

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

9290 Partnership,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17C 0211

DECISION AND ORDER

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

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on November 9, 2017, before Commissioners Robert W. Hotz and James D. Kuhn. Timothy Kerrigan appeared telephonically as a person who filed an appeal on behalf of 9290 Partnership (the Taxpayer). Shakil Malik, Deputy 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 file for the purpose of determining personal jurisdiction and subject matter jurisdiction.

II. SUMMARY OF FACTS

The record established at the hearing consisted of the case file and the testimony of Mr. Kerrigan. On this record, the Commission finds that the subject property is owned by the Taxpayer. The appeal form required by the Commission's rules was signed by Mr. Kerrigan as "asset manager for owner." Mr. Kerrigan is not a licensed attorney. Mr. Kerrigan is vice president of a company by the name of Investor's Realty, which has been the property manager and leasing agent for several of the Taxpayer's buildings for at least 20 years. Investor's Realty routinely signs contracts of significant value on behalf of the Taxpayer, although the Taxpayer signs its own tenant leases for the Subject Property. Neither Mr. Kerrigan nor anyone else at Investor's Realty has any ownership interest in, or any employment relationship with, the Taxpayer. The Taxpayer has the obligation to pay property taxes on the Subject Property, and the funds used to pay the taxes are drawn from a trust account of which Investor's Realty is a

fiduciary. Investor's Realty has a contractual responsibility to arrange the payments, but the funds used to pay the taxes belong to the Taxpayer.

III. ANALYSIS

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. Although only these requirements are jurisdictional under the relevant statute, the same statute provides, "The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations."¹

The rules of the Commission state, in relevant part, "An Appeal Form or Petition must be signed by a party, legal counsel for a party, or a person authorized by law or these rules."² The rules provide a list of persons who may sign an appeal, including property owners, elected officials, guardians or conservators, and trustees, but not property or asset managers. The rule defining the term "party" includes an explanatory statement that provides: "Standing, a legal concept, is fundamental to the right to appeal. If the person bringing an appeal does not have standing, the appeal must be dismissed."³

The Nebraska Supreme Court has stated,

[S]tanding requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court's jurisdiction and justify exercise of the court's remedial powers on the litigant's behalf. Thus, generally, a litigant must assert the litigant's own rights and interests, and cannot rest a claim on the legal rights or interests of third parties.⁴

The relationship between the legal concepts of standing and jurisdiction is complex, but the application of the Commission's rules is clear in this case.

Neither Mr. Kerrigan nor Investor's Realty has any ownership interest in the Subject Property, and Mr. Kerrigan is not an attorney who may file an appeal on behalf of a client. Although the rule does allow a trustee to sign an appeal, it is clear from the context of the rule that this provision relates to situations in which the property itself is owned by a trust and the

¹ See Neb. Rev. Stat. §77-5013 (2016 Cum. Supp.).

² 442 Nebraska Administrative Code (NAC), Chapter 5, Section 001.04 (6/11).

³ 442 NAC Ch. 2 §001.36.

⁴ *In re Application A-18503, Water Division 2-D.*, 286 Neb. 611, 615, 838 N.W.2d 242, 246 (2013).

person who signs the appeal is the trustee for that trust;⁵ the record does not support such a factual conclusion in this case. Neither Mr. Kerrigan nor Investor's Realty falls into any of the other categories of persons listed in the rule who are authorized to sign an appeal. The Commission's rules require that the appeal be dismissed due to a lack of standing on the part of the person bringing the appeal.

For the reasons stated above, the appeal must be dismissed.

IV. CONCLUSION

The appeal filed on behalf of the Taxpayer must be, and is, dismissed.

ORDER

IT IS THEREFORE ORDERED THAT:

1. Case No: 17C 0211 is dismissed with prejudice.
2. This order, 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 (2014 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

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

SIGNED AND SEALED November 21, 2017

Seal

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁵ See 442 NAC 5.001.05E