

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ANKONY ANGUS CORP., INC.,

) Docket 505

Page 110

Plaintiff,

v. —

STATE OF NEBRASKA,
DEPARTMENT OF REVENUE,

) ORDER

Defendant.

This case involves an appeal from a decision of the State of Nebraska, Department of Revenue [the Department] made on October 5, 1993, brought under the Nebraska Administrative Procedure Act. NEB. REV. STAT. §§ 84-901 through -920 (Reissue 1987, as amended). Accordingly, review is conducted by the court, without a jury, de novo on the record of the Department. NEB. REV. STAT. § 84-917(5)(a) (Cum. Supp. 1992).

During oral arguments, the plaintiff's counsel conceded that the plaintiff was not entitled to a hearing under NEB. REV. STAT. § 84-913 (Reissue 1987) on his refund claim. Rather, the claim procedure is governed by NEB. REV. STAT. § 76-908 (Reissue 1990).

The court finds the facts to be as follows: On August 14, 1992, at 2:49 p.m., a Warranty Deed was filed with the Register of Deeds of Scotts Bluff County, Nebraska, in which Shadow Isle, Inc., conveyed to Colin Halfwassen real estate located in Scotts Bluff County, Nebraska. Nebraska Documentary Stamp Tax in the amount of \$1,950.00 was paid on that transfer. On that same date, at 2:52 p.m., a Warranty Deed was filed with the Register of Deeds of Scotts Bluff County, Nebraska, in which Colin Halfwassen and Caryl Halfwassen, husband and wife, conveyed to Ankony Angus Corporation, Inc., the same real estate deeded to Halfwassen by Shadow Isle, Inc. Nebraska Documentary Stamp Tax in the amount of \$1,950.00 was paid on that transfer.

Pursuant to NEB. REV. STAT. § 76-908 (Reissue 1990), on September 30, 1993, Ankony Angus Corporation, Inc., filed a Nebraska Refund Claim for Documentary Stamp Tax, Form 53, in the amount of \$1950.00 with the Register of Deeds of Scotts Bluff County, Nebraska. Attached to the refund claim was a statement explaining the basis for the claim to be as follows:

Colin Halfwassen contracted with Occidental Petroleum, Inc. on behalf of Ankony Angus Corporation, Inc. for the purchase of the real estate. The transfer of the real estate to Colin Halfwassen was a transfer to him *in trust* for the benefit of Ankony Angus, [sic] Corporation, Inc. Immediately upon obtaining the deed, Halfwassen deeded the property to Ankony Angus Corporation, Inc. At no time did Colin Halfwassen intend to have any ownership interest in the property other than an [sic] as *undisclosed trustee* for the benefit of Ankony Angus Corporation, Inc. Consideration for the purchase came from Ankony Angus Corporation, Inc. The total amount of funds that was transferred was the amount paid in the original transaction. [Emphasis added.]

No other evidence was presented in support of the plaintiff's refund claim.

The Register of Deeds of Scotts Bluff County deferred recommendation on the plaintiff's refund claim and forwarded it to the Department for its determination. The Department disapproved the refund claim stating: "No trust document presented with the claim showing Mr. Colin Halfwassen or [sic] [as] trustee for Ankony Angus Corporation." It is this determination which the plaintiff appeals.

Generally speaking, NEB. REV. STAT. § 76-901 (Cum. Supp. 1992) imposes a tax on any person conveying real estate. That section goes on to provide that "[a]ll deeds purporting to transfer legal title or beneficial interest shall be presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the instrument is except under section 76-902."

NEB. REV. STAT. § 76-902(17) (Cum. Supp. 1992) allows an exemption

to:

Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the property is made under such circumstances as to come within one of the exemptions specified in this section and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue.

The plaintiff appears to be attempting to come under this exemption.

On August 14, 1992, the register of deeds was not presented with a signed statement certifying that the conveyance from Shadow Isle, Inc., to Halfwassen came within one of the exemptions of § 76-902. Nor was such a statement presented with the plaintiff's refund claim. There is absolutely no tangible evidence that the conveyance to Halfwassen represented a conveyance into a trust. (Query: If the conveyance to Halfwassen was into a trust or as a trustee, why did his spouse join in the conveyance to the plaintiff?)

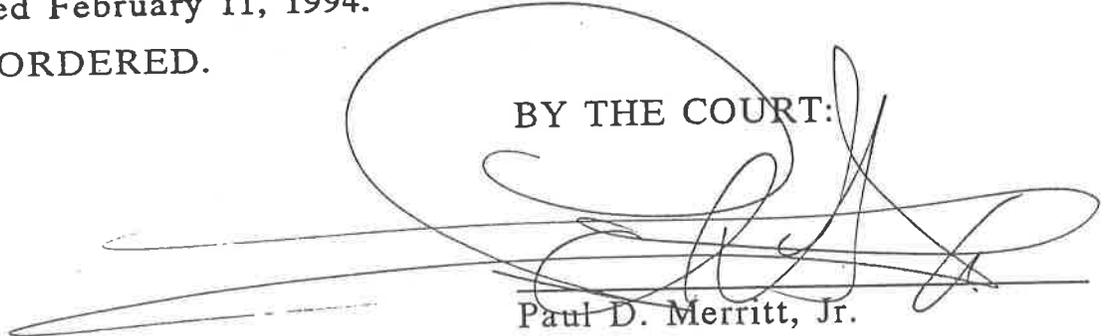
The decision of the Department is affirmed. The costs of this action are taxed to the plaintiff.

A copy of this Order is sent to the attorneys of record.

Dated February 11, 1994.

SO ORDERED.

BY THE COURT:



Paul D. Merritt, Jr.
District Judge