

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Rogério S. Tavares

v.

**R.I. Division of Motor Vehicles
(R.I. Vehicle Value Commission)**

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A.A. No. 2015 – 048

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED

that the Findings and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the decision of the Vehicle Value Commission is VACATED and the matter REMANDED to the Commission for further proceedings consistent with the attached opinion.

Entered as an Order of this Court at Providence on this 28th day of December, 2015.

By Order:

_____/s/
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/
Jeanne E. LaFazia
Chief Judge

Rogério S. Tavares :
 :
 v. : A.A. No. 2015 – 048
 :
 R.I. Division of Motor Vehicles :
 (R.I. Vehicle Value Commission) :

FINDINGS AND RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. Rogério S. Tavares urges that the Rhode Island Vehicle Value Commission (RIVVC) erred when it rejected his appeal of a motor vehicle excise tax assessment. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 44-34-8 and the applicable standard of review is found in subsection 42-35-15(g). This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. After a review of the entire record I find that — for the reasons explained below — that this matter must be REMANDED to the

Vehicle Value Commission so that it may forward to us the written decision it rendered in this case.

I

FACTS AND TRAVEL OF THE CASE

Appellant, a resident of Providence, is the owner of a 2007 Infiniti M45. When he received his 2014 Motor Vehicle Excise Tax bill, he disagreed strongly with the assessment of his vehicle. Accordingly, on July 8, 2014, he filed an appeal with the Rhode Island Vehicle Value Commission, pursuant to Gen. Laws 1956 § 44-34-8. See Exhibit 1, appended to Appellant's Memorandum. According to a letter Mr. Tavares received from the Providence Tax Assessor, the Commission upheld his assessment on or about October 28, 2014.

On or about May 5, 2015, Mr. Tavares filed a complaint for judicial review in the Sixth Division District Court. After a conference failed to resolve the instant appeal a briefing schedule was set. The Vehicle Value Commission filed its Memorandum of Law on July 13, 2015; thereafter, Mr. Tavares filed his Memorandum on August 13, 2015.

II
LAW REGARDING REVIEW

A
Jurisdiction

Jurisdiction to hear appeals from the decisions of the Commission is vested in the Rhode Island District Court by Gen. Laws 1956 § 44-34-8(b):

44-34-8. — Appeal procedure. — (a) ...

(b) Within thirty (30) days of the notification of the decision of the tax assessor or the commission, an aggrieved taxpayer may appeal the decision to the district court for the judicial division within which the city or town is located.

(c) ...

B
Administrative Procedures Act

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 42-35-15(g), a provision of the Rhode Island Administrative Procedures Act (APA), which provides as follows:

(g) Standard of review. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;

- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”¹ Thus, the Court will not substitute its judgment for that of the agency (here, the Commission) as to the weight of the evidence on questions of fact.² Stated differently, the findings of the Commission must be upheld even though a reasonable mind might have reached a contrary result.³

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

² Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

³ Id., at 506-507, 246 A.2d at 215.

III APPLICABLE LAW

This case centers on Mr. Tavares' displeasure with the Commission's assessment of his vehicle's value. In a nutshell, he urges that the Commission's reliance on a commercial valuation guide in setting his valuation was improper, because his valuation did not reflect the fact that his vehicle had been severely damaged and had undergone much repair and reconstruction.

However, this Court recently affirmed a valuation rendered by the Vehicle Value Commission which employed such a generalized approach, on the ground that the use of such guide-books was specifically authorized by statute.⁴

⁴ See Nadeau v. R.I. Vehicle Value Commission, A.A. No. 2014-139, at 5, (Dist. Ct. 5/29/15) citing the following portion of Gen. Laws 1956 § 44-34-11(c) – (c) The commission shall annually determine the presumptive values of vehicles and trailers subject to the excise tax in the following manner:

- (1) Not earlier than September 30 and not later than December 31 of each year, the commission shall by rule adopt a methodology for determining the presumptive value of vehicles and trailers subject to the excise tax which shall give consideration to the following factors:
 - (i) The average retail price of similar vehicles of the same make, model, type, and year of manufacture as reported by motor vehicle dealers or by official used car guides, such as that of the National Automobile Dealers Association for New England. Where regional

III INSUFFICIENCY OF THE RECORD

Although, as stated in Part II of this opinion, this Court has recently decided an appeal from the RIVVC, I do not believe we can address the instant case at this time. Quite simply, the decision of the Commission, from which Mr. Tavares appeals, is not contained in the record forwarded to this Court. And so, I must recommend that the case be remanded so that the Commission's complete file on this case may be certified to us.

In making this recommendation, I have assumed that such a decision has been formally made. If not, I would expect that such a decision should be rendered promptly.⁵

guides are not available, the commission shall use other publications deemed appropriate; and

(ii) Other information concerning the average retail prices for make, model, type, and year of manufacture of motor vehicles as the director and the Rhode Island vehicle value commission may deem appropriate to determine fair values. (Emphasis added).

Note: the case cited above is available on the judiciary's web site, at <https://www.courts.ri.gov/Courts/districtcourt/DistrictDecisions/14-139.pdf>.

⁵ If a formal decision has not been rendered, we have an additional problem — the instant case is not justiciable, not ripe for review.

IV
CONCLUSION

Accordingly, I recommend that the instant case be REMANDED to the Rhode Island Vehicle Value Commission.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

December 28, 2015