

<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>DALE MONTAGNE REVOCABLE LIVING TRUST,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>SUMMIT COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 75359</b></p>
<p><b>ORDER DISMISSING APPEAL</b></p>	

**THIS MATTER** came before the Board of Assessment Appeals (BAA) on August 13, 2019 on Respondent’s Motion to Dismiss. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2016-2017.

**PROPERTY DESCRIPTION**

Lot 2B, Lost Creek Ranch Sub  
Summit County Schedule Number: 6505557

**MOTION TO DISMISS**

On June 27, 2019, the Board received Respondent’s Motion to Dismiss. Respondent argues that Petitioner’s appeal to the BAA should be dismissed as it was untimely filed.

Respondent states that the decision of the Summit County was mailed and sent via electronic mail to Petitioner on November 21, 2018. Pursuant to Section 39-2-125(1)(f), a decision of a board of county commissioners (“BOCC”) must be appealed before the BAA within 30 days from the entry of such decision. Hence, Petitioner’s deadline to appeal the BOCC’s decision to the BAA was on December 21, 2018. However, Petitioner did not file an appeal with the BAA until March 25, 2019, three months past the statutory deadline. Accordingly, Respondent argues that Petitioner’s appeal to the BAA was filed untimely and should be dismissed.

In support of its Motion to Dismiss, Respondent enclosed a copy of an email that Ms. Sarah Wilkinson sent on behalf of BOCC/Manager’s Office to Petitioner with a copy of the Summit BOCC’s decision. The email was addressed to Petitioner’s email address at dalem@netscape.com and was sent on November 21, 2018 at 1:58 PM. In addition, Respondent enclosed a copy of the

Summit BOCC's decision. The Summit BOCC's decision was dated November 21, 2018 and indicated that appeal to the BAA must be filed within 30 days of the BOCC decision.

In response to Respondent's Motion to Dismiss, Mr. Dale Montagne emailed to the BAA on three separate occasions (twice on June 28, 2019 and once on August 1, 2019). Mr. Montagne stated several reasons in opposition to the dismissal of this matter, arguing that: the County set very short response times; he did not receive the pink valuation post card in 2015; he was unable to attend the CBOE hearing due to an ailing mother; the neighbor with whom Mr. Montagne had standing agreement to graze suffers from a mental disorder; and that the CBOE hearing, which, according to Mr. Montagne was supposed to take place in July (unspecified year), did not occur until December (unspecified year).

### **THE BOARD'S FINDINGS**

Timely filing is a statutory jurisdictional requirement for taking administrative appeals before the BAA. *Fleisher-Smyth v. Bd. of Assessment App.*, 865 P.2d 922 (Colo. App. 1993). Respondent presented a copy of an email containing November 21, 2018 Summit BOCC decision which was sent to Petitioner on the same date, November 21, 2018. In addition, Respondent stated that the November 21, 2018 BOCC decision was also mailed to Petitioner. Respondent's contention, that the BOCC decision was mailed and emailed to Petitioner on November 21, 2018 was not controverted. Accordingly, the statutory deadline to file an appeal before the BAA was December 21, 2018. Petitioner postmarked the appeal to the BAA on March 22, 2019. The Board received Petitioner's appeal on March 25, 2019. Therefore, Petitioner's appeal to the BAA was untimely because it was postmarked and delivered to the BAA after the statutory filing deadline.

### **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-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 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 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 when Respondent alleges procedural errors or errors of law by the Board.

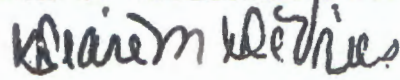
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the

property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

Dated this 14<sup>th</sup> day of August, 2019.

**BOARD OF ASSESSMENT APPEALS**

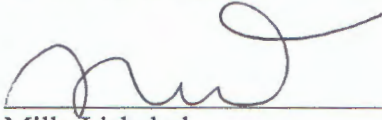


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Diane M. DeVries



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Debra A. Baumbach

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



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Milla Lishchuk

