

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harold K. Scholz Trust
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15C 0789

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on December 22, 2015. Ann Hough appeared telephonically at the hearing before the Commission. Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission also received evidence and argument offered regarding the Jurisdiction of the Commission to hear this appeal.

II. STANDARD OF REVIEW

Neb. Rev. Stat. §77-5013 provides that the Commission obtains jurisdiction over an appeal when the appeal form 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.¹ Any action of the County Board pursuant to §77-1502 may be appealed to the Tax Equalization and Review Commission (the Commission) in accordance with Neb. Rev. Stat. §77-5013 on or before August 24, or on or before September 10 if the County Board has adopted a resolution to

¹ See, Neb. Rev. Stat. §77-5013 (2014 Cum. Supp.).

extend the deadline for hearing protests under Neb. Rev. Stat. §77-1502.² 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.³

III. ANALYSIS

Neb. Rev. Stat. §77-5013(4) grants the Commission the authority to specify the requirements for the execution of an appeal or petition in the Commission's Rules & Regulations, including the requirements regarding who may sign an appeal.⁴ The Subject Property is owned by the Harold K. Scholz Trust. Ann Hough signed the appeal form.⁵ At the hearing, Ann Hough testified that she was the Treasurer for the Harold K. Scholz, Company, but that she was unsure whether she was a Trustee for the Harold K. Scholz Trust. Per the Rules & Regulations, the owner of real property may sign the appeal form, and if the owner of the property is a Trust, a Trustee may sign the appeal form.⁶

At the hearing, Ann Hough and the County Board stipulated to the admission of the trust document for the Harold K. Scholz Trust (the Trust). The Commission received a copy of the Trust document.⁷ According to the Trust, the Trustee is to have "full discretionary powers, without court approval, to perform every act which a prudent person might perform in dealing with the property of another, including the power to sell real property..."⁸ Also according to the terms of the Trust, the Trustee of the Trust is Harold K. Sholz unless Harold K. Sholz should "fail or decline to qualify or cease to act as Trustee."⁹ No evidence was received in this proceeding to indicate that Harold K. Sholz had failed or declined to qualify or cease to act as Trustee of the Trust.

According to the evidence received, Ann Hough, the signee of the appeal, is not the owner of the Subject Property, nor is she the Trustee authorized by the Trust to perform every act which a prudent person might perform in dealing with the property of another. Therefore, the

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Title 442, Chapter 5, section 001.05.

⁵ See, Case File.

⁶ Title 442, Chapter 5, section 001.05E.

⁷ Exhibit 1.

⁸ Exhibit 1, Article XIII of the Trust.

⁹ Exhibit 1, Article II of the Trust.

Commission determines that Ann Hough was not authorized to sign the appeal and the appeal was not properly perfected.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Diane Battiato
1819 Farnam St. Suite H09 Civic Center
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
Omaha, NE 68183

3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED January 7, 2016

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner