IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

James T. Bland, Trustee of The Bland Family Trust Plaintiffs, v. Government of the Virgin Islands, Angel E. Dawson, Jr., Chairman of the Board of Tax Review, Defendants.	SX-11-CV-350

MEMORANDUM OPINION

THIS MATTER comes before the Court on the Government's Motion to Dismiss for Lack of Jurisdiction and the Plaintiff's Motion for Summary Judgment.

A. Factual Background:

On or about October 22, 2010, Plaintiff James T. Bland submitted an appeal to the Board of Tax Review (hereinafter "Board") challenging the Tax Assessor's assessment of the value of his real property, described as Plots 45 & 46 Estate Herman Hill, for tax year 2006. In essence, Plaintiff alleged that the 2006 taxes levied against the property were based on inaccurately assessed property values. Plaintiff's Notice of Appeal to the Board showed the Tax Assessor's assessment of Plot 45 as undeveloped land valued at $24,300, and Plot 46 as land and improvements valued at $738,000. It also showed Plaintiff's own estimate of Plot 45 as undeveloped land valued at $20,000 and Plot 46 as land and improvements valued $300,000. Although Plaintiff contended that Tax Assessor's assessment of value was inaccurate, the

Plaintiff provided no evidence that the assessment violated a statutory or rule provision or is based on an improper formula.

By written notice dated December 30, 2010, the Board informed the Plaintiff that his appeal had been dismissed. By letter dated January 6, 2011, Plaintiff inquired of the Board as to the basis for the dismissal. The Board responded by letter dated January 19, 2011 and informed Plaintiff that the Board dismissed the appeal because the taxes on the subject property had not been paid by the deadline fixed for filing appeals.[1]

Plaintiff filed a second appeal on or about April 27, 2011, challenging the 2007 assessment and taxes levied against Plot 46. Plaintiff's Notice of Appeal to the Board showed the Tax Assessor's assessment of Plot 46 as land and improvements valued at $451,000. It showed Plaintiff's estimate of Plot 46 as land and improvements valued at $295,000. There is no evidence that Plaintiff appealed the assessment of Plot 45 for the 2007 tax year. By letter dated June 21, 2011, the Board informed the Plaintiff that it upheld the Tax Assessor's assessment and determined that there were no changes to be made to that assessment.

On or about July 22, 2011, Plaintiff brought the instant action against the Government and the Chairman of the Board of Tax Review by filing a complaint with the Court seeking damages and a refund of the overpayment of taxes paid on the property for the period 1998 through 2007. The basis of the claim is that the tax assessor has been levying taxes based on an improper and inflated value of the property. The Government, after some delay, filed an Answer to the Complaint and subsequently filed a Motion to Dismiss for Lack of Subject Matter

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[1] There is no evidence of a fixed deadline for filing tax appeal as specifically applicable to the facts of this case. V.I. Code tit. 33 § 2451(a) sets a deadline for the filing of an appeal as September 15 succeeding the year in which the assessment is made. However, V.I. Code tit. 33 § 2452 requires that the Board conducts a hearing within 120 days of the filing of a complaint. The complaint challenging the Tax Assessor's assessment for the 2006 tax year was filed on October 22, 2010 and dismissed on December 30, 2010.

Jurisdiction. The Plaintiff has filed a Motion for Summary Judgment, and the Government interposed a response. For the reasons set forth below, the Court will grant the Government's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

B. The legal Framework of Tax Appeals:

The provisions for a tax payer's challenge to the Tax Assessor's valuation of property and corresponding assessment of taxes are outlined in V.I. Code tit. 33 §§ 2451 - 2454. Summarily, these provisions require the aggrieved taxpayer to file an appeal with the Board of Tax Review (Board) and if dissatisfied with the decision of the Board, to file a Petition for Review with the Superior Court within thirty (30) days of receipt of the Board's decision.

C. The Court's Authority to Grant Relief:

Prior to considering the merits of a matter before it, a court is obligated to determine whether it has subject matter jurisdiction over the dispute. *Brunn v. Dowdye*, 59 V.I. 899, 904 (V.I. 2013) citing *V.I. Gov't Hosp. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 279 (V.I. 2008). In the instant matter, the Court must resolve two issues to determine its subject matter jurisdiction. The first is whether the Plaintiff timely requested review of the decision of the Board of Tax Review with respect to the dismissal of his appeal of the 2006 assessments, and the denial of relief with regard to the appeal of the 2007 assessments. The second is whether the Plaintiff followed the appropriate statutory procedures when he filed his complaint with the Superior Court.

V.I. Code tit. 33 § 2451(a) provides in pertinent part:

> Any person aggrieved by the action of the Tax Assessor in relation to the valuation of his property may make written complaint thereof to the Board of Tax Review, ...

V.I. Code tit. 33 § 2453(d) provides in pertinent part:

> The decision of the Board of Tax Review in all matters coming before it under this subtitle shall be final unless the taxpayer within 30 days after receipt from the Board of the notice provided in section 2454 of this title, petitions the Superior Court of the Virgin Islands for a review. A copy of this petition must be served on the Chairman of the Board of Tax Review. The Superior Court may modify, reverse or affirm the decision of the Board of Tax Review.

The Board rendered its decision and informed the Plaintiff of the dismissal of his appeal of the 2006 assessments by written notice dated December 30, 2010. Through further correspondence dated January 19, 2011, the Board explained to Plaintiff that the Board did not consider his appeal[2] because the taxes for the year in question had not been paid by December 1, 2010, which was the deadline for filing appeals.[3] Plaintiff did not file a Petition for Review with the Superior Court challenging the decision of the Board of Tax Review.

Subsequently, the Board convened a hearing on June 16, 2011, to address the Plaintiff's appeal of the Tax Assessor's valuation and assessment with regard to the 2007 taxes. The Board issued written notice of its decision on June 21, 2011. The Board's decision affirmed the Tax Assessor's assessment.

Subsequent to his receipt of the Board's decision on his appeal for tax year 2007, Plaintiff filed a complaint with the Superior Court. The filing of the complaint raises issues of the Court's subject matter jurisdiction and its authority to entertain Plaintiff's complaint. The first issue that impacts the Court's jurisdiction concerns the timeliness of the Plaintiff's request to the Superior Court for relief in relation to the Board's decision on his appeal of the Tax Assessor's assessments. If the complaint is considered a Petition for Review as Section 2453(d) requires,

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[2] The reference to a deadline does not appear to be relevant since V.I. Code tit. 33 § 2451 provides the Board of Tax Review with authority to immediately dismiss any complaint that does not contain proof of payment of current assessment during the pendency of the appeal.

[3] The Board informed the Plaintiff by letter of January 19, 2011 that by Executive Order of the Governor, the deadline for filing tax appeals was December 1, 2010.

this Court would lack jurisdiction to hear the matter on its merits with respect to the dismissal of Plaintiff's appeal of the 2006 tax assessments. V.I. Code tit. 33 § 2453(d) requires the taxpayer to file a Petition for Review with the Superior Court within thirty (30) days of receipt of the decision of the Board. The Plaintiff acknowledged receipt of the Board's decision on January 6, 2011.[4] The Plaintiff filed his complaint with the Court on July 22, 2011, more than six (6) months after his receipt of the Board's decision. Given the requirements of V.I. Code tit. 33 § 2453(d), the filing of the complaint would be untimely. When the time to appeal or seek review of an administrative decision is established by statute, timeliness is a jurisdictional issue. Therefore, a petition filed out-of-time deprives the court of jurisdiction to entertain the appeal. *Gov't of the V.I. v. Crooke*, 54 V.I. 237, 253 (VI 2010) citing *Bowles v. Russell*, 551 US 205(2007). The late filing denies the Court of subject matter jurisdiction.

With regard to the assessment for the 2007 tax year, the Government contends that the complaint, if considered a writ of review, was filed outside the time period prescribed to file writs of review. The Board rendered its decision on Plaintiff's appeal of the 2007 assessment on June 21, 2011. The Government argues that the Plaintiff had until July 21, 2011 to file his writ of review. It would appear that the Government argues that the time for seeking review should be calculated from the date of issuance of the Board's decision. This argument is inconsistent with the applicable statutory provisions. Section 2453(d) expressly states that a petition for review shall be filed within thirty (30) days of the taxpayer's receipt of the Board's notice. It is unlikely that the Plaintiff received notice of the Board's decision on the same day it was issued considering that it was sent by regular mail. The time for filing an appeal or seek review of an

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[4] The Plaintiff's January 6, 2011 letter to the Board acknowledged that the Plaintiff received the Board's Notice of Dismissal on that same day. Plaintiff's Supplemental Brief in opposition to Defendants' Motion to Dismiss for lack of Jurisdiction also notes that Plaintiff received the Board's Notice of Dismissal on January 6, 2011.

agency decision is governed by the provisions prescribed in the applicable statutes. Therefore, the computation of time for the filing appeal or seek review of the Board's decision would commence upon Plaintiff's receipt of the notice. *Worldwide Flight Services v. Gov't of the V.I.*, 51 V.I. 105, 109 (V.I. 2009). Accordingly, the computation of the time depends upon Plaintiff's receipt of the Notice as established by Section 2453(d). The Plaintiff acknowledged receipt of the Board's Notice on June 28, 2011. There is nothing in the record that the Plaintiff received a notice on any other day. The Plaintiff's July 22, 2011 complaint would be timely filed if Plaintiff received the Board's decision on June 22, 2011 or any time thereafter. Therefore, if the complaint were to be considered a petition for review, it would have been timely filed and the Court would have subject matter jurisdiction with respect to the Board's decision on the assessments for the year 2007.

Despite the timeliness of the complaint as it concerns the assessment for tax year 2007, there is a second issue that impacts on the Court's jurisdiction. This issue implicates the procedure which Plaintiff employed to seek redress in the Superior Court. Rather than filing a Petition for Review as Section 2453(d) requires, Plaintiff filed an original complaint alleging that his property taxes were based on an incorrectly assessed value of his property. The complaint seeks damages for the incorrect assessment for the period 1998 through 2007. While the complaint filed with the Court challenges the Tax Assessor's assessment of the value of the Plaintiff's properties, it is not a Petition for Review under section 2453(d). In substance, a petition for review would outline the errors of the Board's decision for this Court to review.

A review or appeal is a proceeding undertaken to have a higher court consider the decision of a lower court or agency. *In re Petition for Disbarment of Plaskett*, 56 V.I. 441, 448 (VI 2012). A review or appeal asks a court to consider the decision of a lower court or agency and in seeking relief, request that the Court modifies, vacates or reverses the lower court's or agency's decision. On the other hand, a complaint is an original pleading requesting relief and does not ask the higher court to review the decision of a lower court or agency. Plaintiff's complaint does not ask the Superior Court to consider identified errors of the Board of Tax Review so as to modify, reverse or affirm the Board's decision. The complaint requests damages which are a different form of relief. Accordingly, Plaintiff's complaint does not qualify as a Petition for Review. By virtue of Title 33 V.I.C. § 2453(a) a taxpayer who is dissatisfied with the decision of the Board may invoke the Superior Court's jurisdiction by Petition of Review. The Plaintiff did not invoke the Superior Court's jurisdiction under the appropriate procedure. When a statute establishes a specific procedure for invoking the Superior Court's jurisdiction, the failure to follow that procedure deprives the court of its jurisdiction. *Narcotics Strike Force v. Gov't of the V.I.*, PERB, 60 V.I. 204, 217 (VI 2013). Plaintiff did not follow the proper procedure to seek redress of the Board's decision. Therefore, the Court lacks jurisdiction to entertain the Plaintiff's complaint.

CONCLUSION:

The Plaintiff's failure to timely file a Petition for Review with respect to the Board's denial of his appeal of the 2006 tax assessments, deprives the Court of jurisdiction to hear the merits of his case with respect to the 2006 assessments. Moreover, the Court lacks jurisdiction to entertain the Plaintiff's complaint since a Petition for Review is statutorily required for addressing tax payer grievance and dissatisfaction with the decisions of the Board of Tax Review. The Defendant's Motion to Dismiss is **GRANTED**. An appropriate order will follow.

DATED this 27 day of April, 2017.

Jomo Meade
JOMO MEADE
Judge
Superior Court of the Virgin Islands

ATTEST:
Estrella George
Clerk of the Court

By: ____________
Court Clerk Supervisor

Dated: 5 / 1 / 17