IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

COPPEROPOLIS MINING CO., INC.,   )
)
    Plaintiff,   )   TC-MD 060520C
)
    v.   )
)
GRANT COUNTY ASSESSOR,   )
)
    Defendant.   )   **DECISION OF DISMISSAL**

This matter is before the court on Defendant's Motion to Dismiss, filed June 1, 2006. The motion was heard by the court by telephone on July 20, 2006. Plaintiff was represented by Thom Seal (Seal), the tax matter shareholder. Defendant was represented by Mike Kilpatrick, attorney for Grant County Assessor.

Plaintiff seeks a reduction in the real market value of an undeveloped parcel of land identified in the assessor's records as Account 2631, for tax years 2003-04, 2004-05, and 2005-06. Defendant moves to dismiss the complaint as untimely.

Defendant asserts that the Order of the county board of property tax appeals (board) was mailed April 7, 2006, and that Plaintiff's Complaint to this court was filed May 9, 2006, beyond the 30-day statutory deadline. In response, Plaintiff asserts the envelope containing the board's Order is postmarked April 8, 2006, and was thus "mailed" on the eighth. Plaintiff agrees that his Complaint to this court was mailed May 9, 2006.

ORS 305.280(4)[1] provides in relevant part that an appeal "from an order of a county board of property tax appeals shall be filed within 30 days after the * * * date of mailing of the

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[1] References to Oregon Revised Statutes (ORS) are to 2003.

order." Assuming Plaintiff is correct that the board's Order was, in fact, not mailed until April 8, 2006, the statutory 30-day deadline was Monday, May 8, 2006, one day before Plaintiff filed its Complaint. The Complaint is therefore untimely. However, that does not foreclose the possibility of relief.

The property that forms the basis of the underlying appeal is unimproved land, and, under ORS 305.288(3), the court can consider the appeal and order a change in the value of the property provided Plaintiff establishes "good and sufficient cause" for failing to properly pursue the statutory right of appeal. ORS 305.288(5)(b)(A) 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[.]" The statute specifically excludes "inadvertence, oversight, [and] lack of knowledge" from the definition of good and sufficient cause. ORS 305.288(5)(b)(B).

Plaintiff's appeal is based on an assertion that Defendant violated the provisions of ORS 308.146 by increasing the real market value of his property by more than three percent following the court's adjudicated value for tax year 2002-03. Seal explained that no appeal was filed in 2003 (for tax year 2003-04) because he did not notice the value increased by more than three percent that year. An appeal was filed for the 2004-05 tax year, but was dismissed by the board because Plaintiff failed to timely correct an error in the petition. Seal explained that he was out of the country when the board's written request asking Plaintiff to perfect the petition was mailed and that he returned after the petition had been dismissed. As for the 2005-06 tax year, Seal explained that he did not receive the board's Order until April 22, 2006, and that it took time to prepare the Complaint before it was filed. The board's Order arrived late because it was mailed to a post office box in Prairie City, Oregon, and then forwarded to a post office box in Nevada.

Plaintiff clearly does not have good and sufficient cause for failing to pursue an appeal for tax years 2003-04 and 2004-05. Seal was unaware of the alleged error in the value in 2003 and, as a result, simply neglected to appeal. Seal's lack of knowledge is not good and sufficient cause. As for 2004, Seal was unavailable to receive the board's request to perfect the petition (correct the error) because he was out of the country and did not return until after the board had dismissed the petition. Seal's absence does not excuse his failure to tend to his business affairs in a timely fashion. It was certainly not " an extraordinary circumstance that was beyond the control of the taxpayer[.]" *See* ORS 305.288(5)(b)(A).

Good and sufficient cause is also lacking for the 2005-06 tax year because the board mailed its Order to the address appearing on Plaintiff's petition to the board. That is the same address Plaintiff provided to the assessor as the official address of record. Plaintiff did not receive the board's Order in a timely fashion because he was at another location in another state (Nevada). Moreover, Plaintiff still had sufficient time to file his complaint with this court; Seal received the board's order on April 22, 2006, and the postmark deadline for the appeal was May 8, 2006, which gave Seal in excess of two weeks to appeal.

In conclusion, Plaintiff's Complaint to the Tax Court challenging the value for the 2005-06 tax year was filed beyond the statutory 30-day deadline and is therefore untimely. The rescuing provisions of ORS 305.288, which encompass all three years under appeal, are of no help to Plaintiff because Plaintiff has not demonstrated good and sufficient cause for failing to properly and timely petition the board and, if necessary, timely appeal the board's Order to this court. Accordingly, the complaint must be dismissed. Now, therefore,

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

Dated this _____ day of August 2006.

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                                    DAN ROBINSON
                                    MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by <u>mailing</u> to: 1163 State Street, Salem, OR 97301-2563; or by <u>hand delivery</u> to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within <u>60</u> 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 August 4, 2006. The Court filed and entered this document on August 4, 2006.