

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Best Western Settle Inn,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13C 808

**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 January 17, 2014. Mike Panchal, Managing Member of Swati, LLC d/b/a Best Western Settle Inn, appeared at the hearing before the Commission on behalf of the Appellant. Tim Trieschmann, the Appellant's Business Manager, also appeared at the hearing. Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization, the Appellee. The Tax Equalization and Review Commission (herein referred to as the "Commission") took notice of its case files for the purpose of determining personal and subject matter jurisdiction. The Commission also received Exhibits 1 – 3 in evidence for jurisdictional purposes.

II. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it 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 of Equalization pursuant to section 77-1502 may be appealed to the Commission in accordance with section 77-5013 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 77-1502.² "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

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

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

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 77-105 to 77-1510.”³ 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.⁴

III. ANALYSIS

Nebraska Statutes section 77-1502 required the filing of a protest for the Subject Property with the County Board by June 30, 2013.⁵ Because the Appellant purchased the Subject Property on October 9, 2013, it did not file a protest with the County Board by June 30, 2013.

In effect, the Appellant asserted that the Commission should find jurisdiction in this matter because it was unable to meet the County Board’s June 30th protest filing deadline due to failure to receive notice of valuation change prior thereto. The Appellant was uncertain whether the previous owner received timely notification regarding valuation change or protested the Subject Property’s 2013 assessed valuation by June 30, 2013.

The Commission does not find the Appellant's argument persuasive. The County was not required to give notice to the Appellant regarding any change in Subject Property valuation for tax year 2013 because it was not the owner of record as of May 20, 2013.⁶ Additionally, as indicated previously, Nebraska Statutes section 77-1502 required the filing of a protest for the Subject Property with the County Board by June 30, 2013.⁷ The Appellant is uncertain whether the previous owner filed a protest of the Subject Property’s valuation for tax year 2013 with the County Board by June 30, 2013.

An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.⁸ Additionally, “if the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be

³ Neb. Rev. Stat. 77-1507.01 (Reissue 2009)

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁵ Neb. Rev. Stat. 77-1502 (2012 Cum. Supp.).

⁶ Neb. Rev. Stat. 77-1315(2) (2012 Cum. Supp.).

⁷ Neb. Rev. Stat. 77-1502 (2012 Cum. Supp.).

⁸ *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

dismissed.”⁹ Therefore, because the Appellant did not file a protest with the County Board for the 2013 tax year by June 30, 2013, and because it is uncertain whether the previous owner filed a protest by that date, the Commission finds that the County Board did not have jurisdiction to hear the protest. Additionally, the Appellant has failed to demonstrate a failure to give notice prevented the timely filing of a protest or appeal to allow for the filing of a petition under Nebraska Statutes section 77-1507.01 referenced above. It follows that the Commission does not have jurisdiction over this matter.

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. 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:

Roger Morrissey
1819 Farnam Stre. Rm 400
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
68183

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

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

SIGNED AND SEALED: January 22, 2014.

Thomas D. Freimuth, Commissioner

Seal

Nancy J. Salmon, Commissioner

⁹ *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012).