

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

Circo Realty Company,  
Circo Strategic Investments, LLC,  
Barbara J. Kay,  
Appellants,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 17C 0560, 17C 0562,  
& 17R 0633

**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 in the matters captioned above on February 12, 2018. Barbara J. Kay, the individual who signed the appeal form in each case, appeared telephonically at the hearing on behalf of the Appellants. Shakil A. Malik, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction. The Commission received evidence and heard argument regarding its jurisdiction to hear these appeals.

**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.<sup>1</sup> In order to have standing to invoke a tribunal's jurisdiction, one must have some legal or equitable right, title, or interest in the subject of the controversy.<sup>2</sup> The defect of standing is a defect of subject matter jurisdiction.<sup>3</sup>

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<sup>1</sup> Neb. Rev. Stat. 77-5013 (2016 Cum. Supp.).

<sup>2</sup> See, e.g., *Douglas County Board of Commissioners v. Civil Service Commission*, 263 Neb. 544, 549, 641 N.W.2d 55, 60 (2002).

<sup>3</sup> *In Re. Invol. Dissolution of Wiles Bros.*, 285 Neb. 920, 924, 830 N.W.2d 474 (2013).

### III. ANALYSIS

Barbara J. Kay signed the appeal form in each of these three cases, but each parcel involved is owned by some other person or legal entity. If a party to an appeal before the Commission is a corporation, limited liability company, partnership, limited partnership, or other legal entity, the entity may sign an appeal through a director, an officer, a full-time salaried employee, member, manager, or other individual authorized by law or the governing documents of the entity.<sup>4</sup> If a party is a natural person, authority to sign an appeal is limited to that person or the person's attorney, as well as the person's guardian, conservator, or next friend.<sup>5</sup>

#### A. 17C 0560, Property Owner: Circo Realty Company

For the Commission to obtain jurisdiction over the appeal filed by Ms. Kay on behalf of Circo Realty Company, the evidence must show that Ms. Kay was a director, officer, full time salaried employee, etc., of Circo Realty Company, or that she was authorized to sign the appeal by law or by the governing documents of the entity. The evidence adduced at the hearing indicates that Ms. Kay is not an employee of Circo Realty Company; rather, she is an employee of Circo Enterprises, LLC. Dennis Circo owns both Circo Realty Company (the property owner) and Circo Enterprises, LLC (Ms. Kay's employer), but Circo Realty Company and Circo Enterprises, LLC are separate and distinct legal entities. There is no evidence that the governing documents of Circo Realty Company authorize Ms. Kay to sign an appeal on the company's behalf. The Commission finds that Ms. Kay lacked standing to sign the appeal form on behalf of Circo Realty Company. As a result, the Commission does not have subject matter jurisdiction over Case No. 17C 0560, and the case should be dismissed.

#### B. 17C 0562, Property Owner: Circo Strategic Investments, LLC

For the Commission to obtain jurisdiction over the appeal filed by Ms. Kay on behalf of Circo Strategic Investments, the evidence must show that Ms. Kay was a director, officer, full time salaried employee, etc., of Circo Strategic Investments, or that she was authorized to sign the appeal by law or by the governing documents of the entity. As before, the evidence adduced

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<sup>4</sup> 442 NAC Ch. 5 § 001.05D.

<sup>5</sup> 442 NAC Ch. 5 § 001.05C.

at the hearing indicates that Ms. Kay is an employee of Circo Enterprises, LLC, rather than Circo Strategic Investments. Circo Strategic Investments and Circo Enterprises, LLC are separate and distinct legal entities. There is no evidence that the governing documents of Circo Strategic Investments authorize Ms. Kay to sign an appeal on the company's behalf. The Commission finds that Ms. Kay lacked standing to sign the appeal form on behalf of Circo Strategic Investments. As a result, the Commission lacks jurisdiction to hear Case No. 17C 0562, and the case should be dismissed.

C. 17R 0633, Property Owner: Dennis P. Circo

The third appeal involves a parcel owned individually by Dennis P. Circo. For the Commission to obtain jurisdiction over an appeal filed by Ms. Kay on behalf of Mr. Circo, the evidence must show that Ms. Kay was an attorney, guardian, conservator, or next friend of Mr. Circo. The record contains no evidence of such a relationship. The Commission finds that Ms. Kay lacked standing to sign the appeal form on behalf of Dennis P. Circo. As a result, the Commission lacks jurisdiction to hear Case No. 17R 0633, and the case should be dismissed.

**IV. CONCLUSION**

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

**ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeals are dismissed with prejudice.

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 required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.) as follows:

Diane Battiato  
1819 Farnam Stre. Ste H09 Civic Center  
Omaha, NE 68183-1000

John Ewing  
1819 Farnam St., Rm H03  
Omaha, NE 68183-1000

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

**SIGNED AND SEALED: February 20, 2018.**

**Seal**

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner