IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JAY WATSON **Plaintiff**)	CASE NO. SX-12-CV-0000301
)	ACTION FOR: INJUNCTIVE RELIEF
vs)	
GOVERNMENT OF THE VIRGIN ISLANDS GOVERNOR, JOHN P. DE JONGH)	

Defendant

NOTICE OF ENTRY OF ORDER DENYING SUMMARY JUDGMENT

TO: JAY T. WATSON
ANGELA POLK, ESQ.,

Please take notice that on October 29, 2014 a(n) ORDER DENYING SUMMARY JUDGMENT dated October 29, 2014 was entered by the Clerk in the above-entitled matter.

Dated: October 29, 2014

Estrella H. George
Acting Clerk of the Court

JUDITH WARD-HALL
COURT CLERK SUPERVISOR

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JAY T. WATSON, PLAINTIFF, v. **GOVERNMENT OF THE VIRGIN ISLANDS AND GOVERNOR JOHN P. DE JONGH, JR.,** DEFENDANTS.	**SX-12-CV-301** **ACTION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff Jay Watson's (hereinafter "Plaintiff") Motion for Summary Judgment, filed on August 28, 2013. Defendants Government of the Virgin Islands and Governor John P. de Jongh, Jr. (hereinafter "Defendants") filed their opposition to Plaintiff's Motion on September 17, 2013. Plaintiff filed a reply to Defendants' opposition on September 23, 2013. For the reasons set forth below, the Court will deny Plaintiff's Motion.

FACTS AND PROCEDURAL HISTORY

In 2008, Defendant Governor de Jongh submitted legislation to the 27th Legislature that sought to abolish the Virgin Islands Drug Enforcement Bureau (hereinafter "Drug Enforcement Bureau") formerly known as the Virgin Islands Narcotics Strike Force. The purpose of the legislation was to "[increase] efficiency within the Government of the Virgin Islands" and "[improve] law enforcement means" because, according to the Governor, the Drug Enforcement Bureau "though well-intended, [had] not lived up to its mandate" (Plaintiff's Exhibit XX). The Legislature never acted on Defendant Governor de Jongh's proposed legislation.

That same year, the annual budget for the Territory for Fiscal Year 2009 was submitted to the Legislature by Defendants. The annual budget did not specifically identify funding for the Drug Enforcement Bureau. The Drug Enforcement Bureau was later closed by Defendants because of what they cited as a lack of funding from the Legislature. As a result, all of the Drug Enforcement Bureau's employees, including Plaintiff, were transferred or reassigned to other government agencies.

On August 20, 2010, the Legislature enacted Act 7194. This legislation renamed the Drug Enforcement Bureau the Virgin Islands Bureau of Narcotics and Dangerous Drug Control (hereinafter "Bureau of Narcotics") and removed the agency from the jurisdiction of the Office of the Governor. Governor de Jongh originally vetoed Act 7194, however, the Legislature overrode his veto on September 20, 2010. Under Act 7194, the Bureau of Narcotics became a semi-autonomous agency under the executive branch, controlled by a director and a board. Act 7194 also includes a reinstatement provision that requires "[a]ll former non-agent employees of the Virgin Islands Drug Enforcement Bureau" to be reinstated into the Bureau of Narcotics unless those employees choose otherwise. *See* 3 V.I.C. 1234(a). Plaintiff was never transferred back to his position as Drug Enforcement Agent under the renamed agency.

Plaintiff filed an action for declaratory judgment and injunctive relief against Defendants on August 8, 2012. In his suit Plaintiff challenges the dismantling of the Drug Enforcement Bureau and Defendants' failure to reassign him to the Bureau of Narcotics. Plaintiff alleges that by closing the Drug Enforcement Bureau, Defendants "abolish[ed] a statutory agency of the Government of the Virgin Islands . . . in a manner that exceeded their constitutional, statutory and discretionary authority" (Compl. ¶ 5). Plaintiff also alleges that Act 7194 mandated the return of all drug enforcement agents who were reassigned after the closing of the Drug Enforcement Bureau.

Defendants filed an Answer to Plaintiff's Complaint on January 16, 2013, and discovery proceedings commenced soon after. On April 10, 2013, Plaintiff served his Request for Admissions on Defendants. When Defendants did not respond to Plaintiff's request, Plaintiff filed a Motion and Brief to Deem Facts Admitted. Defendants never responded to Plaintiff's Motion. Plaintiff's Motion was granted by Order entered August 12, 2013. On August 28, 2013, Plaintiff filed his Motion for Summary Judgment asserting that there is no genuine issue of material fact on his claims, and therefore he is entitled to judgment as a matter of law.

DISCUSSION

A motion for summary judgment shall be granted, "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).[1] Once this showing has been made the non-moving party bears the burden of disproving the moving party's assertion that there is no genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The test to determine summary judgment is two-part: "[W]hether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Maduro v. American Airlines, Inc.*, No. 2007/029, 2008 WL 901525 *3 (V.I. 2008). Plaintiff has overcome his burden of proving there is no genuine dispute as to any material fact, however, he has failed to prove he is entitled to judgment as a matter of law.

[1] The Federal Rules of Civil Procedure are made applicable to this Court through Rule 7 of the Rules of the Superior Court.

I. Plaintiff Has Met His Burden of Showing There is No Genuine Issue of Material Fact

Federal Rule of Civil Procedure 36(a)(3)[2] states that "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection." On May 20, 2013, Plaintiff filed a Motion and Brief to Deem Facts Admitted against Defendants. Defendants never responded, and on August 12, 2013, an Order was entered granting Plaintiff's Motion. In Defendants' response to Plaintiff's Motion for Summary Judgment they seem to argue that this Court should disregard the August 12, 2013 Order which deemed the facts in Plaintiff's Rule 36 Request for Admissions admitted, and not consider these facts in the summary judgment ruling. The issue regarding whether these facts should be admitted, however, has already been ruled on and is no longer before the Court. As such, this Court stands by the August 12, 2013 Order and will use the admitted facts to form the basis of its summary judgment ruling. With no facts stated to the contrary[3], this Court finds that Plaintiff has met his burden of showing that there is no genuine issue of material fact.

II. Plaintiff is Not Entitled to Judgment as a Matter of Law

The legal issues central to this case are: (1) whether Defendants violated Section 11 of the Revised Organic Acts and Title 3 of the Virgin Islands Code when they closed the Drug Enforcement Bureau; and (2) whether Defendants' failure to transfer Plaintiff and other former Drug Enforcement Bureau Narcotics Agents back to the renamed Bureau of Narcotics is a violation of Title 3, Section 1294 of the Virgin Islands Code. This Court will first address the

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[2] Federal Rule of Civil Procedure 36(a)(3) is made applicable to this Court through Rule 39 of the Rules of the Superior Court, which reads: "Depositions and discovery shall be had in the Superior Court of the Virgin Islands, pursuant to the provisions of Rules 26 to 37, inclusive of the Federal Rules of Civil Procedure."

[3] The Court recognizes that in Defendants' Response they argue that the issue regarding whether Plaintiff was required to be reinstated to the Bureau of Narcotics is clearly a genuine issue of material fact, however, the Court views this as a legal issue rather than a factual issue and will address it as such.

alleged illegal closure of the Drug Enforcement Bureau, and then address whether Defendants were required to transfer Plaintiff to the Bureau of Narcotics.

A. Defendants' Closure of the Drug Enforcement Bureau Was Not an Abuse of Power under the Revised Organic Act or Virgin Islands Code

Section 11 of the Revised Organic Act of 1954 gives the Governor "general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of the Virgin Islands." Section 11 also states that the Governor "shall be responsible for the faithful execution of the laws of the Virgin Islands." This responsibility implies that the Governor must abide by the laws enacted by the Legislative Branch. *See Felix v. Gov't of the V.I.*, 3 V.I. 399 (D.V.I. 1958). As long as the Governor observes the laws and acts within the limits of powers conferred on him, his actions in respect of discretionary and political power are not reviewable by the courts. *Id.* at 706-08.

To support his argument that Defendants illegally closed the Drug Enforcement Bureau, Plaintiff refers to now repealed Title 3, Section 27g(k) of the Virgin Islands Code: "The budget for the Strike Force shall be included in the budget of the Governor for each fiscal year." Former Section 27g(l) goes on to say that "[a]ll funds appropriated for drug and narcotics enforcement and for other drug enforcement activities shall be appropriated to the Office of the Governor." Plaintiff argues that both of these sections, which were in effect when the Drug Enforcement Bureau was closed by Defendants, required Defendants to fund the needs of all statutorily mandated entities even in the absence of a specific line item appropriation for those entities. This argument, however, is erroneous. There is nothing in the plain language of these sections that directed Defendants to perform any specific action with the money appropriated to them by the Legislature. [4] Section 27g(k) merely mandated that the Governor include the Drug Enforcement Bureau budget within his proposed budget, while Section 27g(l) only specified where money appropriated for drug and narcotics enforcement should go. Neither section directed what the Governor must do with the money appropriated by the Legislature or what he should do if the Legislature failed to appropriate funds. In fact, contrary to Plaintiff's argument, former Section 27g(b) put the Drug Enforcement Bureau under the exclusive jurisdiction, control, and direction of the Governor. This meant that the Governor had the discretionary authority to transfer Drug Enforcement Bureau employees to other government agencies due to a lack of funding.

The details of the executive budget are spelled out in Title 2 of the Virgin Islands Code. Title 2, Section 19 of the Code states:

> It is the purpose of this act to establish a comprehensive system for program and financial management which furthers the capacity of the Governor and Legislature to plan and finance the services which they determine the Government of the United States Virgin Islands will provide for its citizens.

Accordingly, under Section 19, the Governor and Legislature are to work together to plan and finance government services. It is the responsibility of the Governor to direct the preparation and administration of the budget for the Territory. V.I. CODE ANN. tit. 2, § 20 (1970). Section 9(c) of the Revised Organic Act of 1954 provides that the Governor's budget "shall be the basis of the appropriation bills for the ensuing fiscal year." To that end, once the budget has been prepared, the Legislature is responsible for considering the Governor's recommendations and

[4] "In interpreting statutory texts courts use the ordinary meaning of terms unless context requires a different result." *Gonzales v. Carhart*, 550 U.S. 124, 152 (2007).

adopting those it deems appropriate. 2 V.I.C. §§ 21(1)-(2). This means the Legislature has the final say concerning which services receive funding.[5]

The facts indicate that Defendants "failed to submit a proposed budget for the Virgin Islands Drug Enforcement Bureau to the Virgin Islands Legislature in 2008 and 2009 for fiscal years 2009 and 2010" (Request for Admissions #8). Plaintiff is correct that this means that the Governor failed to follow former Section 27g(k). However, this fact still does not support his assertion that Defendants illegally closed the Drug Enforcement Bureau. "The Organic Act places the purse strings of government finances in the hands of the Legislature." *Chiang v. Turnbull*, 43 V.I. 49, 63 (Terr. Ct. 2000). In addition, as stated above, the Legislature has the final say concerning which government programs and services receive funding. Thus, the Legislature always had the power to appropriate funds to the Drug Enforcement Bureau, regardless of whether a budget for the Drug Enforcement Bureau was included in the proposed budget of the Governor. According to the facts deemed admitted and exhibits provided by Plaintiff, the Legislature did not appropriate funds to the Drug Enforcement Bureau. If Plaintiff had provided facts indicating that Defendants illegally withheld money appropriated to the Drug Enforcement Bureau, such facts would have demonstrated a clear abuse of power by the Governor. In this case, however, because the facts show that the Legislature did not appropriate funds to the Drug Enforcement Bureau, the Defendants did not exceed their statutory authority when they used their discretion to transfer employees from an executive agency that had not received funding from the Legislature to other government agencies.

[5] Title 2, Section 25 of the Virgin Islands Code provides further support for this statement. Section 25 reads: The Legislature shall consider the Governor's proposed comprehensive program and financial plan; evaluate alternatives to the Governor's recommendations; *and determine the comprehensive program and financial plan to support the services to be provided the citizens of the Virgin Islands*" (emphasis added).

B. Chapter 42 of Title 3 of the Virgin Islands Code Does Not Require Defendants to Transfer Former Drug Enforcement Bureau Narcotics Agents to the Renamed Bureau of Narcotics

In his Motion for Summary Judgment, Plaintiff asks this Court to declare that he is and continues to be a Narcotics Agent within the Bureau of Narcotics. According to Plaintiff, Act 7194 required that all drug enforcement agents who were reassigned after the closure of the Drug Enforcement Bureau be returned to the newly formed Bureau of Narcotics. Act 7194 amended Title 3 of the Virgin Islands Code by striking Sections 27g and 27h in their entirety and adding a new Chapter 42, which includes Sections 1214-35. Section 1234(a) reads as follows:

> All former *non-agent* employees of the Virgin Islands Drug Enforcement Bureau who were transferred or assigned to other territorial law enforcement and government agencies and who currently are working in other territorial law enforcement and government agencies must, unless they otherwise express a contrary intent pursuant to section 1235 of this chapter, be reinstated into the Virgin Islands Bureau of Narcotics and Dangerous Drugs Control (emphasis added).

Defendants argue that Plaintiff's job classification as Narcotics Agent removes him from the "reinstatement" provision of Section 1234(a).

Section 1215(a)(1) defines "agents" as "members of the Virgin Islands Bureau of Narcotics and Dangerous Drugs Control." This definition mirrors the definition used for "agent" under former Section 27g. A further reading of Chapter 42 indicates that "agents" or "members" of the Bureau of Narcotics are essentially law enforcement officers. For example, Section 1218(f) reads "[i]n addition to the functions specified in this section, the members of the Bureau shall have the same law enforcement powers as police officers of the Virgin Islands Police Department including, but not limited to, peace officers status pursuant to title 5 V.I.C., 3561." It is clear that the Legislature's intent was to leave employees classified as "agents" out of the reinstatement provision of Section 1234(a) and only make this option applicable to former staff of the Drug Enforcement Bureau.

Plaintiff refers to Section 1220(a) to support his assertion that members of the Drug Enforcement Bureau were automatically members of the new Bureau of Narcotics. Section 1220(a) states "[a]ll members of the Bureau, including those on loan from other local government departments or agencies, are accountable to and under the direct control and supervision of the Director." Section 1215(2) defines "Bureau" as "the Virgin Islands Bureau of Narcotics and Dangerous Drug Control." Section 1220(a) makes no mention of members of the former Drug Enforcement Bureau. Section 1220(a) speaks solely to current members of the Bureau of Narcotics and those on loan from other agencies. It cannot be read to include former members of the Drug Enforcement Bureau when section 1234(a) specifically addresses the issue of reinstatement of former employees from the Drug Enforcement Bureau without including former "agents" or "members" as persons required to be reinstated into the Bureau of Narcotics.

Another important point to note about Act 7194 and the addition of Chapter 42 is that it not only renamed the Drug Enforcement Bureau, but it also continued the agency as a semi-autonomous entity within the executive branch, removing it from the exclusive jurisdiction, control, direction of the Governor and placing it into the hands of the Virgin Islands Bureau of Narcotics and Dangerous Drugs Control Board (hereinafter "Board"). Assuming arguendo, Plaintiff's argument was correct, it would have been the responsibility of the Board to reinstate him as a Narcotics Agent with the new agency, not the responsibility of the Governor or the Executive branch.

CONCLUSION

Although Plaintiff has met his burden of showing that there is no genuine issue of material fact necessary for this matter to proceed to trial, this Court cannot find that he is entitled to judgment in his favor as a matter of law. The facts presented do not indicate that Defendants stepped outside of their statutory authority when they transferred Drug Enforcement Bureau employees to other agencies due to a lack of funding. As a result, the Court cannot review these actions nor declare them illegal. Also, the law does not support Plaintiff's assertion that Defendants are required to reinstate him as a Narcotics Agent with the Bureau of Narcotics. Defendants are not legally authorized to perform such an action because the Bureau of Narcotics is not under their jurisdiction or control. In addition, Section 1234(a) is the only provision in Chapter 42 that addresses the reinstatement of former Drug Enforcement Bureau employees to the Bureau of Narcotics, and it is only applicable to "non-agent employees." Plaintiff has not presented facts demonstrating that he is entitled to judgment as a matter of law, thus Plaintiff's Motion for Summary Judgment is denied. Accordingly, it is hereby:

ORDERED that Plaintiff's Motion for Summary Judgment is **DENIED**.

DONE and so ORDERED this 29 day of October, 2014.

Harold W. L. Willocks

Harold W. L. Willocks
Administrative Judge of the Superior Court

ATTEST:
Estrella George
Acting Clerk of the Court

By: ______________________
Court Clerk Supervisor

Dated: 10 / 29 / 14