

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

HITOSHI UTSUMI,)	
)	
Appellant,)	Case No 06R-608 & 06R-609
)	
v.)	FINDINGS AND ORDER DISMISSING
)	APPEALS FOR WANT OF
LANCASTER COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned cases were called for a hearing pursuant to an Amended Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"), issued on October 26, 2006. The hearing and its continuation were held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on November 9, 2006. Commissioners Lore, Hans, and Warnes were present. Commissioner Warnes presided at the hearing.

Hitoshi Utsumi appeared on behalf of Haruye Utsumi ("the Taxpayer"), by teleconference. The Lancaster County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Mr. Michael E. Thew, Esq., Deputy County Attorney, for Lancaster County, Nebraska. The Commission took statutory notice, received and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing.

**I.
FINDINGS**

The Commission finds and determines that:

PROCEDURAL FINDINGS

1. The Taxpayer is the owner of record of certain residential/commercial real property described in the appeal for Case No 06R-608 as Flowerland Replat, Lot #1, and in the appeal for Case No 06R-609 as Flowerland Replat, Lot #4 ("the subject property").
2. An Order to Show Cause and Notice of Telephonic Hearing (Jurisdictional Authority of the Commission) was issued by the Commission on November 23, 2005, directing the Taxpayer to show why appeals should not be dismissed for want of jurisdiction.

SUBSTANTIVE FINDINGS

1. All appeals were signed Hitoshi Utsumi son of Haruye Utsumi.
2. The Appeals at issue herein were signed by Hitoshi Utsumi on September 9, 2006, and filed on September 11, 2006. (Appeal Forms - Case Files).

II. CONCLUSIONS OF LAW

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission's rules and regulations or Neb. Rev. Stat. §77-5016(3) (Reissue 2003, as amended by 2004 Neb. Laws L.B. 973, §51).
2. Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties. *Creighton*

St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission,
260 Neb. 905, 620 N.W.2d 90 (2000).

3. An appeal filed by a person without authority to file the appeal is void. *See, Waite v. Carpenter*, 1 Neb. App. 321, 496 N.W.2d 1 (1992)

III. ANALYSIS

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer when the appeal was signed and filed by the son of the owner of the subject property. The Commission has authority to adopt and promulgate rules and regulations necessary to regulate persons and proceedings within the Commission's jurisdiction and authority. *Neb. Rev. Stat. §77-5021* (Reissue 2003). The unauthorized practice of law is prohibited by statute. *Neb. Rev. Stat. §7-101* (Reissue 1997). The statute as interpreted by the Nebraska Supreme Court govern conduct before the Commission. The Commission's rules and regulations allow a family member to appear at a hearing on behalf of a Taxpayer under limited circumstances. *442 Neb. Admin. Code, ch4, §011*, (01/05). The rules as promulgated by the Commission governing the filing of appeals do not provide for appeals to be filed by family members. *442 Neb. Admin. Code, ch5, §001.02*, (01/05). No person other than a party, legal counsel for a party, or a person authorized by the rules can file an appeal on behalf of another person. *442 Neb. Admin. Code, ch5, §001.02H*, (01/05). The evidence before the Commission does not show the Taxpayer's son to be a person who could file an appeal on behalf of the Taxpayer.

There is no showing that Hitoshi Utsumi was authorized to file appeals on behalf of Haruye Utsumi under the Commission's rules and regulations. Appeals filed without authority for their filing are void. *See. Waite v. Carpenter*, 1 Neb. App. 321, 496 N.W.2d 1 (1992)

**IV.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The Appeals of Haruye Utsumi concerning the valuation of residential/commercial real property described in the appeal for Case No 06R-608 as Flowerland Replat, Lot #1, and in the appeal for Case No 06R-609 as Flowerland Replat, Lot #4 Nebraska are dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.
4. This decision shall only be applicable to tax year 2006.

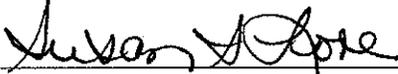
Signed and Sealed. November 16, 2006.



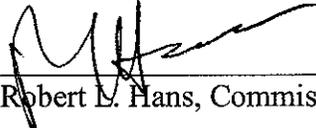
SEAL



William C. Warnes, Commissioner



Susan S. Lore, Commissioner



Robert L. Hans, Commissioner