

Isidro K. SEMAN  
vs.  
Vicente M. ALDAN, et al.

Appellate No. 86-9032  
District Court NMI  
Appellate Division

Decided August 11, 1987

Affirming 2 CR 916 (CTC 1986)

**1. Appeal and Error - Standard of Review - Jurisdiction**

The determination of whether subject matter jurisdiction exists is a question of law reviewable de novo by the Appellate Division.

**2. Elections - Contests - Statutory Challenge**

Under common law there is no right to contest, in court, a public election; a right exists only under constitutional or statutory provisions.

**3. Elections - Contests - Statutory Challenge**

An election statute must be strictly construed.

**4. Elections - Contests - Statutory Challenge**

An individual seeking relief in an election contest must strictly follow the terms of the statute.

**5. Jurisdiction - Subject Matter - Waiver**

Subject matter jurisdiction may not be waived.

**6. Administrative Law - Agency Action - Jurisdiction**

If an administrative body is without jurisdiction, its acts are void.

**7. Elections - Contests - Jurisdiction  
Administrative Law - Agency Action - Jurisdiction**

Where contestant did not file a challenge to the election results within seven (7) days after discovery of facts supporting contest, the Board of Elections was without jurisdiction to entertain the election contest. 1 CMC §6423(b).

FILED  
Clerk  
District Court

AUG 11 1987

For The Northern Mariana Islands  
By *Gonzalez*  
(Dorothy B. ...)

IN THE DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS  
  
APPELLATE DIVISION

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ISIDRO K. SEMAN,	)	DCA NO. 86-9032
	)	
Plaintiff-Appellant,	)	CTC CIVIL ACTION NO. 86-09
	)	
v.	)	
	)	
VICENTE M. ALDAN and BOARD	)	OPINION
OF ELECTIONS OF THE CNMI,	)	
	)	
Defendants-Appellees.	)	

Before: DUENAS, \* LAURETA and NIELSEN, \*\* District Judges.

For the Appellant: DOUGLAS F. CUSHNIE  
P. O. Box 949  
Saipan, CM 96950

For Appellees: VICENTE T. SALAS  
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MARYBETH HERALD  
FITZGERALD, HERALD & BERGSMA  
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Saipan, CM 96950

NIELSEN, Senior District Judge:

This is an appeal from the Commonwealth trial court, Northern Mariana Islands. Isidro Seman appeals the trial court's dismissal of the action based on lack of subject matter jurisdiction. We affirm the judgment of the trial court.

\* Honorable Cristobal C. Duenas, U. S. District Judge for the Territory of Guam, sitting by designation.

\*\* Honorable Leland C. Nielsen, Senior U. S. District Judge for the Southern District of California, sitting by designation.

1           This action involves an election contest brought under 1  
2 CMC § 6421 et seq concerning the election of the Mayor for the  
3 Northern Islands of the Commonwealth. On October 23, 1985,  
4 defendant Vicente Aldan challenged the eligibility of twenty  
5 voters. The Board of Elections (Board) distributed a question-  
6 aire to the twenty voters on or about November 2, 1985. Plain-  
7 tiff Isidro Seman received a questionnaire. Ultimately, the  
8 Board rejected the votes of eight voters, including the vote of  
9 Seman.

10           On November 3, 1985, the election of the Mayor for the  
11 Northern Islands of the Commonwealth was held. Aldan defeated  
12 David Peters by six votes. The Board certified the results of  
13 the election on November 19, 1985.

14           On December 3, 1985, Seman filed an election contest  
15 complaint with the Board of Elections. The answer to the com-  
16 plaint raised the affirmative defense of lack of subject matter  
17 jurisdiction on the grounds that Seman did not file within seven  
18 days after discovering facts supporting the contest.

19           On January 7, 1986, the Board found in favor of Aldan.  
20 No findings were made as to the Board's jurisdiction. Seman  
21 appealed to the Commonwealth trial court. Aldan filed a motion  
22 to dismiss based on lack of subject matter jurisdiction. The  
23 Board joined in the motion. The court dismissed the action.  
24 Seman appeals.

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1           Standard of Review

2       [1]    The determination of whether subject matter jurisdiction  
3 exists is a question of law. Rodriguez v. Flota Mercante  
4 Grancolumbiana, SA, 703 F.2d 1069, 1071 n.2 (9th Cir. 1983)  
5 cert. denied 464 U.S. 820. Questions of law are reviewed de  
6 novo. Id.

7           Discussion

8           1 CMC § 6423(b) provides:

9                   The contestant shall verify the statement  
10                   of contest and shall file it within seven  
11                   days after the discovery of the fact sup-  
12                   porting the contest, except that no com-  
                  plaint may be filed over 30 days after the  
                  declaration of official results.

13       Seman knew his vote was being challenged as of November 2 when  
14 he received a questionnaire from the Board. (Transcript of hear-  
15 ing, p.19) On or before November 17, Seman knew his vote was  
16 not going to be counted. (Transcript of hearing, p. 21) Seman  
17 filed his complaint on December 3. Clearly, Seman missed the  
18 seven day filing deadline.

19       Seman argues that 1 CMC 6423(b) is a limitations provi-  
20 sion and may be waived. He contends defendants waived the dead-  
21 line. We disagree.

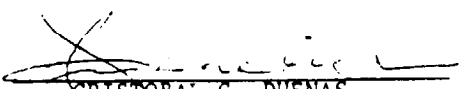
22       [2-6] Under common law there is no right to contest, in court,  
23 a public election. Johnson v. Stevenson, 170 F.2d 108, 110 (5th  
24 Cir. 1948). cert. denied 336 U.S. 904. The right exists only  
25 under constitutional or statutory provisions. 29 C.J.S. Elec-  
26 tions § 247. An election statute must be strictly construed.  
27 26 Am. Jur. 2d Elections § 318. An individual seeking relief  
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1 must strictly follow the terms of the statute. 29 C.J.S.  
2 Elections § 247. State ex rel. Hodges v. Kosciusko Circuit, 402  
3 N.E. 1231 (Ind. 1980) (election contest petition was jurisdic-  
4 tionally defective where it did not follow the statutory  
5 requirement) Subject matter jurisdiction may not be waived.  
6 See Sullivan v. First Affiliated Securities Inc., 813 F.2d 1368,  
7 1374 (9th Cir. 1987) If an administrative body is without  
8 jurisdiction, its acts are void. Doolan v. Carr, 125 U.S. 618,  
9 625 (1887).

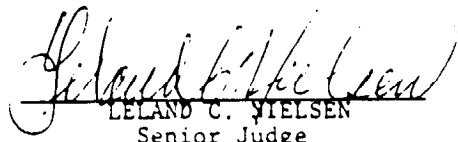
10 Even if waiver were possible, Aldan did not waive the  
11 seven-day requirement. He alleged lack of subject matter  
12 jurisdiction in his answer to the complaint filed before the  
13 Board of Elections and the complaint filed before the trial  
14 court.

15 [7] Seman missed the seven day filing deadline required by 1  
16 CMC § 6423(b). The Board of Elections was without jurisdiction  
17 to entertain the election contest. The trial court properly  
18 dismissed the action.

19 AFFIRMED.

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CRISTOBAL C. DUENAS  
Judge

  
ALFRED LAURETA  
Judge

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LELAND C. YELSEN  
Senior Judge