BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 74272
Petitioner: **WYNN ELLIOTT,** v. Respondent: **SAN MIGUEL COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER comes before the Board of Assessment Appeals on Respondent's Motion to Dismiss. The Board received Respondent's Motion to Dismiss on October 4, 2018. The Board received Petitioner's Response in Opposition to Motion to Dismiss on October 16, 2018.

Background

On June 21, 2018, San Miguel Assessor issued a Real and Personal Property Notice of Determination for the subject property, identified as Lot 248 B, 151 Palmyra Drive, Mountain Village, Colorado. The Assessor classified the subject parcel as vacant land and valued it at $1,000,000 for tax year 2018.

On or about July 11, 2018, Petitioner's agent, Raymond Bowers, filed a protest with the San Miguel County Board of Equalization ("CBOE") contesting both the 2018 classification and valuation of the subject property. A hearing officer heard Petitioner's CBOE protest and issued a ruling on August 1, 2018, upholding the Assessor's value of $1,000,000 as well as the vacant land classification of the subject property.

Following the denial from the CBOE, on August 15, 2018, Petitioner's agent sent a request for a binding arbitration concerning the Assessor's 2018 valuation of the subject property to the San Miguel County Attorney's Office.

Subsequent to Petitioner's election to pursue the appeal of the CBOE decision through binding arbitration, Petitioner's agent also filed an appeal with the Board of Assessment Appeals on August 27, 2018 protesting the classification of the subject property for 2018 tax year.

Motion to Dismiss

Respondent argues that Petitioner selected his appellate remedy of the CBOE decision on August 15, 2018 when he requested binding arbitration. Respondent contends that based on the plain reading of Section 39-5-108, C.R.S., Petitioner may only choose one of three appellate remedies to a decision rendered by the CBOE: BAA, District Court or binding arbitration. According to Respondent, there is nothing in the statute that allows Petitioner to bifurcate the issue decided by the CBOE into separate appeals.

In response, Petitioner argues that because Petitioner protests both classification and valuation of the subject for the 2018 tax year, those issues constitute "two very distinct appeals" appropriate for adjudication by two different forums. Petitioner chose to challenge the CBOE's valuation of the subject property through binding arbitration and, simultaneously, filed an appeal of the CBOE's classification of the subject parcel to the Board of Assessment Appeals. The essence of Petitioner's argument is that Petitioner's appeal involves two distinct disputes that require two distinct decisions.

Board's Findings

Aggrieved taxpayers are provided with multiple levels of review to challenge valuations assigned by the assessor. This process begins with a protest filed with the assessor. *See* Section 39-5-122(2), C.R.S. (2010). Once the assessor denies the protest in writing, the taxpayer may appeal to the CBOE. *See* Section 39-5-122(3), C.R.S. Following the CBOE's order, the taxpayer may elect to appeal the valuation to the BAA or the district court where the property is situated, or submit the case to binding arbitration. *See* Section 39-8-108(2), C.R.S.:

> Any decision rendered by the county board of equalization shall state that the petitioner has the right to appeal the decision of the county board of equalization to the board of assessment appeals or to the district court of the county wherein the petitioner's property is located or to submit the case to arbitration . . . (Emphasis added).

The starting point in statutory interpretation is the language of the statute itself. *State Bd. of Equalization v. American Airlines*, 773 P.2d 1033, 1040 (Colo.1989). "Where the statutory language is clear and unambiguous there is no need to resort to interpretative rules of statutory construction; the statute, in that instance, should be applied as written, since it may be presumed that the General Assembly meant what it clearly said." *Griffin v. S.W. Devanney & Co.*, 775 P.2d 555, 559 (Colo. 1989).

Here, the plain language of Section 39-8-108 provides that if the county board of equalization denies the petition in whole or in part, the taxpayer has three alternative options for additional review: appeal to the BAA for a hearing, to the district court for a trial de novo, or submit the dispute to binding arbitration. Section 39-8-108(2), C.R.S.

The General Assembly chose to use "or" instead of "and" when it adopted the statutory language at issue. The statutory language is plain and clear. Applying the statutory language as

written, the Board finds that Petitioner could chose only one of three alternative methods of appealing the CBOE decision: either through district court, through the Board of Assessment Appeals, or, as the Petitioner chose here, through the binding arbitration. The statute does not permitted Petitioner to seek multiple appeals of the same CBOE decision pertaining to the same subject property for the same tax year.

Finally, Petitioner's decision to pursue two separate appeals of the subject property's 2018 valuation and classification runs afoul to the basic valuation principles. The determination of a property's value for tax purposes requires that, firstly, the property is correctly classified and, secondly, valued using statutorily-prescribed methodologies. See, e.g. *Assessor's Reference Library*, Vol. 3 at Page 2.4. ("Proper land classification is essential in order to establish how the property is to be valued.").

ORDER:

Respondent's Motion to Dismiss is granted.

The appeal is hereby DISMISSED.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED/MAILED this 26th day of October, 2018.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Diane M. DeVries

Diane M. DeVries

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

Milla Lishchuk

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS