

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

REUBEN DOWLING,

Plaintiff,

v.

**UNITED STATES GOVERNMENT,
VIRGIN ISLANDS GOVERNMENT,
and ALMORE FREDERICKS,**

Defendants.

2000-CV-0049

**TO: Lee J. Rohn, Esq.
Angela Tyson-Floyd, Esq., AUSA
Richard Schrader, Jr., Esq., AAG**

ORDER DENYING PLAINTIFF'S MOTION FOR SANCTIONS

THIS MATTER came before the Court upon Plaintiff's Motion for Sanctions and/or to Re-Open Discovery (Docket No. 348). In it's Order (Docket No. 367), entered July 10, 2008, the Court deferred ruling upon said motion, allowing Defendant Virgin Islands Government to submit a certification regarding its possession of the tapes at issue. Said Defendant filed such certification (*see* Docket No. 368) on July 25, 2008.

Having reviewed the affidavit of Leonardo Carrion and being fully satisfied therein, the Court finds that said Defendant is unable to locate the tapes at issue. The Court cannot order said Defendant to produce or sanction said Defendant for failing to produce evidence

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it cannot find. Because such evidence is unavailable, re-opening discovery is not required.

Consequently, the Court will deny Plaintiff's said motion.

Accordingly, it is hereby **ORDERED** that Plaintiff's Motion for Sanctions and/or to Re-Open Discovery (Docket No. 348) is **DENIED**.

ENTER:

Dated: July 29, 2008

_____/s/
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE