

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

STEVEN G. GAMBOA and KATHERINE E. DIXON,)	
)	
)	
Plaintiffs,)	No. 020952C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the real market value of a residential structure for the 2001-02 tax year. Defendant moved to dismiss the Complaint because Plaintiffs did not appeal from an order of the county board of property tax appeals (board). Hearing on the motion was held November 12, 2002. Steven Gamboa and Katherine Dixon appeared on their own behalf. Edna Stanton, a county appraiser, appeared for Defendant.

STATEMENT OF FACTS

Plaintiffs seek a reduction in the real market value of the subject property from \$659,660 to \$575,000, a reduction of 13 percent. Plaintiffs were late in filing their petition with the board. Gamboa testified he was aware of the December 31, 2001, deadline. When questioned by the court, Gamboa testified that he thought he might have mailed the appeal before the end of the year but that he could not specifically recall. Gamboa admits the petition may not have been mailed until after the holiday, on Wednesday, January 2, 2002. The board received the petition on Friday, January 4, 2002. Plaintiffs were notified by the board that the petition was late. Gamboa telephoned the assessor's office and spoke with Mr. Hamm, who advised him he could file an appeal with the magistrate division of the Oregon Tax Court. Plaintiffs filed their Complaint in June 2002. Defendant acknowledges that the value may be a little high

based on the purchase price, but has moved to dismiss the appeal as untimely.

COURT'S ANALYSIS

The deadline for petitioning the board for the 2001-02 tax year was December 31, 2001. See ORS 309.100(2).¹ Plaintiffs missed that deadline, which is governed by the date of mailing as evidenced by the post mark cancellation on the envelope. ORS 305.820(1). Plaintiffs do not contend the board petition was timely. Plaintiffs are concerned with the value, which they believed could be reduced by appealing to the court.

The court has the authority in certain situations to consider a value appeal where the property owner fails to follow the statutory appeal process by first petitioning the board. In the case of residential property where the requested reduction is less than 20 percent, the statute provides:

“The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

ORS 305.288(3).

The question is whether the taxpayer has “good and sufficient cause” for not petitioning the board on time. Good and sufficient cause is defined in subsection (5) of the statute, which reads:

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“For purposes of this section:

“* * * * *

“(b) ‘Good and sufficient cause’:

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.
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“(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

“(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.”

ORS 305.288(5)(b)(A)(B).

Gamboa stated that he believed he was given bad advice by Hamm, the employee at the assessor's office who advised him to appeal to the Tax Court. The issue of good and sufficient cause, however, concerns Plaintiffs' failure to timely submit the petition to the board. Hamm's advice was given after Plaintiffs missed the board deadline and has no relevance to the good and sufficient cause inquiry. Moreover, Hamm's advice was not incorrect or misleading because the court has the authority to consider the appeal and grant relief, where warranted, provided the taxpayer either alleges an error in value of at least 20 percent or presents a statutorily acceptable reason for missing the board deadline.

Gamboa testified he was busy with work and other things and missed the deadline. Such circumstances are neither extraordinary nor beyond Plaintiffs' control. Plaintiffs' situation is more accurately characterized as one of inadvertence or oversight, circumstances which are specifically excluded from the definition of good and sufficient cause by subsection (5)(b)(B) of ORS 305.288.

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CONCLUSION

Plaintiffs' petition to the county board for the 2001-02 tax year was not timely filed and the reason for the failure to timely pursue that statutory appeal right was

inadvertence or oversight. Such circumstances do not constitute good and sufficient cause as that term is defined in ORS 305.288, and because the error alleged is less than 20 percent, Defendant's request to dismiss must be granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' Complaint is dismissed.

Dated this _____ day of November, 2002.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON NOVEMBER 26, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 26, 2002.