

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 61942

Petitioner:

OWEN SWEENEY,

v.

Respondent:

OURAY COUNTY BOARD OF EQUALIZATION.

ORDER DISMISSING APPEAL

THIS MATTER came before the Board of Assessment Appeals on June 27, 2013, Diane M. DeVries and MaryKay Kelley presiding. Respondent was represented by Martha P. Whitmore, Esq. Petitioner, Mr. Owen Sweeney, appeared *pro se*, via a telephone. On February 27, 2013, Respondent filed a Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"). Petitioner did not file a response to Respondent's Motion to Dismiss.

At the June 27, 2013 hearing, Respondent argued that Petitioner's appeal to the BAA should be dismissed because Petitioner failed to timely appeal his property valuation to Ouray County Board of Equalization. According to Respondent, on June 30, 2012, Ouray County Assessor sent a Notice of Determination to Petitioner, with a copy mailed and e-mailed to Petitioner's counsel of record, Thomas E. Downey, Jr. with Downey & Associates, P.C. The said Notice of Determination indicated that the deadline for appealing Assessor's decision to the County Board of Equalization was July 15.

According to Respondent, Petitioner faxed his appeal to Ouray County Board of Equalization on July 24, 2012, which was nine days after the July 15 deadline. Respondent indicated that Ouray County Board of Equalization sent a letter dated July 25, 2012, informing Petitioner that his appeal arrived after the deadline and would not be considered.

Respondent contended that because Petitioner's appeal to the County Board of Equalization was untimely filed, the County Board of Equalization did not review Petitioner's protest and did not render a decision. Because the County Board of Equalization did not render a decision, Respondent argued, there is no decision to be appealed and the Board of Assessment Appeals is therefore without jurisdiction to hear Petitioner's appeal.

In support of the Motion to Dismiss, Respondent presented for the Board's review the following exhibits:

- A protest to the County Assessor's valuation filed by Petitioner's attorney, Thomas E. Downey, Jr., on May 31, 2012.
- County Assessor's letter, dated June 13, 2012, sent to Petitioner's attorney with information as to the basis for the valuation.
- Notice of Determination, dated June 29, 2012 with an accompanying letter addressed to Petitioner stating that a copy of the Notice of Determination was also mailed to Downey & Associates, P.C.
- A copy of Petitioner's appeal to the County Board of Equalization which was faxed on July 24, 2012.
- A notification letter, dated July 25, 2012, sent from the County Board of Equalization to Petitioner, informing Petitioner that his appeal was filed after the deadline.
- A copy of a fax from Petitioner to the County Board of Equalization, dated October 12, 2012, requesting an update on the status of the appeal.

Respondent also presented a testimony of Ms. Susie Mayfield, Ouray County Assessor, who verified and attested to the accuracy of Respondent's exhibits.

In response, Petitioner argued that his petition should not be dismissed because Respondent failed to mail the Assessor's Notice of Determination to Petitioner in a timely manner. According to Petitioner, he did not receive the Assessor's Notice of Determination until late July, 2012. Petitioner testified that he travels between his two residences, one located in Anchorage, AK and another in Scottsdale, AZ, and that Respondent failed to send a copy of the Assessor's Notice of Determination to Petitioner's Scottsdale address, despite Petitioner's request to do so. Petitioner indicated that mail sent to his Anchorage address can take up to three-four weeks to be forwarded to his Scottsdale address. Petitioner also testified that he was no longer represented by Downey & Associates, P.C. when the County's Notice of Determination was issued and that he did not receive a copy of the Notice of Determination from Mr. Downey.

In accordance with Section 39-2-125(c), C.R.S., the Board of Assessment Appeals has jurisdiction to hear an appeal from a decision of a county board of equalization filed not later than thirty days after the entry of such decision. In this case, Ouray County Board of Equalization did not receive Petitioner's appeal until after the expiration of the July 15th statutory deadline. *See* Section 39-8-106(1)(a), C.R.S. (Protests to a county board of equalization must be "received or postmarked on or before July 15 of that year for real property. . .") Therefore, because Ouray County Board of Equalization did not issue a decision on the merits of Petitioner's appeal, there is no decision which could be appealed to the Board of Assessment Appeals.

As to the timelines of Respondent's Notice of Determination, the Board was most persuaded by Respondent's exhibits as well as by Ms. Mayfield's supporting testimony. The Board was convinced that Respondent fulfilled its obligation to timely notify Petitioner of Assessor's decision by mailing the Notice of Determination to Petitioner's address in Anchorage.

which was Petitioner's address on the County's file, and also by mailing and e-mailing a copy of the Notice of Determination to Mr. Downey, who was Petitioner's attorney of record at the time. The Board was not convinced by and did not find Petitioner's testimony credible.

ORDER:

The Board is without jurisdiction to hear Petitioner's appeal. The appeal is hereby dismissed.

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 Section 24-4-106(11), C.R.S. (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).

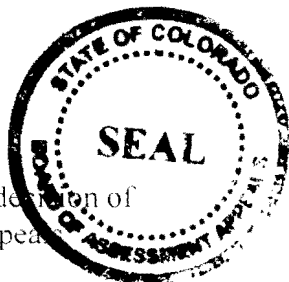
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

Dated this 9th day of July, 2013.



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

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

MaryKay Kelley

MaryKay Kelley

Milla Lishehuk

Milla Lishehuk