

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JACE REAL PROPERTY MANAGEMENT,)	
LLC, dba SWEETBRIAR INN & SUITES,)	
)	
Plaintiff,)	TC-MD 040505C
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This matter is before the court on Defendant’s motion to dismiss (motion). Defendant referenced the untimeliness of the appeal in its Answer and made a formal motion to dismiss at the August 10, 2004, case management conference. That motion was addressed by the court during that proceeding. Plaintiff is represented by Gregory A. Damico, CPA (Damico). Defendant is represented by Elmer Dickens, Assistant County Counsel, Washington County.

I. STATEMENT OF FACTS

The appeal involves a request for a reduction in the real market value of the subject property identified as Account R532917, for the 2003-04 tax year. Through its representative Damico, Plaintiff petitioned the Washington County Board of Property Tax Appeals (Board) to reduce the subject property’s value. On March 4, 2004, the Board issued an order reducing the value by approximately \$1.5 million. Plaintiff seeks an additional reduction of more than \$1 million. Plaintiff’s appeal to this court was postmarked April 12, 2004, which is seven days beyond the 30-day appeal period. Defendant requests that the appeal be dismissed as untimely.

II. ANALYSIS

An appeal to this court from an order of the Board must be “filed within 30 days after the * * * date of mailing of the order.” ORS 305.280(4)¹. A complaint is deemed filed with the Tax

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.
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Court “on the date shown by the post-office cancellation mark stamped upon the envelope containing [the complaint].” ORS 305.418(1)(a). Because the thirtieth day fell on a Saturday, the deadline was Monday, April 5, 2004. Plaintiff’s Complaint was filed seven days beyond that date. Accordingly, the appeal was untimely.

Damico explained that he filed petitions with the Board for more than 40 properties and that he received in return one envelope containing all of the Board orders. Unfortunately, the order for the subject property was missed and not discovered until roughly one week after the deadline. An appeal was immediately filed with the Tax Court.

Defendant argues that the Complaint must be dismissed unless Plaintiff establishes good and sufficient cause for the untimely appeal and that the explanation provided by Damico does not satisfy the statutory definition. The court agrees that a late appeal seeking a reduction in value that involves a commercial property must be dismissed as untimely, absent a showing of good and sufficient cause as provided in ORS 305.288(3). Good and sufficient cause is defined as “an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer’s agent or representative, and that cause the taxpayer, agent or representative to fail to pursue the statutory right of appeal.” ORS 305.288(5)(b)(A). The court appreciates Damico’s candor. However, the circumstances pertaining to the untimely filing are neither extraordinary nor beyond the control of the Plaintiff’s representative. Damico argued that, if the court dismisses the appeal, the taxpayer will suffer. That is true, assuming additional proceedings would achieve a further reduction in value. However, by appointing a representative, a taxpayer transfers authority to that individual and accepts the consequences of that representative’s actions or inactions.

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III. CONCLUSION

The court has considered Defendant's motion and concludes the Complaint must be dismissed as untimely. Plaintiff missed the 30-day appeal period and the explanation does not constitute good and sufficient cause. Now, therefore,

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

Dated this _____ day of _____, 2004.

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 9, 2004. THE COURT FILED THIS DOCUMENT SEPTEMBER 9, 2004.