

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

EJK ASSOCIATES, LLC,)	
)	
Plaintiff,)	TC-MD 030749C
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This is a property tax value appeal for the 2002-03 tax year before the court on its own motion to determine whether Plaintiff's failure to timely petition the Clackamas County Board of Property Tax Appeals (board) should result in a dismissal of the Complaint. The August 25, 2003, case management conference was converted to a hearing to determine that issue. Appearing for Plaintiff were Julie Gilkison, Manager and Gary Deardorff (Deardorff), Office Manager. John Taylor, an appraiser with the Clackamas County Assessor's Office, appeared for Defendant.

I. STATEMENT OF FACTS

The subject property is a commercial building in downtown Molalla. Plaintiff purchased the property on November 30, 2001, for \$80,000. The real market value (RMV) on the assessment and tax rolls for the 2002-03 tax year was set by the assessor's office at \$170,263. Plaintiff seeks a reduction to the purchase price. Plaintiff filed an appeal petition with the board but the board dismissed the petition as untimely. The board's order indicates that the "petition was filed or postmarked after December 31, 2002." Plaintiff timely appealed the board's order to the Tax Court.

Plaintiff acknowledges that the envelope containing the petition to the board was postmarked after December 31, 2002. That letter was placed in a United States Postal

Service collection box near Plaintiff's office mid-afternoon (around 3:30 p.m.). Plaintiff assumed that the mailman would collect the mail from that box around 5:00 p.m. which, according to the testimony, is the scheduled pickup time for other collection boxes in the downtown area. Plaintiff later discovered that the scheduled pickup time for the box it used to mail the board petition was 1:00 p.m. That explains the "delay" in the postmark date. Plaintiff did not attempt to mail the petition earlier because it initially mistakenly believed that the petition could not be filed until after December 31, 2002, and before April 1, 2003. The reason for the misunderstanding is that Deardorff had earlier inquired about a forest reclassification request for another property and discussed the appeal process for the subject property during that telephone conversation with an employee of the assessor's office. The April 1, 2003, deadline applies to the forest reclassification request but not the board petition. Deardorff "thought" the deadline applied to both forms, which concerned property tax matters involving the assessor's office.

II. ANALYSIS

The first step in the value appeal process is to file a petition with the local county board. ORS 309.100¹ and ORS 305.275(3). Petitions to the board must be filed by December 31 of the current tax year. ORS 309.100(2). Plaintiff admittedly missed that deadline, which is governed by the post office cancellation mark appearing on the envelope. ORS 305.820(1)(a). Were it not for the provisions of ORS 305.288, a late appeal to the board would be fatal; the case could not be heard by the court (absent some equitable consideration). However, ORS 305.288, which is a rescuing provision, allows a taxpayer to proceed in this court notwithstanding the failure to timely petition the board, provided, in the case of commercial property, that the taxpayer can establish that the

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

failure to pursue the statutory right of appeal was due to “good and sufficient cause.”² 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). Inadvertence, oversight, and lack of knowledge are excluded by statute from the definition of good and sufficient cause. ORS 305.288(5)(b)(B).

In this case, Plaintiff’s petition to the board was late because it first misunderstood the deadline for filing the petition and then made an erroneous assumption as to when the mailman picked up the mail at the collection box. Those factors do not constitute “an extraordinary circumstance * * * beyond [Plaintiff’s] control.” ORS 305.288(5)(b)(A). Accordingly, good and sufficient cause is lacking and the appeal may not go forward.

III. CONCLUSION

The court concludes that Plaintiff’s appeal should be dismissed because Plaintiff was late in petitioning the board and the court cannot excuse the untimeliness under the good and sufficient cause standard found in ORS 305.288(3) and (5). Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal is 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

² Appeals involving residential property, that is, property used as a dwelling of not more than four units, can be considered by the court in spite of the failure of the taxpayer to timely petition the board if the taxpayer alleges an error in value of at least 20 percent. ORS 305.288(1).

DECISION BECOMES FINAL AND CANNOT BE CHANGED.

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON
SEPTEMBER 22, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER
22, 2003.**