



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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In the Matter of

Consolidated
HCPCCSNF, LLC
APN: 163-02-114-009
Clark County, Nevada
PETITIONER

Case No. 14-151

HCPCCSNF, LLC
APN: 138-10-301-018
Clark County, Nevada
PETITIONER

Case No. 14-153

Deer Springs Town Center &
Home Depot as Lessee
APN: 124-23-210-002
Clark County, Nevada
PETITIONERS

Case No. 14-154

Michele Shafe
Clark County Assessor
RESPONDENT

Appeal of the Decisions of the
CLARK COUNTY
BOARD OF EQUALIZATION

NOTICE OF DECISION

Appearances

Jason Morris appeared on behalf of HCPCCSNF, LLC and Deer Springs Town Center and Home Depot as Lessee (Taxpayers).

Rocky Steele appeared on behalf of the Clark County Assessor's Office (Assessor).

Summary

The matter of the Taxpayers' petitions for review of property valuations for the 2014-15 Secured Roll within Clark County, Nevada, came before the State Board of Equalization (State Board) for hearing in Las Vegas, Nevada, on June 23, 2014 after due notice to the Taxpayer and the Assessor.

The State Board consolidated case numbers 14-151, 14-153, and 14-154 as the issue of the County Board's reasons for denial of jurisdiction was the same in all three cases.^{1 2}

Taxpayer HCPCCSNF, LLC offered new evidence consisting of property information about Covenant Care, an assisted living citizen's care facility, and sales comparison information. The evidence was timely filed. The State Board admitted the new evidence for case numbers 14-151 and 14-153 into the record. Taxpayer Deer Springs Town Center offered new evidence consisting of property information about Home Depot facility, and sales comparison information, as well as evidence of how other taxpayers were treated. This evidence was submitted 6 days not 7 days in advance of the hearing as required by NAC 361.739(1)(b). The State Board did not admit the new evidence for case 14-154 into the record.³

Pursuant to NAC 361.7014, the Secretary to the State Board examined the petitions of the Taxpayers in case number 14-151, 14-153, and 14-154, and found the Taxpayers' appeals were for the tax year 2014-2015.⁴ Although the appeal was filed timely to the State Board, the signer on behalf of the Lessee, Covenant Care, Luanne Pacheco, granting agent authorization to Ernst and Young and filed on 1-15-14 to the Clark County Board of Equalization (County Board) could not be substantiated as, or linked to, the owner HCPCCSNF, LLC.⁵ The County Board did not accept jurisdiction to hear the case because the lease document which shows the lessee is responsible for payment of the taxes was not provided until the day of the hearing, and thus the relationship between the authorized signatory and the owner of the property could not be verified within the timeframe required by NRS 361.362.⁶ The question before the State Board is whether the County Board had a preponderance of the evidence before it to support its decision to not accept jurisdiction.

¹ See *Tr.*, 6-23-14, p. 88, l. 20 through p. 89, 9:

20 MEMBER JOHNSON: Why don't we move to 21 consolidate first, because the new evidence applies 22 to all three cases. I think we should see if the 23 county has any objection to consolidating, and the 24 petitioner is trying to help us out which I 25 appreciate. Page 89 1 CHAIRMAN MESERVY: So you would like to 2 consolidate these? 3 MR. MORRIS: Yes, sir. 4 CHAIRMAN MESERVY: So you're saying 151, 153, 5 and 154? 6 MR. MORRIS: Correct. 7 CHAIRMAN MESERVY: Does the county have an 8 issue with that? 9 MR. STEELE: No, not with the consolidation.

² See *Tr.*, 6-23-14, p. 89, l. 17 through p. 90, l. 3:

17 Before we do this, on the new evidence, we probably 18 need to call these other two cases since we're 19 thinking of consolidating that, correct? So, Terry, 20 can you call those other cases? 21 MS. RUBALD: Yes. Mr. Chairman, next case 22 is -- the other two cases are 14-153. The 23 petitioner is HCPCCSNF, LLC, commercial property. 24 And other case is 14-154, Deer Springs Town Center & 25 Home Depot as the lessee. Page 90 1 CHAIRMAN MESERVY: And we still have 2 authorization on all three from the same petitioner? 3 MS. RUBALD: Yes.

³ See NAC 361.769; *Tr.*, 6-23-14, p. 96, l. 23 through p. 97, l. 18:

23 MEMBER JOHNSON: I will make a motion that in 24 cases 14-151, 14-153, and 14-154, that we allow in 25 all of the new evidence with the exception of the Page 97 1 one piece of new evidence in 14-154 that was 2 submitted six days before the hearing doesn't meet 3 our statutory requirement. We don't allow that one 4 and the rest we do and give it the weight that we 5 feel it's due. 6 CHAIRMAN MESERVY: Anyone have a second? 7 MEMBER HARPER: Second. 8 CHAIRMAN MESERVY: Any other comment? My only 9 concern is did we get the assessor's office a chance 10 to look at all those new evidences on all three 11 cases? 12 MS. RUBALD: It was part of the record. 13 CHAIRMAN MESERVY: That's what I want to make 14 sure. Okay. Then all in favor? 15 THE BOARD PANEL: Aye. 16 CHAIRMAN MESERVY: Any opposed? Okay. It's 17 unanimous. So it's accepted. And as to its weight 18 now, go for it.

⁴ See *Record, Petition to the State Board, page 1 in each case.*

⁵ See *Record, Case No. 14-151, SBE pages 3 and 16, Case no. 14-153, SBE pages 3 and 17, agent authorization form signed by Luanne Pacheco for Covenant Care; Case No. 14-154, SBE pages 3 and 14, agent authorization form signed by Wendy Kaeman for Home Depot.*

⁶ See *Record, SBE pages 9, Notice of Decision by County Board; and SBE pages 265-266, Minutes of the County Board. See also Tr.*, 6-23-14, p. 106, l. 3-17 – see footnote #9.

The State Board, having considered all evidence, documents and testimony pertaining to the decision of the County Board to deny jurisdiction, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

- 1) The State Board is an administrative body created pursuant to NRS 361.375.
- 2) The State Board is mandated to hear all appeals of property tax assessments pursuant to NRS 361.360 and NRS 361.400.
- 3) The Taxpayer and the Assessor were given adequate, proper and legal notice of the time and place of the hearing before the State Board, and the matter was properly noticed pursuant to the Open Meeting Law at NRS 241.020.⁷
- 4) Pursuant to NRS 361.340(11), every appeal to the county board must be filed not later than January 15th. The tax agent included with the appeal to the Clark County Board of Equalization (County Board), an agent authorization form dated May 3, 2013.⁸ The County Board did not accept jurisdiction to hear the case because the lease document which shows the lessee is responsible for payment of the taxes was not provided until the day of the hearing, and thus the relationship between the authorized signatory for the Petition of appeal to the County Board and the owner of the property could not be verified within the timeframe required by NRS 361.362.^{9 10}

⁷ See Record, SBE page 269, Case No. 14-151; SBE page 268, Case No. 14-153; and SBE pages 124-125, Case No. 14-154, Receipt of certified mail.

⁸ See Record, SBE page 16, Case No. 14-151, Authorization of Tax Agent from Covenant Care.

⁹ See Record, SBE pages 9, Case No. 14-151, Notice of Decision by County Board; and SBE pages 265-266, Case No. 14-151, Minutes of the County Board. See also Tr., 6-23-14, p. 106, l. 3 through p. 107, l. 18:

3 the record, I'll say it one time, HCPCCSNF, LLC. 4 That's the owner of the property. If you turn to 5 SBE 3, the authorization is for Covenant Care, LLC, 6 and we were unable to through our research on the 7 Secretary of State's web site, link Covenant Care to 8 the owner of the property. 9 So if you'll turn to SBE 14, that 10 leads us to HCP 210, LP and HCPI trust. And that 11 leads to a dead end. Those were looked up, and 12 there was nothing further on the Secretary of 13 State's web site. And, again, to reiterate, SBE 17, 14 the lease was provided at the time of the hearing on 15 February 14. So we found no relationship between 16 the authorized signatory and the owner of the 17 property. Thank you. 18 CHAIRMAN MESERVY: Thank you. One quick 19 question. If you go to 14, the resident agent, 20 there is CSC Services of Nevada. Does that look 21 like the same company, that is, if you look at the 22 letterhead? That is interesting. Okay. I guess 23 not. Any questions? 24 MEMBER JOHNSON: Just to clear up the 25 registered agent information, that can be someone Page 107 1 that they choose to use in Nevada that they use as 2 registered agent. Registered agent does not need to 3 be owner of corporation. 4 CHAIRMAN MESERVY: I'm very aware of that. 5 MEMBER JOHNSON: Okay. I figured you were. 6 MR. STEELE: I believe Ms. Widener may have 7 something to add. 8 MS. WIDENER: I just believe the key here is 9 the providing of the information to us. It's not 10 that we aren't willing to accept leases. We do. 11 But most all of the representatives that represent 12 tenants versus actual owners know they must provide 13 us that information showing that the tenant, in 14 fact, has the right to file the appeal and must be 15 given to us in the timely manner. That is the crux 16 of this issue, is we were not -- we did not receive 17 that lease in a timely manner. So we did not have 18 authorization in a timely manner.

¹⁰ See also Tr., 6-23-14, p. 114, l. 12 through p. 115, l. 6:

12 MEMBER HARPER: So I think you just answered 13 my question. So what you're saying is if you are 14 provided a lease like you were in this situation, 15 you still need to make the connection between 16 whoever the landlord owner is stated to be in this 17 case I think it's AHP, the one that I butchered 18 earlier. And so you still go to the Secretary of 19 State's web site to see if there is a connection 20 between that entity. And in this case, the one you 21 read into the record earlier, HCPCCSNF, LLC? 22 MS. WIDENER: Well, that owner and Covenant 23 Care. And since we had no other evidence at that 24 point in time if Covenant Care was leasing the 25 property, that's where we ended it. And there was Page 115 1 no connection to Covenant Care. We were not made 2 aware there was a lease in play until at the time of 3 the hearing as we said. And then that lease further 4 we didn't do any further investigation into it, but 5 whether it actually allows for that, but again it 6 was untimely.

- 5) The State Board found in case 14-154, Deer Springs Town Center, that the lease indicates the owner shall cooperate with the lessee in appeal proceedings, but the lease was not provided to the County Board in a timely manner to support the agent authorization assertion.¹¹
- 6) The State Board found the County Board had a preponderance of evidence before it to support the decision it made. The State Board found the County Board made its decision on the basis of the untimely filing of leases which would support the assertion that the lessee had the right to file an appeal; and the State Board found the County Board had not erred in its decision.^{12, 13}
- 7) The State Board affirmed the decision of the County Board.¹⁴
- 8) Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so denominated.

CONCLUSIONS OF LAW

- 1) The Taxpayer timely filed a notice of appeal, and the State Board accepted jurisdiction to determine this matter.
- 2) The Taxpayer and the Assessor are subject to the jurisdiction of the State Board.
- 3) A preponderance of the evidence is defined as whether "the fact sought to be proved is more probable than not." *Kent K. v. Bobby M.*, 110 P.3d 1013, 1018 (Ariz., 1995). Based on the State Board's finding that the County Board's decision to not take jurisdiction was supported by a preponderance of the evidence, and the Taxpayer did not overcome the burden to show the County Board's decision was not supported by a preponderance of the evidence, the State Board upheld the decision of the County Board.

¹¹ See Tr., 6-23-14, p.123, l. 12 through p. 124, l. 20:

12 MEMBER HARPER: Yeah. And I guess I would 13 just like to maybe put this on the record in Case 14 14-154, looking at SBE 22 which is a page from the 15 lease addressing real estate taxes, section 5.3, 16 subsection B, it says the last sentence, "landlord 17 shall fully cooperate with tenant in any such 18 proceeding at no cost or expense to landlord." And 19 what it is is addressing sufficient time to allow 20 the tenant to determine whether or not to contest or 21 increase -- contest any increase in real estate 22 taxes. And so, again, it comes down to this timing 23 issue. The landlord/owner in this case knew that 24 they had signed those rights to the tenant, and they 25 have to cooperate per the lease agreement. So all Page 124 1 of this should have been done within the timeframes 2 and deadlines and not -- 3 CHAIRMAN MESERVY: There is no breach in 4 contract then. 5 MEMBER HARPER: You know, they have to 6 provide, hey, we're the landlords, we're the owners, 7 here's the link to the Secretary of State's web site 8 or legal ownership. And we give the tenant the 9 right to appeal the taxes. And, again, it comes 10 down to the timeliness of this and, you know, again 11 not to chastise representatives, but, you know, you 12 guys know this, and you should be aware of it. And 13 I understand, believe me. I'm an independent fee 14 appraiser, and I know dealing with property owners 15 and trying to get information and all that 16 especially around the first of the year can be a 17 pain. But, you know, it kind of falls on you guys 18 to get all this, get it filed, get these letters of 19 authorization in, get these leases in and do so in a 20 timely fashion.

¹² See Tr., 6-23-14, p. 124, l. 21 through p. 125, l. 2:

21 MEMBER JOHNSON: And my last comment is we're 22 not retrying the case here. We can't substitute our 23 judgment for the county's hearing. I didn't see 24 anything that would cause me to believe that the 25 county board erred in their determination not to Page 125 1 accept jurisdiction. And that's a much lower bar in 2 my mind than if we were hearing the cases fresh.

¹³ See Tr., 6-23-14, p. 125, ll. 6-9:

6 14-151, 14-153, and 14-154, that we uphold the 7 County Board of Equalization's decision to deny 8 jurisdiction as the county board's decision appears 9 to be based on a preponderance of the evidence

¹⁴ See tr., 6-23-14, p. 125, ll. 5-16:

5 MEMBER JOHNSON: I will make a motion in Cases 6 14-151, 14-153, and 14-154, that we uphold the 7 County Board of Equalization's decision to deny 8 jurisdiction as the county board's decision appears 9 to be based on a preponderance of the evidence. 10 CHAIRMAN MESERVY: Second? Any second? 11 MEMBER HARPER: Second. 12 CHAIRMAN MESERVY: Okay. Any other comments? 13 All in favor. 14 THE BOARD PANEL: Aye. 15 CHAIRMAN MESERVY: Any opposed? It's 16 unanimous. Okay.

- 4) NRS 361.362 states that at the time a person files an appeal pursuant to NRS 361.356, 361.357 or 361.360 on behalf of the owner of a property, the person shall provide to the county board of equalization or the State Board of Equalization, as appropriate, written authorization from the owner of the property that authorizes the person to file the appeal concerning the assessment that was made. If the person files the appeal in a timely manner without the written authorization required by this section, the person may provide that written authorization within 48 hours after the last day allowed for filing the appeal.
- 5) Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

DECISION

The Petitions of the Taxpayers are denied based on the above Findings of Fact and Conclusions of Law. The Clark County Comptroller is instructed to certify the assessment roll of the county consistent with this decision.

BY THE STATE BOARD OF EQUALIZATION THIS 30th DAY OF SEPTEMBER, 2014.



Christopher G. Nielsen, Secretary
CGN/ter