

Before the
Administrative Hearing Commission
State of Missouri



CROMWELL LOFTS, LLC,)	
)	
Petitioner,)	
)	
vs.)	No. 15-0241 RI
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We dismiss Cromwell Lofts, LLC’s complaint because it was not timely filed.

Procedure

On February 17, 2015, Cromwell Lofts, LLC (“Cromwell”) appealed the Director of Revenue’s (“the Director”) final decision that Cromwell is liable for a 2012 tax credit penalty. On March 9, 2015, the Director filed a motion to dismiss the complaint, with a supporting affidavit as to business records of the Department of Revenue that included a final decision issued on January 14, 2015. We treat the Director’s motion as a motion for summary decision because it relies on matters outside the complaint. 1 CSR 15-3.436(4) and 1 CSR 15-

3.446(6)(A).¹ We will grant the motion if the Director establishes facts that entitle her to a favorable decision and Cromwell does not dispute those facts. Regulation 1 CSR 15-446(6)(A).

We gave Cromwell until March 25, 2015, to respond to the motion, but no response was filed. Therefore, the following facts are undisputed.

Findings of Fact

1. On January 14, 2015, the Director mailed a final decision that Cromwell is liable for a 2012 tax credit penalty by placing it in the United States mail.
2. Cromwell filed its complaint with this Commission on February 17, 2015, the date the complaint was mailed by certified mail.
3. February 17, 2015, was more than 30 days after January 14, 2015.

Conclusions of Law

Because this Commission was created by state statutes, we have only such authority as the statutes give us. *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). We do not have authority to add to or subtract from the terms of the statutes or to make an exception. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

Section 621.050.1² provides that we have jurisdiction to hear an appeal from the Director's decision if the complaint is filed "within thirty days after the decision of the director is placed in the United States mail or within thirty days after the decision is delivered, whichever is earlier." The date of filing is deemed to be the date it is mailed if it is sent by registered or certified mail. Section 621.205. Our findings show that Cromwell did not file the complaint

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² All statutory references are to RSMo 2000 unless otherwise indicated.

within thirty days after the Director mailed the decision. We have no jurisdiction to hear a complaint filed out of time. *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc), *cert. denied*, 488 U.S. 893(1988). If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000). Therefore, we must dismiss Cromwell's complaint.

Summary

We grant the Director's motion and dismiss the complaint.

SO ORDERED on April 1, 2015.

\s\ Audrey Hanson McIntosh
AUDREY HANSON MCINTOSH
Commissioner