

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DARDEN RESTAURANTS,</p> <p>v.</p> <p>Respondent:</p> <p>BROOMFIELD COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Kenneth S. Kramer, Esq. Berenbaum, Weinshienk & Eason, P.C.</p> <p>Address: 370 17th Street, Suite 4800 Denver, Colorado 80202</p> <p>Phone Number: (303) 825-0800</p> <p>E-mail: kskramer@bw-legal.com</p> <p>Attorney Reg. No.: 16929</p>	<p>Docket Number: 43416</p>
<p>ORDER</p>	

THIS MATTER came before the Board of Assessment Appeals on May 7, 2004, to consider the Motion to Dismiss filed by Respondent. Board members Judee Nuechter and Rebecca Hawkins presided. Petitioner was represented by Kenneth S. Kramer, Esq. Respondent was represented by Tami Yellico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**665 Flatiron Marketplace Drive, Broomfield, Colorado
(Broomfield County Schedule No. R1145830)**

ISSUES:

Respondent:

Respondent contends that Petitioner failed to exhaust its administrative remedies, therefore the Board of Assessment Appeals (BAA) lacks jurisdiction to consider Petitioner's protest of the 2003 valuation of the subject property. In support of its position, Broomfield asserts that it sent a Notice of Determination (NOD) to Darden, but that Darden failed to appeal the NOD by the July 15th deadline.

Petitioner:

Petitioner contends that it did not receive the NOD and therefore did not appeal the valuation to Respondent. Petitioner nevertheless asserts that due process requires that it be entitled to appeal the determination of value.

FINDINGS OF FACT:

1. The Broomfield County Assessor's Office maintains a computer database system for its official records, which includes information for the purpose of providing notice to taxpayers.
2. Ms. Vickie Krening, Broomfield County Deputy Assessor, maintains the database and oversees the mailing of Notices of Valuation (NOVs) and NODs to taxpayers, which includes entering the Assessor's decisions and matching NODs against their records. An outside source mails the NOVs to taxpayers.
3. NODs are all processed identically by the Assessor's Office and are forwarded to an internal post office that meter stamps the envelopes and then sends them to the United States Post Office for mailing to taxpayers. Broomfield County mailed out the 2003 NODs on June 30, 2003.
4. No 2003 NODs were returned by mail to Broomfield.
5. Petitioner's NOV and NOD were both mailed to GRMI, Inc., d/b/a Bahama Breeze, P.O. Box 593330, Orlando, FL 32859, pursuant to warranty deed on file related to the subject property.
6. Darden received the NOV for 2003 and appealed the valuation to the Broomfield County Assessor's Office.
7. The master log for NODs indicates that Petitioner's NOD was mailed out on June 30, 2003 to the same address as was the relevant NOV.

8. A representative of Petitioner's contacted Ms. Krening on August 5, 2003, inquiring about when NODs were mailed. The representative advised Ms. Krening that Petitioner had not received a NOD. Ms. Krening responded that no mail had been returned and that the time to appeal had passed. A copy of Petitioner's NOD was faxed to the representative on August 5, 2003.

9. Mr. Dave Baltar, Property Tax Manager for Darden Restaurants, handles tax assessment notices for Darden and its related group of businesses, which include 1,300 restaurants. Assessment notice information is entered into Darden's computer system by date received and includes corresponding appeal dates. Mr. Baltar then reviews the actual notices.

10. On or about July 31, 2003, Mr. Baltar telephoned Ms. Krening concerning the status of NODs for two properties in Colorado, at which time he was informed that the time to appeal had passed. Mr. Baltar stated that the NOD for the subject property was not received in his office and that he was unaware of Colorado's July 15th deadline for appealing NODs.

11. Mr. Baltar spoke over the telephone to Mr. John Storb, a Certified General Appraiser with the Broomfield County Assessor's Office regarding appeals of NOVs he had not heard about within 30 days, including property involving a Red Lobster restaurant as well as the subject property.

CONCLUSIONS OF LAW

1. The parties presented evidence in support of their respective positions concerning receipt of the relevant NOD. The parties urged the Board to consider whether the presumption that the NOD was properly prepared and mailed by the Broomfield County Assessor and received by Petitioner is overcome by Petitioner. See Canyon Crest Villas South v. Board of County Comm'rs, 36 Colo. App. 409, 411, 542 P.2d 395, 396 (1975) (rebuttable presumption that county prepared and mailed notice of valuation); Board of Assessment Appeals v. Valley County Club, 792 P.2d 299, 302 n. 4 (Colo. 1990) (BAA determined taxpayer presumed to have received notice of valuation). See also, Popke v. Industrial Claim Appeals Office, 944 P.2d 677, 683 (Colo. App. 1997), *citing* Campbell v. IBM Corp., 867 P.2d 77 (Colo. App. 1993) (rebuttable presumption that letter properly addressed, stamped, and mailed was duly delivered to addressee). However, the outcome of this matter depends on the statutory scheme governing the review of valuation determinations.

2. A taxpayer whose appeal is denied by the assessor may appeal to the county board of equalization. § 39-5-122(3), C.R.S. (2004).

3. The county board of equalization shall hear petitions for appeal pursuant to section 39-8-106, C.R.S. (2004).

4. The BAA may hear appeals from decisions of county boards of equalization. The BAA may only hear an appeal from an assessor's determination upon the Board of Equalization's failure to respond timely to a properly filed appeal by a taxpayer. §39-2-125(1)(c),(e), C.R.S. (2004). In this case, there is no order from the Broomfield County Board of Equalization and no indication of an appeal properly filed before the Broomfield County Board of Equalization.

5. Here, Petitioner appealed directly to the BAA. Its petition advised the BAA that it did not receive a NOD and failed to timely petition due to a clerical error.

6. The BAA is without jurisdiction to entertain Petitioner's appeal without a decision from the Broomfield County Board of Equalization. The BAA is therefore required to dismiss Petitioner's appeal.

ORDER:

Petitioner's appeal to the BAA is dismissed for lack of jurisdiction.

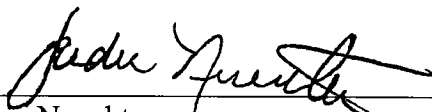
APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.


If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 14th day of December 2004.

BOARD OF ASSESSMENT APPEALS



Judée Nuechter

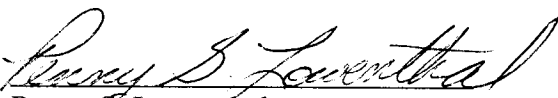


Rebecca Hawkins

This decision was put on the record

DEC 13 2004

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Penny S. Lowenthal

