

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF )  
ANITA RAYE KLEINER ) Docket No. 2020-06  
FROM A DECISION BY THE NATRONA )  
COUNTY BOARD OF EQUALIZATION )  
(2019 Property Tax Assessment) )

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**DECISION AND ORDER**

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**APPEARANCES**

Non-attorney John Burd appeared on behalf of taxpayer Anita Kleiner.

Charmaine Reed, Natrona County Attorney's Office, appeared on behalf of Natrona County Assessor Matt Keating.

**SUMMARY**

[¶ 1] Anita Kleiner appealed Assessor's 2019 assessment of her real property to the Natrona County Board of Equalization. The County Board began an evidentiary hearing, but the Hearing Officer dismissed Ms. Kleiner's appeal as untimely before the County Board received any evidence. The Wyoming State Board of Equalization, Chairman David L. Delicath, Vice-Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, remand for the County Board to determine whether Assessor should have been equitably estopped from asserting the appeal's untimeliness because a member of his staff misled Ms. Kleiner's representative by saying that she would have 30 days to appeal after Assessor completed an informal review of the assessment.

**ISSUES**

[¶ 2] Ms. Kleiner does not present an issue statement, but she argues for equitable estoppel.

[¶ 3] Assessor also does not present an issue statement. He contends that the dismissal was appropriate because Ms. Kleiner filed her appeal more than 30 days after Assessor sent her assessment.

## **JURISDICTION**

[¶ 4] The State Board shall “hear appeals from county boards of equalization[.]” Wyo. Stat. Ann. § 39-11-102.1(c) (2017). An aggrieved taxpayer may file an appeal with the State Board within 30 days of the County Board’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its final decision on January 15, 2020. (R.10). Ms. Kleiner filed her appeal 12 days later. (Notice of Appeal, 1). Accordingly, we have jurisdiction to decide this matter.

## **PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD**

[¶ 5] Ms. Kleiner owns real property in Natrona County. Assessor mailed Ms. Kleiner’s 2019 assessment on April 26, 2019. (R. at 9). Eighteen days later, Ms. Kleiner’s representative, John Burd visited Assessor’s office because he and Ms. Kleiner thought the assessment was incorrect. (Hr’g at 10:18, 14:45). He spoke with Renee Berry, who told Mr. Burd that Assessor could review the assessment. *Id.* Mr. Burd stated that Ms. Berry told him Ms. Klein would have 30 days to appeal after Assessor completed the review. *Id.* Ms. Berry, however, stated that she told Mr. Burd that Ms. Klein would have a new 30 day appeal period only if Assessor changed the assessment. (Hr’g at 20:45, 23:00). Assessor mailed Ms. Kleiner a letter on June 10, 2019, announcing that the review resulted in no change to the assessment. (R. at 9).

[¶ 6] Ms. Kleiner filed her appeal on June 18. (R. at 1). The County Board scheduled a hearing for November 13. (R. at 2). At that hearing, Assessor’s attorney conceded that Ms. Berry’s statement could have led Ms. Kleiner to believe she had 30 days to appeal after completion of the review. (Hr’g at 20:45). Ms. Berry subsequently said that she didn’t remember exactly what she told Ms. Kleiner. (Hr’g at 31:40).

[¶ 7] Assessor moved for dismissal on the grounds that the notice of appeal didn’t meet the requirements set forth in our rules governing CBOE proceedings. (Hr’g at 32:20). The Hearing Officer granted the motion to dismiss on the grounds that the notice of appeal was untimely. (Hr’g at 40:30). The County Board chairman signed an order dismissing Ms. Kleiner’s appeal as untimely. (R. at 9). The County Board did not address the question of estoppel in its decision and order.

## **CONCLUSIONS OF LAW**

### **A. State Board’s review function and burdens of proof**

[¶ 8] This Board reviews county board decisions as an intermediate appellate body and treats the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). Our standard of review of a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2017), that a district court must apply in reviewing such decisions. Our review is limited to determining whether a county board’s action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2006). “Substantial evidence is relevant evidence which a reasonable mind might accept in support of the [County Board’s] conclusions. It is more than a scintilla of evidence.” *In re Lysne*, 2018 WY 107, ¶ 12, 426 P.3d 290, 294-95 (Wyo. 2018) (quoting *Walton v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2007 WY 46, ¶ 9, 153 P.3d 932, 935 (Wyo. 2007)).

[¶ 9] We review questions of law de novo and will affirm the County Board’s conclusions of law “only if they are in accord with the law.” *Maverick Motorsports Grp., LLC v. Dep’t of Revenue*, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State Dep’t of Transp*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

## B. Equitable estoppel

[¶ 10] The County Board did not issue findings of fact determining which version of the conversation between Ms. Berry and Mr. Burd is accurate. Instead, it determined that Ms. Kleiner’s failure to appeal within 30 days after the assessment was jurisdictional and dispositive. Mr. Burd never said the words “equitable estoppel,” but he nonetheless made a prima facie argument for it. The County Board also didn’t mention equitable estoppel, but it implicitly recognized the principle and at one point agreed to go ahead with the hearing based on Ms. Berry’s allegedly inaccurate information to Ms. Kleiner. (Hr’g at 24:30). Ms. Kleiner argued for estoppel in her brief to us. Assessor didn’t respond to that argument in his brief.

[¶ 11] This Board has never addressed a claim of equitable estoppel against a county assessor. We have, however, acknowledged that the Wyoming Department of Revenue

could be equitably estopped from asserting a statute of limitations defense. *See e.g. In re Jedediah Corp.*, WL 2018 492665, Docket No. 2016-22, \*1 (Wyo. State Bd. of Equalization, Jan. 11, 2018). We hold now that a county assessor can be equitably estopped from asserting a statute of limitations defense against a taxpayer.

[¶ 12] Because the County Board didn't address equitable estoppel, there's no equitable estoppel decision for this Board to review. Instead, we remand the case to the County Board to rule on Ms. Kleiner's equitable estoppel claim. If the County Board finds that Assessor is not equitably estopped from asserting the untimeliness of Ms. Kleiner's appeal, it can, and should, dismiss the appeal as untimely. If it finds that Assessor is estopped, it should hold an evidentiary hearing and rule on the merits of Ms. Kleiner's appeal.

### ORDER

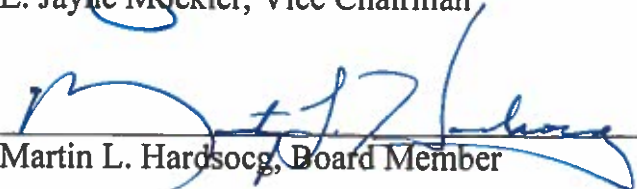
[¶ 13] **IT IS, THEREFORE, ORDERED** the decision of the Natrona County Board of Equalization is **remanded**.

DATED this 2 day of June 2020.

### STATE BOARD OF EQUALIZATION

  
\_\_\_\_\_  
David L. Delicath, Chairman

  
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E. Jayne Mockler, Vice Chairman

  
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Martin L. Hardsocg, Board Member

ATTEST:

  
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Jennifer Fujinami, Executive Assistant

## CERTIFICATE OF SERVICE

I certify that on the 2 day of June 2020, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Anita Kleiner  
Box 1503  
Mills, WY 82644

Charmaine Reed  
Natrona County Attorney's Office  
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Jennifer Fujinami, Executive Assistant  
State Board of Equalization  
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Phone: (307) 777-6989  
Fax: (307) 777-6363

cc: Dan Noble, Director, Dep't of Revenue  
Brian Judkins, Property Tax Div., Dep't of Revenue  
Commissioners/Treasurer/Clerk – Natrona County  
CCH  
ABA State and Local Tax Reporter  
State Library  
File