IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF: **PAMELA GAFFIN,** Petitioner, vs. **GOVERNMENT OF THE VIRGIN ISLANDS DEPARTMENT OF FINANCE, BOARD OF TAX REVIEW,** Respondent.	)	Case No. ST-16-CV-100 PETITION FOR WRIT OF REVIEW

MEMORANDUM OPINION

This matter is a petition for writ of review following a decision by the Virgin Islands Board of Tax Review on Petitioner Pamela Gaffin's appeal of her 2014 property tax assessment. The Board of Tax Review issued a Change in Assessment following the hearing on Gaffin's appeal. Gaffin's petition for writ of review seeks review of the Board's decision and asserts broader complaints with the tax assessment and assessment-appeals process in the Virgin Islands. For the reasons set forth below, the Court will reverse and vacate the Board's decision and remand the matter to the Board for re-consideration of Gaffin's appeal and assessment. However, the Court will not reach Gaffin's broader complaints, as they fall outside the scope of the Court's review on this writ.

BACKGROUND

Petitioner Pamela Gaffin is the owner of a 0.73-acre parcel of land known as 6FD Estate Carolina #1, Coral Bay Qtr. on St. John, U.S. Virgin Islands. In early 2015, the Virgin Islands Tax Assessor's Office issued Gaffin's 2014 real property tax bill that reflected an assessed value of $318,600 (land assessed at $99,000 and improvements assessed at $219,000).[1] The bill listed a total tax due of $1,201.12, a credit in the amount of $400, and a balance due of $801.12.

On April 22, 2015 Gaffin filed a Notice of Appeal with the Virgin Islands Board of Tax Review (the "Board") to challenge her assessment.[2] Gaffin identified as her reason for appeal, "the mass appraisal process produced very flawed values." It also identified, "[i]nformal appeals, until fixed I should be assessed at the 1998 rate." In the space provided on the appeal form for "Appel[l]ant's Estimate of Value", Gaffin listed a total estimated value, including land and improvements/buildings, of $65,742, which evidently was the 1998 appraisal rate for her property.

Along with her Notice of Appeal, Gaffin submitted to the Board a letter detailing a broad set of complaints she had that concerned a 2013 mass appraisal of property values conducted by the Virgin Islands government—the mass appraisal that led to Gaffin's 2014 adjusted assessment value. To wit, Gaffin's allegations included: that the 2013 mass appraisal "resulted in extremely flawed results;" that

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[1] The tax bill is formally identified as "Notice of Change of Assessment and Real Property Tax Bill".
[2] Gaffin also remitted payment in order for her to file an appeal. She took advantage of the 5% early payment discount and remitted payment of $761.06.

the appraisal was not conducted in accordance with International Association of Assessing Officers ("IAAO") standards in violation of Virgin Islands law[3]; that the results of the 2013 mass appraisal fell below IAAO accuracy standards, "which means the mass appraisal is invalid, illegal and cannot be used to generate bills"; and that the appeals process mandated by IAAO standards had been ignored by the Board. Gaffin requested that the 1998 value assessed for her property continue to be used, "[u]ntil such time as the Mass Appraisal results are certified as being valid according to IAAO standards and the informal appeal process has been followed and completed for every complaint." [4]

[3] 33 V.I.C. § 2404(a) ("In assessing the fair market value of real property, the Tax Assessor shall use the applicable standards promulgated by the International Association of Assessing Officers ("IAAO"), and shall promulgate such rules and regulation as necessary to implement the IAAO standards for all classifications of property set forth in section 2301(b) of this title.").

[4] *See* April 22, 2015 Letter from Pam Gaffin. Gaffin's reliance on the 1998 value requires some explanation: In *Berne Corp. v. V.I.*, 262 F. Supp. 2d 540 (2003), and a series of related cases before the District Court of the Virgin Islands, taxpayers challenged the system used by the Government of the Virgin Islands for assessing and taxing real property in the territory, alleging violations of various federal statutes as well as infringements of their procedural and substantive due process rights under the Fourteenth Amendment of the United States Constitution. *Berne Corp. v. Gov't of the V.I.*, 2011 U.S. Dist. LEXIS 6125, *1 (D.V.I.). Pursuant to a settlement between plaintiff taxpayers and the Government, the Government agreed to implement a new real property tax assessment system. In 2003, the District Court found that the Government had materially breached the settlement. The court enjoined the Government "from issuing any tax bills until there [was] in place an assessment system that [would] reliably and credibly appraise real property" at appropriate rates. 262 F. Supp. 2d at 572. However, the court held that, "the Government could issue bills to non-party taxpayers based on the assessment values for the 1998 calendar year reflected in the 1999 tax bills if it provided a mechanism to adjust the assessments and bills retroactively." 2011 U.S. Dist. LEXIS 6125, *4. Because of repeated failures by the Government to develop a reliable and credible assessment system (and the issuance of 2006 tax bills in violation of a 2003 decree, which led the District Court to hold the Government in contempt) the District Court's injunction was in place until early 2011, when the court finally allowed the Government to "issue and collect tax bills prospectively from tax year 2010 at rates other than those based on the 1998 assessments." *Id.* at *24. It is for this reason that Gaffin, alleging that the Government has again failed to institute a fair and reliable system of tax assessment, argues that she be taxed based on her 1998 assessment rate.

The Board of Tax Review heard Gaffin's appeal on January 29, 2016, well beyond 120 days from the filing of her appeal, the statutory deadline for the Board to hear appeals.[5] At the hearing, Gaffin challenged her individual assessment, but emphasized that she had broader complaints concerning property value appraisals on the St. John. She testified that, "[m]y problem with the property today is not the normal thing that you have been hearing with the assessed value. The problem is that the revaluation process was flawed, illegal and needs to be thrown out."[6] She then testified regarding each of the broader complaints that she had raised in her letter to the Board.

At the end of her testimony, the Chair of the Board asked Gaffin if she had provided an appraisal report for her individual property. Gaffin answered that she had not, that she had provided the Board with information on comparable properties, but she again reiterated:

> But that's not what I'm saying. I'm not saying that my individual situation is incorrect. I'm saying the entire process that arrives at the

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[5] 33 V.I.C. § 2452:

> The Board of Tax Review shall with respect to real property assessments hold such hearings within one hundred twenty (120) days of the filing of a written complaint, and in any event, unless the Governor for sufficient cause shall extend the time therefor in writing, not later than one hundred twenty (120) days after the last permissible date for the filing of a taxpayer's complaint or claim as provided in sections 2412(3) and 2451 of this title, and shall—
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> (1) notify the aggrieved person or his representative to appear at one of its hearings;
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> (2) hear the appeal and determine any questions arising before it which relate to the liability of the property to assessment, or to the amount thereof; and
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> (3) upon recording its determination, order the assessment books or schedules to be corrected in accordance with its decision.

Gaffin filed her appeal on April 22, 2015. The deadline by which the Board was required to hear her appeal would have been sometime in September 2015 at the latest.

[6] Transcript of Jan. 29, 2016 Gaffin Appeal Hearing before Board ("Transcript"), 71:21-24.

> number that was printed out is incorrect and needs to be verified and justified to me, which is my right and is in the IAAO standards, transparency to all stakeholders, which I am a stakeholder. I want to see how they arrived at this number.[7]

Dolace McLean, Counsel for the Lieutenant Governor, who was at the hearing representing the Tax Assessor's Office, then objected to Gaffin's generalized airing of complaints, stating that the purpose of the Board is to perform an individualized adjudication. McLean posited that Gaffin's generalized complaints about the assessment system were outside the subject matter jurisdiction of the Board.[8]

Near the end of the hearing, the Board discussed with Gaffin the information on comparable properties that Gaffin had provided to the Board. After the hearing ended, the Board deliberated an adjustment to Gaffin's assessment in closed session. The discussions between the Chair and other Board members largely consisted of:

Chair:	Okay. Well, then let us complete the agenda by deliberating on Pam Gaffin and then we'll go to the continuances. Well, actually, no, let's get the low hanging fruit out of the way.
Crites:	Pam Gaffin could be the low hanging fruit. It's an easy solution I think.
Chair:	I would think so. Is there a motion on the floor?
Crites:	I mean we didn't get any data from the Tax Assessor for Pam Gaffin.
Chair:	No we didn't.
Crites:	She did give us some comps. I would prefer to act on her appeal with those comps.[9]

. . . .

[7] *Id.* 82:13-20.

[8] *Id.* 84:10-17. During her hearing, Gaffin asked repeatedly (and politely) where in the statutes or law the Board is limited to only dealing with individual assessments. *Id.* 91:12-92:4. She was told only, "The Board is aware of its own subject matter jurisdiction, Miss Gaffin." *Id.* 91:21-22.

[9] *Id.* 112:23-113:11.

Crites:	So to me her own comps that she's providing provided a fairly reasonable tie-in without any major adjustments because we don't have the date to make major adjustments. We can only engage by what we were told today. So based on that I think we could value her – put her assessed value at [$]230,000.[10]
	. . . .
Chair:	Okay, land plus 230. We'll let the Tax Assessor –
Crites:	Apportion however they wish. I am not really going to try to – we don't have the data available to do that.
Chair:	Right.
Crites:	They should be able to identify these sales and be able to make that kind of allocation.
Chair:	Okay.
Baynes:	Well, then I will agree with what Board Member Crites has calculated.
Smith:	I'm sure she will like that.[11]

The Chair then moved to re-assess Gaffin at an assessed value of $230,000. All present voted in favor of the adjustment, and the Board issued a change in assessment and notified Gaffin by letter dated February 3, 2016.

Gaffin, unsatisfied because none of her questions were answered and none of her broader issues were addressed by the Board, timely filed her Petition for Writ of Review with the Court on March 1, 2016.

GAFFIN'S PETITION AND THE BOARD'S OPPOSITION

In her Petition, like her appeal before the Board, Gaffin raises several issues that go beyond her individual assessment. Those issues include: the validity of the 2013 mass appraisal results; the duties of the Board under Virgin Islands law and

[10] *Id.* 113:25-114:5.
[11] *Id.* 114:12-25.

whether the Board is complying with those obligations; potential conflicts of interest linked to Board membership and Board representation; the legality of the qualifications of the Tax Assessor and staff under the Virgin Islands code; questions related to the compliance of the mass appraisal with IAAO standards; and problems with the appeals process and the Board's verification of assessed values.[12] Gaffin's alleges that there are "extreme errors" in property assessments, and includes among her examples a property with an assessed value of $768,000 that sold for $6 million, and another property assessed for $623,000 that sold for $145,000.[13] Speaking to the Board's jurisdiction, Gaffin asserts that, contrary to what she was told (or not told) at her hearing, "there is no law or procedure that restricts the Board's power to only changing numbers."[14] She asserts that, "the Board of Tax Appeals exists to protect the Constitutional rights of the Taxpayer from erroneous Tax Assessments and provides the Board with the necessary power to demand answers from the Tax Assessor in order to protect those rights."[15]

The Board argues in its Opposition that its findings regarding Gaffin's assessment were supported by substantial evidence and therefore must be accepted by the Court. Consequently, it argues, the adjusted valuation it adopted should be upheld, and Gaffin is not entitled to the 1998 rate she requested. The Board argues that Gaffin's broader concerns about the constitutionality of the Virgin Islands'

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[12] Pet. for Writ of Review ("Pet.") 10.
[13] *Id.* 8-9.
[14] *Id.* 10.
[15] *Id.*

property tax system as a whole, and the procedures the government employs within that system, must be "raised before the courts."[16] The Board concludes that the instant review should be limited to evaluating Gaffin's individual assessment, and that the Board's findings regarding that assessment should be affirmed.[17]

STANDARD OF REVIEW

In reviewing a decision of an administrative agency such as the Board, a court's task is not to substitute its judgment concerning facts for that of the agency. *Tutu Park v. Writ of Review V.I. Bd. of Tax Review*, 1998 V.I. LEXIS 4, *6 (V.I. Super. Ct.) (citing *Helvering v. National Grocery, Co.*, 304 U.S. 282 (1938), without pincite); *see Helvering*, 304 U.S. at 294-95 ("[A reviewing court must limit] its review to ascertaining whether there was evidence to support the Board's findings and decision[.] . . . To draw inferences, to weigh the evidence and to declare the result [i]s the function of the Board.") (citation omitted). The question for a reviewing court is whether substantial evidence supported the agency's findings.[18] Substantial

[16] Oppo. 11. The Court infers that the Board means through filing a complaint with the Court.

[17] The Board also makes a lengthy argument that the 120-day deadline to hold an appeal hearing is a claims-processing rule and not jurisdictional in nature. *See* Oppo. 5-9. The Board concludes that, "[it] does not lose jurisdiction over a taxpayer's appeal if it does not fully adjudicate the appeal within 120 days of the taxpayer's filing." Oppo. 9. However, Gaffin has not challenged the Board's jurisdiction over her appeal. She did make the argument, both at her Board hearing and in her Petition, that she should be assessed at the 1998 rate because she was not given a hearing within 120 days as required by statute—"I win period." But that is not an argument that the Board had no jurisdiction to hear her appeal at all. The Court will not address the Board's claim-processing argument any further.

[18] *See also*, *Perry v. Gov't Emples. Serv. Comm'n*, 18 V.I. 524, 527 (D.V.I. 1981) ("In reviewing the actions of an administrative agency such as the GESC the Court must determine: 1) Whether the agency acted within the limits of its statutory powers; 2) Whether the agency applied the relevant law correctly; 3) Whether the agency findings are supported by substantial evidence on the record; 4)

evidence is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Tutu Park*, 1998 V.I. LEXIS 4, *6 (quoting *Consolo v. Federal Maritime Com.*, 383 U.S. 607, 619-20).

"Where the findings of [an agency] are supported by substantial evidence they must be accepted." *Tutu Park*, 1998 V.I. LEXIS 4, *6 (citing *Helvering*); *see Jackman v. Estate of Pitterson*, 2008 U.S. Dist. LEXIS 65111, *5 n.8 (D.V.I.) ("[I]t is a long and ubiquitously well-settled principle that the substantial evidence standard is the guiding standard of review for cases concerning administrative agency decisions.") (citing cases from the U.S. Supreme Court, the Third Circuit, and the Territorial Court). Only where a court finds that an agency's findings are *not* supported by substantial evidence may it modify or reverse the decision of the agency.

Finally, "[i]t is the burden of petitioner to show affirmatively noncompliance with the statutory requirements as would invalidate the assessment." *Tutu Park*, 1998 V.I. LEXIS 4, *6 (citing *Ricardo v. Ambrose*, 211 F.2d 212 (3rd Cir. 1954)).

Whether the agency has abused its discretion by acting in an arbitrary or capricious manner.") (citing *In re Hooper's Estate*, 359 F.2d 569, 575 (3rd Cir.) cert. denied sub nom. *Marine Nat'l Bank v. Gov't of the V.I.*, 385 U.S. 903 (1966); *Donastorg v. GESC*, 6 V.I. 368, 371 (D.V.I. 1968); *Turnbull v. Holder*, 11 V.I. 93, 98 (D.V.I. 1974)).

ANALYSIS

I. The Board's Decision Was Not Based on Substantial Evidence and Must Be Reversed.

In assessing the value of real property in the Virgin Islands, the Tax Assessor is directed by statute to, "use the applicable standards promulgated by the [IAAO]," and to, "promulgate such rules and regulation[s] as necessary to implement," those standards. 33 V.I.C. § 2404(a). In reviewing assessments on appeal, the Board is tasked with, "decid[ing] all complaints in respect to the assessment of taxes and correct[ing] all errors made therein." 33 V.I.C. § 2453(a). In carrying out its responsibilities, the Board is able to, "designate hearing officers, qualified by training or experience in the areas of law, tax, or accounting, to conduct hearings under this chapter, to compile evidence and establish findings of fact[.]" *Id.* § 2453(c). According to the Board's Rules and Regulations, members of the Board may "[a]t any time during the hearing . . . question the Appellant or the Appellant's representative and witnesses and also the Tax Assessor or the Tax Assessor's representative or staff and witnesses."[19] The regulations state that, "[i]n the event additional information is required by the Board, the Appellant or Tax Assessor shall furnish such requested information for the Board's consideration within the time set by the Board."[20]

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[19] Board of Tax Review, Property Tax Appeals Rules and Regulations § 2453-3(c). The Rules and Regulations are signed by the Governor.
[20] *Id.* § 2453-3(d).

The Board did not question the Tax Assessor concerning Gaffin's assessment (even though a representative of the Tax Assessor was present at the hearing). It did not attempt to ascertain whether Gaffin's original assessment complied with IAAO standards, or whether it was even facially erroneous. It did not request information from the Tax Assessor; members of the Board said in no uncertain terms that they did not have all the relevant data they needed: "we didn't get any data from the Tax Assessor for Pam Gaffin;" "we don't have the data to make major adjustments;" "let the Tax Assessor" "apportion how they wish," because, "we don't have the data available to do that." Instead, the Board simply relied on information on the sales values of comparable properties provided by Gaffin herself. In other words, the Board adopted a re-assessment value based solely on comparative property data *provided by the taxpayer herself*, and then adjusted the assessment down from $318,600 to $230,000. Without opining on whether Gaffin's information was accurate[21], the Court finds that the Board failed to act properly in merely relying on such information without first drawing its own conclusions based on evidence from both Gaffin and the Tax Assessor. As the Board's own members made clear, they didn't have the data.[22]

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[21] Gaffin's information may well have been accurate. The Court was impressed by the amount of time and resources that Gaffin committed to her appeal before the Board and to her review before the Court.
[22] Board Member Crites specifically said that, "we don't have the data to make major adjustments," yet the Gaffin's assessment was adjusted from $318,600 down to $230,000. That is a major adjustment, apparently done without sufficient substantiation.

The Court is aware that the Tax Assessor and Gaffin attempted to arrange an inspection of Gaffin's property after Gaffin filed her appeal, but that they were unable to and thus no inspection occurred. However, that does not obviate the need for the Board to have based its decision on appropriate evidence. If the Board was without the evidence it required, it should have refrained from making an adjustment.

The Court finds the Board's decision was clearly arbitrary and capricious, and demonstrably not based on substantial evidence.[23] It must be reversed, and the appeal remanded back to the Board.

On remand, the Board is to again consider Gaffin's appeal. The Board must base its decision on relevant evidence and must determine whether Gaffin's assessment complies with standards outlined by law, even if that means requesting the relevant data and information from the Tax Assessor. The Board must base it decision on substantial evidence.[24]

II. The Court's Review Is Limited to the Board's Adjudication of Gaffin's Individual Assessment.

Gaffin's arguments are very broad and have far reaching effects if successful. The issue of fair taxation is a fundamental one. Drastically unfair taxation of the type alleged here, without an administrative process to provide adequate remedy, would raise significant due process concerns. *See Berne*, 262 F. Supp. 2d at 569 (quoting *Reich v. Collins*, 513 U.S. 106, 108 ("[D]ue process requires a 'clear and

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[23] The Board contends that Gaffin's Petition is an "attempt to now decry the success of her outcome, not by denying the validity of the fair market value ascribed to her home, but by stating her blanket desire to have the tax rate returned to that of 1998[.]" Oppo. 10. But Gaffin did not request that her property be re-assessed at fair market value; she insisted that it should be set at the 1998 level until it could re-valued following appropriate standards, and she made that much clear. Thus, Gaffin did not obtain the outcome she sought. And it is clear that she is not decrying her re-assessment, but instead the failure of the Tax Assessor and the Board to carry out their duties pursuant to law.

[24] The Board's decision on remand might be the same as the original decision, but it may only reach that decision after using the data necessary to determine if the 2014 assessment was proper.

certain' remedy for taxes collected in violation of law."). Gaffin's allegations, if true, evidence that the Government of the Virgin Islands is taxing property owners based on a deeply flawed mass appraisal of property values that produced arbitrary and highly erroneous assessments, without giving those owners proper recourse to challenge those assessments—in short, plausible due process violations.

However, the Court cannot reach Gaffin's broader complaints on this writ of review. In *Pirchardo v. Benjamin*, the Virgin Islands Supreme Court confronted the issue of, but ultimately declined to determine, whether the Superior Court is empowered to hear a due process claim under the Virgin Islands' general writ of review statute.[25] 2008 V.I. Supreme LEXIS 25, *4-7 (declining to decide the issue because the petitioner did not raise her due process claims before the agency). No other Virgin Islands court has addressed the Superior Court's ability to hear constitutional claims on a writ of review. All the same, this Court finds that on this particular writ, complaints beyond a taxpayer's individual assessment are beyond the scope of the Court's review.

Title 33, section 2451 allows, "any person aggrieved by the action of the Tax Assessor *in relation to the valuation of his property*," to make "written complaint thereof" to the Board of Tax Review. (Emphasis added). Following the filing of a complaint, the Board is to determine questions, "which relate to the liability of the

[25] Grounds for Writ, 5 V.I.C. § 1422: "The writ of review shall be allowed in all cases where there is no appeal or other plain, speedy, and adequate remedy, and where the officer, board, commission, authority, or tribunal in the exercise of his or its functions appears to have exercised such functions erroneously, or to have exceeded his or its jurisdiction, to the injury of some substantial right of the plaintiff."

property to assessment, or to the amount thereof[.]" 33 V.I.C. § 2452. The Board, "shall decide all complaints *in respect to the assessment of taxes* and correct all errors made therein." 33 V.I.C. § 2453(a) (emphasis added). The Court finds that the statute grants the Board jurisdiction only to consider complaints regarding individual assessments and amounts thereof. That jurisdiction does not encompass challenges to mass appraisals as a whole. Nor does the Board's jurisdiction reach challenges to the Board's own composition or its compliance with statutory and constitutional demands. The Court, for its part, is restricted to "modify[ing], revers[ing], or affirm[ing] decisions of the Board," 33 V.I.C. § 2453(d), decisions which concern individual assessments.

The Court's findings do not mean that the Tax Assessor, the Board, or their actions are beyond reproach. Cleary, an administrative agency must act in compliance with the law and within Constitutional limits. And again, the Court acknowledges the severity of the allegations that Gaffin makes. Yet Gaffin must bring those allegations before the Court through the filing of action with the Court. A complaint is necessary, detailing Gaffin's allegations, and praying for specific relief. On this writ of review, the most the Court can do is review whether the Board's determination of Gaffin's individual property tax liability was supported by the proper evidence. It has done so and found the Board's findings were not, and in that way Gaffin has successfully obtained the relief she sought.

CONCLUSION

In reviewing property tax assessments on appeal, the Board of Tax Review is tasked with deciding all complaints in respect to the assessment of taxes and correcting all errors made therein. In conducting its review, the Board must base its decisions on substantial evidence. In this case, the Board did not do so. Board members' own admissions that they lacked relevant data demonstrate clearly that the Board's re-assessment of Gaffin's property was arbitrary and capricious, and the Change in Assessment must be reversed. The Court will vacate the Board's decision and remand the matter to the Board. On remand the Board shall reconsider Gaffin's appeal and base its decision on appropriate evidence, considering whether Gaffin's assessment complies with statutory requirements.

In regard to Gaffin's broader complaints with the Virgin Islands tax appraisal system and the system of appeals before the Board, those complaints are outside the Court's scope of review on this writ. The Court is prohibited from reaching those issues, and Gaffin must raise them through a complaint before the Court, independent of her appeal from the Board of Tax Review.

The Court will remand the matter to the Board and direct them to schedule a meeting within ninety (90) days to evaluate Petitioner's appeal of her 2014 property tax bill.

An order consistent with this Memorandum will follow.

DATED: November 9, 2018

Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY:
DONNA DONOVAN
Court Clerk Supervisor 11/9/2018