

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John Kirkland,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1159

Decision and Order Affirming the
Determination of the County Board of
Equalization and Order for Costs
(Default Judgment)

For the Appellant:

Rick M. Berkshire,
Attorney at Law

For the Appellee:

Shakil Malik
Deputy Douglas County Attorney

The appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located at 2245 S. 84th Street in Omaha, Douglas County, Nebraska. The legal description of the parcel is found in the Case File.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$170,600 for tax year 2012. John Kirkland (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$66,380. The Douglas County Board determined that the taxable value for tax year 2012 was \$170,600.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission issued an Order for Hearing on July 10, 2015, setting the hearing date for October 20, 2015. The Commission issued an Order for Continuance

¹ See, Case File.

on September 15, 2015 with a hearing date to be set. On March 2, 2016, the Commission ordered this matter set for a hearing on May 31, 2016. Affidavits of Service which appear in the records of the Commission establish that a copy of each of the Orders for Hearing and Notice of Hearing listed above was served on all parties.²

The Commission held a hearing on May 31, 2016. No one appeared on behalf of the Taxpayer as directed by the Commission's Order for Hearing. The County Board moved for a default judgment in favor of the County Board's determination. The County Board also moved for costs to reimburse the offices of the Douglas County Attorney and the Douglas County Assessor for mileage expenses incurred in attending the hearing.

The Commission issued an Order to Submit Bill of Costs on June 2, 2016. The County Board filed a Verified Bill of Costs on June 13, 2016. The total amount of travel expense reimbursement for the County Board and the County Assessor was \$119.88. Counsel for the Taxpayer filed Objections to the Billing of Costs on June 16, 2016.

III. STANDARD OF REVIEW

"In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination or action appealed from is incorrect, the commission shall deny the appeal."³ The Commission is authorized to enter default judgments.⁴

The Commission is authorized to assess costs.⁵ Costs include travel expense reimbursements if the hearing site is more than fifty miles from the county seat of the county from which the action arose.⁶ Payment of costs ordered by the Commission shall be submitted and made payable to the Commission unless the Commission orders otherwise.⁷

This appeal arose out of Douglas County, and the hearing was held at the State Office Building in Lincoln, Lancaster County, more than fifty miles from the county seat of Douglas

² See, Case File.

³ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

⁴ Neb. Rev. Stat. §77-5015 (2014 Cum. Supp.).

⁵ Neb. Rev. Stat. §77-5016(12) (2014 Cum. Supp.), 442 NAC Ch. 4, §004.02(6/11).

⁶ 442 NAC Ch. 2, §001.16(6/11).

⁷ 442 NAC Ch. 4, §004.05(6/11).

County. The Commission may assess costs when a party fails to appear for a duly noticed hearing.⁸

IV. CONCLUSION

The Taxpayer was represented by legal counsel who failed to appear at the hearing as required by the Order for Hearing and Notice of hearing and therefore presented no evidence to show that the order, decision, determination or action appealed from was incorrect. The motion for an Order of Default Judgment should be granted and the decision of the County Board should be Affirmed. Further, the County Board's Motion for Costs should be granted.

V. ORDER

IT IS ORDERED THAT:

1. The Motion of the County Board for Default Judgment is granted.
2. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is Affirmed.
3. The taxable value of the Subject Property for tax year 2012 is \$170,600.
4. The Motion of the County Board for Costs is granted.
5. The Taxpayer is ordered to pay costs of \$119.88 payable to Douglas County, Nebraska.
6. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. This Decision and Order shall only be applicable to tax year 2012.

⁸ 442 NAC Ch. 4, §004.02A2(6/11).

9. This Decision and Order is effective for purposes of appeal on June 21, 2016.

Signed and Sealed: June 21, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.