

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>DOUGLAS BRUCE,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PUEBLO COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 72322</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on July 11, 2018, Sondra Mercier and Cherice Kjosness presiding. Petitioner appeared *pro se* by telephone. Respondent was represented by Gavin Wolny, Esq., also appearing via telephone. Petitioner is protesting the 2017 actual value of the subject property.

Respondent filed a Motion to Dismiss under Rule 21 (“Motion to Dismiss”) on May 30, 2018. On the same date, May 30, 2018, the Board of Assessment Appeals (“the BAA” or “the Board”) received Petitioner’s Answer to Respondent’s Motion to Dismiss. Respondent filed a Reply in Support of Respondent’s Motion to Dismiss on June 4, 2018.

During the July 11, 2018 hearing the BAA heard the parties’ arguments on Respondent’s Motion to Dismiss as well as on the 2017 valuation of the subject property. The Board reserved the ruling on the 2017 valuation of the subject pending the determination as to the merits of Respondent’s Motion to Dismiss.

Hearings in Dockets 72321 and 72322 were consolidated.

I. Motion to Dismiss

Respondent requests the Board to dismiss Petitioner’s appeal as untimely. According to Respondent, on June 29, 2017, the Pueblo County Assessor issued a Notice of Determination denying Petitioner’s protest with respect to the subject’s 2017 valuation. Petitioner’s deadline for filing a protest of the Notice of Determination with the County Board of Equalization (“CBOE”) was

on July 15, 2017. Respondent alleges that Petitioner did not file a protest of the Notice of Determination until July 20, 2017, five days after the deadline.

On July 27, 2017, Cynthia Mitchell, Assistant County Attorney for the Pueblo County Attorney's Office, sent a letter to Petitioner informing him that his Petition and documents "will not be accepted for appeal because they were not received by the deadline date of July 15, 2017." Although Petitioner was not provided with a hearing date, the letter ended with a direction to contact Ms. Mitchell in the event that Petitioner was unable to attend the hearing ("if you are unable to attend at the time scheduled above, please contact me immediately at . . .").

Respondent contends that the July 27, 2017 letter constituted a decision of the County Board of Equalization and that per Section 39-2-125(1)(c), C.R.S. Petitioner had 30 days from July 27, 2017 to appeal to the BAA. Respondent points out that Petitioner's appeal was filed with the BAA on September 20, 2017, some fifty-three days after July 27, 2017. Respondent further alleges that even if the July 27, 2017 letter is not construed as a valid CBOE decision, pursuant to Section 39-2-152(1)(e), Petitioner had until September 11, 2017 to file a direct appeal of the assessor's determination to the BAA. Hence, according to Respondent, Petitioner's September 20, 2017 appeal to the BAA was nine days late.

Petitioner asserts that he did not receive a Notice of Determination that Respondent alleges was mailed to him on June 29, 2017. According to Petitioner, he first received Respondent's Notice of Determination on July 20, 2017 via e-mail after contacting the Assessor's Office. Petitioner argues that the July 15, 2017 statutory deadline for appealing the Notice of Determination does not apply because he did not receive the Notice of Determination until July 20, 2017. Further, Petitioner contends that the statutory 30-day deadline to appeal the CBOE decisions does not apply because the CBOE never entered a decision on Petitioner's appeal.

## II. The Board's Findings

The Board finds that the Assessor did not timely mail the June 29, 2017 Notice of Determination to Petitioner, thereby failing to comply with timely notice requirements set out in Section 39-5-122, C.R.S. However, Section 39-8-106(3), C.R.S. provides that if the assessor fails to comply with the provisions of Section 39-5-122, C.R.S. "[t]he objecting person may present his objections and protests in person or by counsel . . . on any day during the meeting of the county board of equalization held for the purpose of hearing appeals."

In this case, Pueblo CBOE held appeal hearings from July 1, 2017 until August 5, 2017. Petitioner was made aware that the CBOE was hearing appeals until August 5, 2017 as this information was included on the Notice of Determination which Petitioner acknowledged he received on July 20, 2017 via e-mail from the Assessor's Office. Petitioner did not follow the appeal process as set out in Section 39-8-106 by the August 5, 2017 deadline thereby missing his opportunity to appeal the Assessor's Notice of Determination.

The parties disagree whether the July 27, 2017 letter sent to Petitioner by the Pueblo County Attorney's Office should be construed as a valid CBOE decision. The Board finds that under either

party's construction of the July 27, 2017 letter, Petitioner's appeal to the BAA was untimely. If the July 27, 2017 letter is not construed as a "decision" of the CBOE, then Petitioner had until September 11, 2017 to file his protest with the BAA per Section 39-2-125(1)(e), C.R.S. If, on the other hand, the July 27, 2017 letter, despite its numerous deficiencies, were to be construed as a "decision" of the CBOE, then Petitioner had 30 days from entry of such decision, until August 26, 2017, to file an appeal with the Board. Therefore, whether the July 27, 2017 letter is construed as a "decision" of the CBOE triggering the August 26, 2017 deadline or whether the letter is not regarded as such a "decision" triggering the September 11, 2017 deadline, Petitioner's September 20, 2017 appeal to the BAA was untimely.

By statute, compliance with statutory time limits in the filing of administrative appeals is a jurisdictional requirement in such proceedings before the BAA. *Fleisher-Smyth v. Bd. of Assessment App.*, 865 P.2d 922 (Colo. App. 1993). Under the facts presented, the Board is convinced that Petitioner did not timely protest the Assessor's Notice of Determination to the County Board of Equalization. Further, the Board has determined that Petitioner's appeal to the BAA is also untimely.

### **ORDER:**

Therefore, the Board finds that the Board does not have jurisdiction to address the merits of Petitioner's appeal. Respondent's Motion to Dismiss is hereby GRANTED.

### **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-nine 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-nine days after the date of the service of the final order entered).

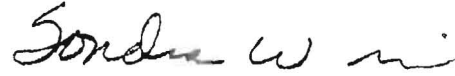
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

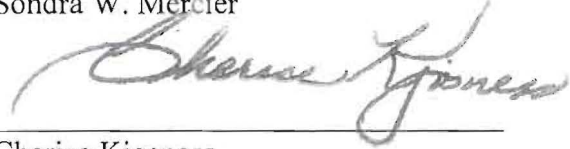
Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 4<sup>th</sup> day of October, 2018.

**BOARD OF ASSESSMENT APPEALS**

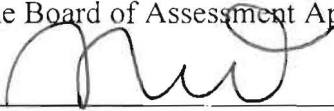


Sondra W. Mercier



Cherice Kjosness

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



Milla Lishchuk