited Partnership to sign an appeal to the Commission for tax year 2011. Additionally, the testimony at the hearing indicates that Phil L. Perry, CEO of Perry Reid Properties is not a person authorized by the Commission's rules and regulations to sign an appeal on behalf of Chadron Apartments I, Limited Partnership, the entity that owned the property or was responsible for payment of real property taxes for tax year 2011.

There is no showing that Craig Reid, Phil L. Perry, or Perry Reid Properties had a sufficient interest to file this appeal and the appeal must be dismissed.

**V.
CONCLUSIONS OF LAW**

The Commission does not have subject matter jurisdiction in this appeal because the appeal was not signed by a person authorized to sign appeals filed with the Commission.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal is dismissed.
2. This decision, if no appeal is timely filed, shall be certified to the Dawes County Treasurer, and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
3. Each party is to bear its own costs in this proceeding.
4. This order is effective for purposes of appeal on May 31, 2013.

Signed and Sealed. May 31, 2013.

SEAL

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner