

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DANIEL J. O'NEILL,)	
)	
Plaintiff,)	TC-MD 070542B
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals concerning certain real property tax payment matters for the 2006-07 tax year. He seeks allowance of a discount lost in the amount of \$961.34. There are five accounts¹ at issue.

I. STATEMENT OF FACTS

In early November of 2006, Plaintiff wrote a personal check in the amount of \$30,687.41 and mailed it to Defendant. It was received on November 14, 2007, and posted to the five accounts. According to Plaintiff, “[d]ue to a bank error, * * * the funds were not available.” (Compl at 2.) He corrected the problem with his bank and then phoned Defendant’s offices about redepositing the original check. He recalls speaking with Mike Brown (Brown) on November 14. Brown confirms the conversation but disagrees as to its specifics.

Plaintiff reports that Brown “absolutely assured me * * * there was no chance that he was looking at an overdraft situation.” (*Id.*) The check was submitted a second time and was again dishonored. The discount for early payment was not allowed.

Brown recalls his first contact with Plaintiff on November 16, 2006. He told Plaintiff “[t]he payment has just posted to the accounts and we had no notification of a NSF check yet. I

¹ R138026, R244801, R200107, R206023 and R195647.

told him that and that I was not sure if the bank would present the check again or not. * * * I couldn't give him a definite answer because I didn't know." (Def's ltr Jun 22, 2007, attach 1.)

The earliest the NSF details would have been available to any Defendant employee was November 30, 2006.

On November 25, 2006, Bank of America directed a letter to Defendant. It stated:

"Our customer Daniel O'Neill had written out a check in the amount of \$30,687.41 for his property taxes on 11/14/06. He was told that he had sufficient funds to cover the check as of that day, which was incorrect. There was and (sic) error by one of our associates and the mistake may have caused the non-payment of the check by the bank. We would appreciate it if you could redeposit the check soon as possible to avoid any more complications."

(Compl at 12.)

Plaintiff paid the amount due with a cashier's check on December 4, 2006. This appeal to the Oregon Tax Court followed. He claims the late payment is due to Defendant's oversights and misinformation.

II. ANALYSIS

ORS 311.505(3)(b)² allows a three discount for real property taxes paid not later than November 15, 2006. In this instance, the check was presented *but not paid* prior to the deadline.

The late payment here is not due to any act or omission by Defendant. Rather, the admitted bank error is the cause for the check being dishonored not just once, but twice.

At trial, Plaintiff argued for a finding of estoppel against Defendant's employee based on the November 16, 2006, phone call. Many of the details of that conversation are in dispute.

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² All references to Oregon revised Statutes (ORS) are to 2005.

In order to prevail with such a claim, Plaintiff must prove, among other elements, “misleading conduct” on the part of Defendant. *Wright v. Dept of Rev.*, 19 OTR 29, 34-35 (2006). Mere testimony that the government orally misguided a taxpayer, is generally, by itself, insufficient to show “proof positive” that the taxpayer was misled. *Schellin v. Dept. of Rev.*, 15 OTR 126, 131 (2000). Furthermore, when the taxpayer’s version of a conversation is disputed by the government officials with whom the taxpayer claims to have spoken, the court will rarely find the required “proof positive” absent corroborative evidence or another compelling reason to believe the taxpayer. *See id.* at 135 (finding disputed oral evidence insufficient).

Plaintiff bears the burden of proof here and must prove by a preponderance of the evidence that there is “proof positive” that Defendant misled him. *Webb v. Dept. of Rev.*, 19 OTR 20, 27 (2006). Here, Plaintiff has not met that burden with sufficient probative evidence.

III. CONCLUSION

Plaintiff’s payment was honored by his bank after the statutory deadline; there is no erroneous act or omission by Defendant. Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied.

Dated this _____ day of December 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on December 7, 2007. The Court filed and entered this document on December 7, 2007.***