

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Akie Niiya Trust,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15C 815

**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, recessed at the Appellant's request, and resumed on February 17, 2016. Mitsu Niiya appeared telephonically in both proceedings. Malina Dobson and Jimmie Pinkham III, Deputy Douglas County Attorneys, each appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board) on each respective date. Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and heard argument 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

Mitsu Niiya testified that he is the son of Akie Niiya. At the hearing on December 22, 2015, Mitsu Niiya was informed that the record indicated that the owner of the Subject Property was the Akie Niiya Trust (the Trust), and that only the Trustee of the Trust was authorized to sign the appeal. He was also advised that the appeal form had been mailed to the Commission in an envelope including another unrelated appeal, but that only one filing fee had been included. Mitsu Niiya informed the Commission that an advisor named Monte Bowman had mailed the appeal, and he requested a continuance to seek advice or counsel.

At the hearing on February 17, 2016, Mitsu Niiya testified that he was a Trustee of the Akie Niiya Trust. The Commission has the authority to specify the requirements for the execution of an appeal or petition in the Commission Rules and Regulations.⁴ The Commission's Rules and Regulations specify the persons who may sign an appeal or petition.⁵ Mitsu Niiya, signee of the appeal, is a son to Akie Niiya, and there is competent evidence that he is a Trustee of the Akie Niiya Trust. An individual who is the Trustee of a Trust is authorized by the Commission to sign an appeal or petition.⁶

On September 14, 2015, the Commission received an envelope containing an appeal of the determination of the Douglas County Board of Equalization made pursuant to statutory requirements regarding the Akie Niiya Trust.⁷ The envelope had a postmark of September 10, 2015. The deadline for filing the appeal for tax year 2015 was 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 77-1502.⁸ The County Board adopted a resolution extending the deadline

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 Neb. Rev. Stat. §77-5013(4) (Reissue 2009).

⁵ Title 442, Neb. Admin. Code ch. 5 §001.05 (6/11).

⁶ Title 442, Neb. Admin. Code ch. 5 §001.05 (6/11).

⁷ Neb. Rev. Stat. §77-1502 (Reissue 2009)

⁸ Neb. Rev. Stat. §77-1510 (Reissue 2009).

for hearing protests (Case File), so the filing deadline for tax year 2015 was September 10, 2015. An appeal is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission on or before the date specified by law for filing the appeal.⁹ Therefore, the appeal was timely filed.

However, the envelope containing the appeal form also contained another unrelated appeal form for another appeal by Quality Care of Omaha, Inc. (Quality Care).¹⁰ Niiya testified he had no knowledge of the other appeal. The envelope used to file the appeals contained only one money order for a \$25.00 filing fee with nothing written on the face of the money order to indicate for appeal the filing fee was being paid. Niiya testified that he had paid a tax advisor named Monte Bowman to file the appeal. According to Niiya, Bowman prepared the appeal form and Niiya signed it. After signing the form, Niiya did not prepare the form for mailing, and Niiya was not present when the appeal forms and filing fee were sealed in the envelope. Niiya testified that he assumed that Bowman had been hired to do those things.

The Commission scheduled separate show cause hearings for December 22, 2015, for both the Quality Care appeal and the Akie Niiya Trust appeal. On that same date, the parties presented evidence and argument in the Quality Care appeal, and the case was submitted for a decision. In the present appeal, at the hearing on December 22, 2015, Mitsu Niiya requested a continuance to consult with an advisor or legal counsel.

The evidence in this appeal is that the Commission received only one filing fee for two separate and unrelated appeals. By the time the Commission received the envelope containing the appeals, the filing date, with its jurisdictional requirements, had tolled. A separate filing fee must be filed with each appeal to the Commission.¹¹ Therefore, the Commission determined that the filing fee should be applied to one of the two appeals rather than to neither of them. The Commission was not authorized to apply one filing fee payment to both appeals. Since the Quality Care appeal was submitted on December 22, 2015, and the present appeal was continued at the request of Mitsu Niiya, the Commission applied the filing fee to the Quality Care appeal and issued a decision and order finding jurisdiction in that case.

⁹ Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

¹⁰ See Case No. 15C 814, *Quality Care of Omaha, Inc. v. the Douglas County Board of Equalization*.

¹¹ And each filing fee must be timely received in order for the Commission to have jurisdiction over each appeal. *Widtfeldt v. Tax Equal. & Rev. Comm.*, 15 Neb. App. 410, 728 N.W.2d 295 (2007).

“Jurisdiction is the inherent power or authority to decide a case.”¹² The Commission only has that authority which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.¹³ Because of the appeal filing requirements of Neb. Rev. Stat. §77-5013, the Commission finds that it should not exercise jurisdiction to decide the merits of the appeal.

IV. CONCLUSION

The Commission does not have the authority to decide the merits of the above captioned appeal and, therefore, the appeal should be dismissed.

V. 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 County Treasurer, and the officer charged with preparing the tax list for County as follows:

Diane Battiato
Douglas County Assessor
1819 Farnam Street
Room H09
Omaha, Nebraska 68183

John Ewing
Douglas County Treasurer
1819 Farnam Street
Room H03
Omaha, Nebraska 68183

¹² *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

¹³ *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

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

SIGNED AND SEALED February 18, 2016

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner