

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

AUBREY E. BRIDGEWATER,	)	
	)	
Petitioner,	)	CASE NO. ST-13-CV-534
vs.	)	
	)	
PUBLIC EMPLOYEES RELATIONS BOARD	)	
and THE VIRGIN ISLANDS TAXICAB	)	
COMMISSION,	)	
	)	
Respondents.	)	

MEMORANDUM OPINION

Pending before the Court is Respondent Virgin Islands Taxicab Commission's ("VITC") motion to dismiss, which was filed on February 11, 2014.¹ For the following reasons, VITC's motion will be denied and Petitioner's appeal will be dismissed.

FACTUAL AND PROCEDURAL HISTORY

On or about August 9, 2013, Petitioner received a memorandum from VITC advising Petitioner that VITC would be suspending Petitioner for five days. On September 27, 2013, the Public Employees Relations Board ("PERB") issued a decision and order affirming VITC's decision to suspend Petitioner. Petitioner filed an appeal² with this Court on October 7, 2013, challenging the PERB decision.

¹ Petitioner filed an opposition on February 21, 2014; and Respondent filed a reply on March 10, 2014.

² Although Petitioner entitled his submission as a "petition for writ of review," and VITC has similarly identified the submission as such, the submission is actually a notice of appeal under 3 V.I.C. § 530a.

STANDARD

3 V.I.C. § 530a establishes that:

Any party aggrieved by any final order of the PERB issued under section 530³ or 531⁴ of this chapter, may appeal to the Superior Court of the Virgin Islands. An application for review must be filed within 30 days after the date of the Final Order and name the PERB as a party respondent. The rules of procedure of the Superior Court regarding a writ of Review shall govern the appeal proceeding. An application not filed in a timely manner shall entitle the prevailing party or PERB to summary judgment enforcing the final order of the PERB.

ANALYSIS

VITC asserts that Petitioner's appeal must be dismissed because the Court lacks *in personam* jurisdiction over VITC due to Petitioner's failure to serve VITC with a copy of the notice of appeal within 120 days of filing the appeal as required by Federal Rule of Civil Procedure 4(m).⁵ VITC also requests that the Court dismiss Petitioner's appeal for failure to prosecute or to dismiss VITC as a party from the appeal. Petitioner opposes VITC's motion and cites *Crooke v. Government of the V.I.*,⁶ in which the court determined

³ 3 V.I.C. § 530(a)(1) establishes that "[n]otwithstanding any other provision of law, in any case after January 1, 1977, before a head officer of an executive department, agency or instrumentality of the Government dismisses, demotes or suspends a regular employee of a department, agency or instrumentality of the Government, the head officer shall furnish the employee with a written statement of the charges against the employee. The employee shall have ten days following the date of receipt of the statement of charges to appeal the proposed action to the Public Employees Relations Board."

⁴ 3 V.I.C. § 531(b) provides that "[a]ny applicant or employee who has reason to believe that he has been discriminated against because of religious or political opinions or affiliations or race, age or sex or national origin in any personnel action may appeal to the Board."

⁵ Federal Rule of Civil Procedure 4(m) provides that: "If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

⁶ 49 V.I. 46, 47, 2007 V.I. LEXIS 21, 1 (V.I. Super. Ct. 2007).

that "[b]ecause a Petition for Writ of Review is a review of an administrative decision and order and not the institution of a civil action, no summons is warranted."

Petitioner's reliance upon *Crooke* is misplaced because VITC has not moved to dismiss on the basis that Petitioner failed to serve VITC with a summons, but rather because Petitioner failed serve VITC with a copy of the notice of appeal. In addition, VITC's reliance on Fed. R. Civ. P. 4 is misplaced because an appeal under 3 V.I.C. § 530a does not explicitly or implicitly incorporate the Federal Rules of Civil Procedure. Rather, 3 V.I.C. § 530a implicitly incorporates Superior Court Rule 15, the rule of procedure for a writ of review. However, Superior Court Rule 15 does not require compliance with any other rule. Moreover, the Court notes that Fed. R. Civ. P. 4 is a rule for trial proceedings and the instant case is an appeal. While VITC correctly states that 4 V.I.C. § 82(c) requires compliance with Rule 4 of the Federal Rules of Civil Procedure, the statute only applies to "[s]ummonses, complaints and subpoenas" and does not apply to appeals.

As a result, VITC has not demonstrated that this Court lacks jurisdiction to review this appeal and VITC's motion to dismiss will be denied.

Notwithstanding, Petitioner has failed to comply with Superior Court Rule 15, which requires Petitioner to "recite such decision or determination and set forth the errors alleged to have been committed therein." While Petitioner indicates he is challenging a September 27, 2013, decision and order by PERB, he has not set forth the errors alleged to have been committed therein. Instead, he merely states that jurisdiction is proper and attaches a "Pre-Hearing Statement" that was purportedly submitted to PERB in the

underlying case, Case No. PERB-GSA-13-24T. As a result, the "Pre-Hearing Statement" does not set forth the errors that PERB committed in its September 27, 2013, decision and order.

Superior Court Rule 15 is a "mandatory requirement for perfecting judicial review of decisions" of administrative bodies.⁷ And, Virgin Islands courts have determined that a failure to comply with provisions of Superior Court Rule 15 divests the Court of jurisdiction to act.⁸ Given that Petitioner has failed to comply with Superior Court Rule 15 and set forth the errors allegedly to have been committed by PERB, this Court does not jurisdiction over this appeal. Accordingly, Petitioner's appeal will be dismissed with prejudice.

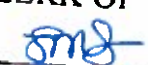
An Order consistent with this Opinion will be entered.

DATED: June 21, 2016


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 
DONNA DONOVAN
Court Clerk Supervisor 6/21/2016

A CERTIFIED TRUE COPY
DATE 06-21-16
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY 
COURT CLERK II

⁷ *Save Long Bay Coalition v. Virgin Islands Bd. Of Land Use Appeals*, 45 V.I. 312, 318 (Terr. Ct. 2003).

⁸ See *Tip Top Construction v. Government of Virgin Islands*, 41 V.I. 72 (Terr. Ct. 1999); see also *Save Long Bay*, *supra*. In both cases, the Court found that failure to comply with Rule 15 deprived the Court of subject matter jurisdiction. The *Save Long Bay* court also rejected an attempt to indirectly comply with Rule 15 by submitting a brief listing numerous reasons why the decision by the administrative agency should be overturned. See *Save Long Bay*, 45 V.I. at 316.