

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DNA INVESTMENTS LLC & SUE F. NUNEZ,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR</p>	<p>Docket No.: 47292</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 3, 2007, Karen E. Hart, James R. Meurer, and MaryKay Kelley presiding. Petitioner, Sue F. Nunez, appeared pro se. Respondent was represented by Robert H. Dodd, Esq. Petitioners are protesting Respondent's decision in DPT File No. 21-06-071, concerning the petition for abatement/refund of taxes on El Paso County Schedule No. 74131-22-007 for tax year 2005.

Petitioners submitted a petition for abatement or refund of property taxes paid for tax year 2005 to the Board of County Commissioners of El Paso County. The county thereafter notified Petitioners that the county was recommending a refund of \$1,200.00, but this recommendation needed Property Tax Administrator approval.

The Property Tax Administrator, after reviewing the petition for abatement or refund and performing independent research, determined that as a result of a clerical error, the county commissioners recommended only an abatement or refund in the amount of \$460.48 rather than \$1,200.00. As a result, the Property Tax Administrator approved the petition for abatement or refund in the amount of \$460.48. Petitioners thereafter timely filed an appeal with this Board from the decision of the Property Tax Administrator. The Property Tax Administrator's decision was the first written notification Petitioners received that the county only approved an abatement or refund in the amount of \$460.48 rather than for \$1,200.00.

According to Colorado's property taxation statutory scheme, if an abatement or refund of one thousand dollars (\$1,000.00) or less is recommended by the board of county commissioners, the board must order the abatement or refund. C.R.S. § 39-1-113(2)(a). If, however, an abatement or refund is recommended by a board of county commissioners in excess of one thousand dollars (\$1,000.00), the county must submit an application to the Property Tax Administrator for approval of the abatement or

refund. C.R.S. § 39-1-113(3). If the application is in proper form and recommended by the county in conformity with the law, the application must be approved. C.R.S. § 39-2-116. Otherwise, the Property Tax Administrator shall disapprove the application. *Id.* The Property Tax Administrator may also partially approve an application if only a portion of the application is found to be in proper form and recommended in conformity with the law. *Id.*

In this case, the county should not have submitted an application to the Property Tax Administrator because the county commissioners recommended that an abatement or refund be granted for \$460.48. Pursuant to C.R.S. § 39-1-113(2)(a), the county board was required to order an abatement or refund in favor of Petitioners. Had the county entered a decision regarding the \$460.48 abatement or refund, and notified Petitioners of such, Petitioners then would have had thirty days to appeal that decision to this Board as the county did not approve the full abatement or refund amount requested by Petitioners. *See* C.R.S. § 39-10-114.5(1).

Instead, the county informed Petitioners, in error, that they were recommending that the Property Tax Administrator approve the \$1,200.00 abatement or refund. It was not until the Property Tax Administrator notified Petitioners of its decision that Petitioners were informed that the county approved a \$460.48 abatement or refund.

The county erred by submitting an application to the Property Tax Administrator in this case. Pursuant to C.R.S. § 39-1-113, the Property Tax Administrator did not have the authority to enter the decision approving the \$460.48 abatement or refund.

Accordingly, the Board dismisses this case as the Property Tax Administrator's decision is invalid. El Paso County therefore must enter a decision notifying Petitioners that the county board approved only a \$460.48 abatement or refund. Pursuant to C.R.S. § 39-10-114.5(1), Petitioners will have 30 days to appeal the county's decision to this Board.

On August 3, 2007, the Board continued the hearing to determine whether the Board had jurisdiction over the petition. Based on the Board's conclusion that the Property Tax Administrator's decision is invalid, the Board closes the hearing and enters this final decision.

ORDER:

The petition is dismissed.

The Property Tax Administrator is directed to notify the El Paso County Board of Commissioners to issue an official decision on the tax year 2005 abatement/refund petition for El Paso County Schedule No. 74131-22-007.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of C.R.S. section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of C.R.S section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

C.R.S. § 39-10-114.5(2) (2007).

DATED and MAILED this 18th day of January 2008.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

This decision was put on the record

JAN 17 2008

[Signature]

James R. Meurer

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

MaryKay Kelley

MaryKay Kelley

[Signature]
Heather Heinlein

