

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ZRZ REALTY COMPANY,)
)
 Plaintiff,) TC-MD 030730C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR and)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendants.) **DECISION OF DISMISSAL**

This matter is before the court on a motion by Defendant Department of Revenue to dismiss the Complaint as untimely. Argument on the motion was heard September 8, 2003. Steven Shain (Shain) appeared for Plaintiff. Defendant Department of Revenue (DOR) was represented by Doug Adair, Assistant Attorney General. James Nagae, an appraiser with the Multnomah County Assessor's Office, appeared for the county.

The appeal of each of the five accounts at issue was filed from an order of the county board of property tax appeals (board). The board orders were all mailed on March 21, 2003. The envelope containing Plaintiff's Complaint is postmarked April 23, 2003, more than 30 days after the board orders were mailed. Plaintiff responded to Defendant's motion for dismissal by a letter dated June 24, 2003. The relevant facts as outlined in that letter are set forth in the analysis below. Shain stated during the September 8, 2003, hearing that he had nothing to add to that explanation, but merely stressed certain points of argument.

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The deadline for appealing an order of the board as a result of an appeal filed under ORS 309.100¹ is “30 days after the date * * * of mailing of the order.”

ORS 305.280(4). Plaintiff missed that deadline by two days.

Plaintiff argues that it intended to file the appeal within the 30-day deadline and notes that the Complaint was dated and executed on April 21, 2003, which is the last day that a timely appeal could have been filed. In its response to the motion, Plaintiff argues:

“[the] documents were placed in ZRZ’s in-house mailroom with expectation and plan for same-day processing and mailing, and it is unclear as to how or why the postmarking and mailing were delayed, or whether this was an in-house or U.S. Postal Service system delay in the post-marking of the envelope.”

These arguments relate, if at all, to the question of “good and sufficient cause,” a standard which, when met, allows the court to consider an appeal and order a value reduction notwithstanding the lack of timeliness. ORS 305.288(3). The relevant statute defines good and sufficient cause as:

“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.”

ORS 305.288(5)(b)(A). The failure to pursue the statutory right of appeal includes an untimely appeal. Plaintiff’s appeal is untimely for reasons that amount to inadvertence or oversight, both of which are statutorily excluded from the definition of good and sufficient cause. ORS 305.288(5)(b)(B). Absent some evidence that the blame can be properly laid at the door of the U.S. Postal Service, the reasonable assumption, and the one the court embraces, is that Plaintiff failed to get the envelope in the hands of the postal service until after the deadline. Given the amount of money at issue in the event Plaintiff succeeded in

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

its appeal, Plaintiff should either have initiated the appeal process sooner or hand-delivered the envelope to the post office and requested that it be postmarked immediately.

On the facts before it the court cannot excuse the untimely appeal. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of September, 2003.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 SEPTEMBER 10, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 10, 2003.