

**BEFORE THE COURT OF TAX APPEALS  
STATE OF KANSAS**

IN THE MATTER OF THE  
EQUALIZATION APPEALS OF ADM,  
L.L.C. FOR THE YEARS 2007 & 2008  
IN JOHNSON COUNTY, KANSAS

Docket Nos. 2007-2893-EQ  
& 2008-5478-EQ

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ORDER DENYING MOTION TO DISMISS  
AND TRANSFER TO  
SMALL CLAIMS AND EXPEDITED HEARINGS DIVISION

Now the above-captioned matters come on for consideration and decision by the Court of Tax Appeals of the State of Kansas.

On September 17, 2008, the Court received a letter from Mark Ciardullo, member of ADM, LLC, requesting that the appeals be transferred to the Small Claims Division due to limitations imposed on persons other than attorneys representing their interests in real property. Also on September 17, 2008, the County filed a Motion to Dismiss Lack of Subject Matter Jurisdiction or Deny Motion for Change of Venue.

After considering the arguments presented, the Court finds and concludes as follows:

The subject matter of these appeals is 13300 Santa Fe Trail Drive, Johnson County, Kansas, also known as Parcel ID# 046-058-34-0-30-09-001.00-0.

Hearings before the Court of Tax Appeals are to be conducted in accordance with the Kansas Administrative Procedures Act (KAPA). 2008 Kan. Sess. Laws, ch. 109 § 1 (amending K.S.A. 74-2426). The KAPA at K.S.A. 77-515 specifically provides that:

“(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.”

and

“(c) A state agency may require a corporation or other artificial person to participate by counsel.”

The Court's current regulations provide in part that "[a]n elected or appointed official or the official's designee of a county, city, or other taxing district or a corporation's officer or employee may appear and testify on behalf of the county, city, taxing district or corporation and, except as otherwise provided in these regulations, may fully participate as a party." K.A.R. 94-2-10(a). The Court acknowledges that this does not mean that a non-attorney, such as a county appraiser or corporate officer, may engage in the unauthorized practice of law. See Att'y Gen. Op. No. 93-100. The appeal forms at issue in these matters were signed and filed by member shareholders of the limited liability company, an artificial entity.

The Kansas Supreme Court in *Babe Houser Motor Co., Inc. v. Tetreault*, 270 Kan. 502, 14 P.3d 1149 (2000) found that a corporation may appear in a small claims proceeding through a full-time employee or officer who is not a licensed attorney. The president of the plaintiff corporation filed the suit in small claims. The Supreme Court explained that the Small Claims Procedures Act, K.S.A. 61-2701 *et seq.*, was designed to foster simplicity of pleading and provide a forum for the speedy trial of small claims. While the common law of Kansas provides that a corporation may not appear in court by an agent who is not an attorney, the Supreme Court acknowledged Att'y Gen. Op. No. 95-100 and agreed that the legislature through the Small Claims Procedure Act had abrogated or modified the common law. Interestingly, the Supreme Court also noted that: "since 1986 a provision of the Kansas Administrative Procedures Act, K.S.A. 77-515(a), has without apparent great problems permitted participation by a duly authorized representative where a corporation or other artificial entity is involved." *Id.* at 507.

In the case of the Court of Tax Appeals, the common law has been modified by the KAPA, which allows participation by a duly authorized representative. The Court notes that while the statute allows "participation", it does not allow the practice of law. The Kansas Supreme Court has the inherent power to define, supervise, regulate and control the practice of law. *State ex rel. Stephan v. Williams*, 246 Kan. 681, 687, 793 P.2d 234 (1990); *Babe Houser Motor Co., Inc.* at 1154.

There is no precise, all-encompassing definition of the "practice of law." Every matter must be considered on its own facts. *Stephan* at 689. The Court finds that a member of an LLC, like an officer or employee of a corporation, is not taking part in the unauthorized practice of law by signing and filing the appeal form provided by the county and approved by the Court of Tax Appeals. See 2008 Kan. Sess. Laws, ch. 109 § 95 (amending K.S.A. 2007 Supp. 79-1609). The Court believes that this position is supported by the Kansas Supreme Court's opinion in *Babe Houser Motor Co., Inc.* allowing the filing of a suit in small claims by an officer of a corporation on forms provided by the court. The Court notes that this matter is factually distinguishable from Pierson

Investments, LLC, Docket No. 2008-3974-EQ, wherein the tax representative at issue was not an employee, member, or officer of the artificial entity, but was specifically retained to perform tax-related services.

In addition, this Court has not ordered the Taxpayer to participate by counsel pursuant to K.S.A. 77-515(c). As a result, the Court concludes that the County's motion to dismiss should be denied.

The Court finds that the Taxpayer elected, by checking a box on the appeal form, to file these matters in the Regular Division of the Court of Tax Appeals. However, because the subject matter is a commercial property valued less than \$2,000,000, the Taxpayer could have elected to file in the Small Claims and Expedited Hearings Division. See 2008 Kan. Sess. Laws, ch. 109 § 8 (amending K.S.A. 74-2433f). In light of the amount in controversy and the expedited time frame within which a small claims hearing officer must hear and decide the appeals, the Court finds that the request is not unreasonable. The Court concludes that the matters should be, and are hereby, transferred to the Small Claims and Expedited Hearings Division. For clarity of the record, the Regular Division hearing scheduled for October 30, 2008 is cancelled.

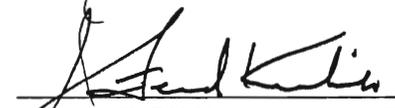
IT IS THEREFORE ORDERED that, for the reasons stated above, the County's motion to dismiss is denied, and the Taxpayer's request to transfer the matters to the Small Claims and Expedited Hearings Division is granted.

IT IS SO ORDERED

THE KANSAS COURT OF TAX APPEALS



  
REBECCA W. CROTTY, CHIEF JUDGE

  
FRED KUBIK, JUDGE

BRUCE F. LARKIN, JUDGE

  
JOELENE R. ALLEN, SECRETARY

