



STATE TAX COMMISSION OF MISSOURI

CALVIN B NIEHAUS,) Appeal Nos. 21-15894
) Parcel/locator No(s): 10J340272
)
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)
)
 Complainant(s),)
)
 v.)
)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST LOUIS COUNTY, MISSOURI,)
 Respondent.)

ORDER OF THE COMMISSION SUMMARILY ALLOWING APPLICATION FOR REVIEW

HOLDING

On September 23, 2022, Senior Hearing Officer Benjamin Slawson (Hearing Officer) entered a Decision and Order (Decision) affirming the St. Louis County Board of Equalization's (BOE) decision regarding the true value in money as of January 1, 2021, of the residential property subject to this appeal owned by Calvin B. Niehaus (Complainant). The Hearing Officer affirmed the BOE's valuation of the subject property on the ground that neither Complainant nor Complainant's counsel appeared for the scheduled Evidentiary Hearing, did not seek a continuance of the Evidentiary Hearing, and did not produce substantial and persuasive evidence of overvaluation as

alleged while Jake Zimmerman, Assessor, St. Louis County, Missouri (Respondent) appeared through counsel at the scheduled Evidentiary Hearing.

Complainant subsequently filed an application for review of the Decision alleging that the office of Complainant's counsel had been destroyed by a flood in July 2022. Complainant alleged that the flood destroyed many files and several pieces of equipment and that Complainant's counsel had been displaced from his office since July 2022 through the date the application for review was filed. Complainant alleged that the STC Legal Coordinator sent an email to Complainant's counsel scheduling the evidentiary hearing in this appeal one day before the office, files, and equipment were destroyed, but Complainant's counsel did not see the email because he was out of town on another matter. Complainant alleged that "[b]ecause of the damage and devastation . . . and the substantial chaos and confusion that followed" the flood in the office of Complainant's counsel, neither Complainant nor Complainant's counsel knew that the evidentiary hearing had been scheduled for September 14, 2022. Complainant further alleged that no one involved with the evidentiary hearing "made any attempt to reach Complainant's counsel" when he did not appear "to see if there was some mistake or oversight;" thus, it would be unfair and prejudicial to Complainant to not allow a new evidentiary hearing. Respondent filed a response to Complainant's application for review stating that "Respondent does not take a stance regarding Complainant's Application for Review of Decision in the above-mentioned appeal."

A party subject to a Decision and Order of a hearing officer of the STC may file

an application requesting the case be reviewed by the Commission. Section 138.432¹. The Commission may summarily allow or deny the request. Section 138.432. If an application for review is allowed, the Commission may affirm, modify, reverse, or set aside the decision and order of the hearing officer on the basis of the evidence previously submitted in such case, may take additional evidence, or may remand the matter to the hearing officer with directions. Any additional hearing shall be conducted in accordance with the requirements of Section 138.431.3. If an application for review is denied, the decision and order of the hearing officer shall be deemed to be the final decision of the Commission for the purpose of judicial review. Section 138.432.

Commission's Ruling

The Application for Review is ALLOWED. The Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, is set aside. The appeal is remanded to the Hearing Officer to conduct an evidentiary hearing in accordance with the requirements of Section 138.431.3.

Judicial review of the Decision and Order may be had in the manner provided in Section 138.432 and Sections 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order.

The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes associated with this appeal pending the possible filing of a petition for judicial review, unless said taxes have been

¹ All statutory citations are to RSMo. 2000, as amended, unless otherwise indicated.

disbursed pursuant to a court order under the provisions of section 139.031. If no judicial review is made within 30 days, the Decision and Order is deemed final and the Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes in accord with the Decision and Order.

SO ORDERED March 24, 2023.
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on March 24, 2023, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Amy S. Westermann
Chief Counsel



STATE TAX COMMISSION OF MISSOURI

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DECISION AND ORDER

Calvin B Niehaus (Complainant) appeals the St. Louis County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject residential property on January 1, 2021, was \$419,100. Complainant alleges overvaluation and argued that the TVM as of that date was \$236,000. Complainant did not produce substantial and persuasive evidence to support the asserted claim of overvaluation. The assessment of the BOE is affirmed.²

Facts

²Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

The evidentiary hearing was scheduled for September 14, 2022, at 4:00 P.M. via Webex pursuant to an Order issued July 25, 2022. Respondent timely appeared at the evidentiary hearing and through counsel Steve Robson. Complainant did not appear, nor did Complainant's counsel of record J. Christopher Wehrle. Complainant did not seek a continuance or otherwise communicate any intent to proceed with the appeal.

Complainant Did Not Prove Overvaluation

The taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). Complainant did not appear at the evidentiary hearing and produced no evidence admitted into the record to support the overvaluation claim. Complainant's failure to appear and to present any evidence necessarily means Complainant fails to meet Complainant's burden of proof.³

CONCLUSION AND ORDER

The assessment made by the BOE is affirmed. The TVM of the subject property as of January 1, 2021, is \$419,100, classified as residential property.

Application for Review

A party may file with the STC an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision

³ For over 150 years, Missouri law has recognized the self-evident proposition that "if there be no evidence sufficient in law to make a prima facie case on this issue, plaintiff cannot be entitled to recover." *Callahan v. Warne*, 40 Mo. 131, 135 (Mo. 1867).

is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

Failure to state specific facts or law upon which the application for review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED September 23, 2022.
STATE TAX COMMISSION OF MISSOURI

Benjamin C. Slawson
Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on September 23, 2022.

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Noah Shepard
Legal Coordinator