IN THE APPELLATE DIVISION OF SUPERIOR COURT OF THE VIRGIN ISLANDS

GREGORY HODGE, Defendant/Petitioner On Review, vs. **MELVIN WALTERS,** Plaintiff/Respondent On Review,	)	**Case No. ST-16-RV-8** **(Case No. ST-16-SM-288)**

MEMORANDUM OPINION

Pending before the Court is Petitioner Gregory Hodge's appeal of a Judgment issued by the Magistrate Division on September 14, 2016. For the following reasons, that Judgment will be affirmed.

RELEVANT BACKGROUND AND PROCEDURAL HISTORY

Petitioner Gregory Hodge, a/k/a DJ Avalanche, is a radio personality and host of the DJ Avalanche Radio Show. On March 17, 2015, DJ Avalanche and Melvin Walters signed a "Consulting Agreement" whereby DJ Avalanche agreed to hire Walters to solicit radio ads for the DJ Avalanche Radio Show, and to provide any or all forms of marketing and public relation on behalf of DJ Avalanche.[1] As DJ Avalanche's media consultant, Walters sought out businesses that wanted to advertise on the DJ Avalanche Radio Show[2], and in exchange, for those services, DJ

[1] Plaintiff's Exhibit No. 1 ("Consulting Agreement")
[2] Hearing Transcript, p. 5 ¶15-19.

Avalanche would pay Walters "50% commission on direct sales contracts...payable upon the completion of the Services, on the 15th and 30th of each month..."[3] The Consulting Agreement did not provide a term or expiration date. Instead it stated:

> The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Agreement. The Term of this Agreement may be extended by mutual written agreement of the Parties.[4]

Despite reference to "termination as provided in this Agreement", the Agreement contained no language on how it could be terminated or under what circumstances termination would be permissible.

Nearly seven months later, in October 2015, Walters completed an advertising agreement with the Virgin Islands Lottery (V.I. Lottery).[5] According to the advertising agreement, the DJ Avalanche Radio Show would broadcast ads for the Virgin Islands Lottery from October 12, 2015 until October 12, 2016 "at a rate of $21,000 per year @$1,750 per month."[6]

Walters also entered into advertisement agreements with Innovative for $612.00[7] and Tutu Park Mall for $178.32.[8] Both of these agreements provided for ads on the DJ Avalanche Show.

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[3] Plaintiff's Exhibit No. 1 ("Consulting Agreement") p.2 ¶6.
[4] *Id.* p.1 ¶3.
[5] Plaintiff's Exhibit No. 2 ("Radio Show Advertising Agreement") p.1.
[6] *Id.*
[7] Plaintiff's Exhibit 3.
[8] Plaintiff's Exhibit 5.

From October 2015 through February 2016, DJ Avalanche broadcast ads for the V.I. Lottery, and Walters billed DJ Avalanche for $875 each month (50% of the $1,750), in accordance with their agreement.[9] However, on April 1, 2016, DJ Avalanche sought to immediately end his agreement with Walters, and wrote a termination letter to Walters, and both parties signed it on April 1, 2016.[10]

After Walters's termination, DJ Avalanche continued publishing V.I. Lottery ads under the V.I. Lottery advertising agreement. Concurrently, Walters continued to bill DJ Avalanche each month remaining under the advertising agreement, but DJ Avalanche did not make any further payments to Walters after the April termination letter. Eventually on August 15, 2016, Walters filed a small claims debt action in the Magistrate Division of the Virgin Islands Superior Court hoping to recover compensation from DJ Avalanche.

The lower court found that Walters—despite being terminated on April 1, 2016—was still entitled to receive compensation from April 2016 until the VI Lottery advertising agreement was completed in October 2016. The court explained "maybe after April 1st [Walters] does not have any legal right to act as [DJ Avalanche's] agent any further, but for services...completed before April 1st and pursuant to that contract, [Walters] is entitled to receive compensation for the contract he secured on

[9] Hearing Transcript, p.11 ¶22-24.
[10] Plaintiff's Exhibit No. 10. (It is not clear if Walters's signature was indicative of his agreeing to the termination, or whether it only indicates acknowledgement of receipt of the letter. But the intent of his signature is irrelevant for purposes of this opinion.)

behalf of [DJ Avalanche]."[11] The court then awarded Walters a judgment of $7,395.16, plus $100.00 in court costs.[12,13]

On October 13, 2016, DJ Avalanche filed the instant appeal of the Magistrate decision and re-asserts that because the Consulting Agreement was terminated on April 1, 2016, Walters is not entitled to any further compensation from him for the advertising agreement with V.I. Lottery.[14]

STANDARD

The Appellate Division of the Superior Court "has jurisdiction to review judgments and orders issued by a Magistrate [Judge], as a result of the Magistrate [Judge's] exercising their original jurisdiction as provided for at 4 V.I.C. § 123(a)."[15] The Appellate Division reviews a Magistrate [Judge's] factual determinations for

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[11] Hearing Transcript, p. 64 ¶15-22.

[12] The judgment awards eight months of compensation at the rate of $875 per month from March to October, 2016, under the Advertising Agreement with VI Lottery. The judgment also includes two other advertising agreements that Walters secured on DJ Avalanche's behalf with Innovative Company and Tutu Park Mall, which entitled Walters to another $395.16 (*See* Plaintiff's Exhibit #5.)

[13] DJ Avalanche seems to suggest that the advertising agreement with Innovative is not binding because it did not contain a signature of an Innovative representative. However, DJ Avalanche does not dispute that he advertised for Innovative according to the agreement, and was paid by Innovative. Furthermore, DJ Avalanche acknowledges that Walters was acting as his agent when he secured the Innovative advertising agreement. *See* Hearing Transcript, at p. 33 ¶11-13. Therefore, the Court agrees with the Magistrate that the Innovative advertising agreement is valid, and Walters is thereby entitled to compensation.

[14] Superior Court Rule 322.1 states "Petitions for review...must be filed...within ten (10) days after entry of the order sought to be reviewed..." Because the Magistrate Court entered its opinion on September 23, 2016; DJ Avalanche's October 13, 2016 Petition is untimely. However, "[w]hen a party fails to raise a defense of untimeliness...a court should proceed to the merits of a case." *Jean-Baptiste v. Virgin Islands Taxicab Commission*, 64 V.I. 235, 250 (V.I. Super. Ct. 2016). Here, Walters has not raised a defense regarding DJ Avalanche's untimeliness. As a result, the Court will consider the merits of the case.

[15] *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

"clear error" and legal findings are "afforded plenary review."[16] "Clear error is a very deferential standard; an appellate court should only reverse a factual determination as being clearly erroneous if it is 'completely devoid of minimum evidentiary support or ... bears no rational relationship to the supportive evidentiary data.'"[17]

ANALYSIS

Having reviewed the lower court's order and the record, the Court finds that the lower court did not commit clear error in finding that Walters was still entitled to compensation for the months remaining in the advertising agreement with DJ Avalanche. Instead the lower court rightfully enforced an established principle of contract law.

Once a contract is terminated, "neither party is liable for further transactions."[18] However, "*terminating a contract does not affect obligations that accrued or rights that vested prior to termination.*"[19]

Walters secured the $21,000 Advertising Agreement prior to his termination. Although Walters was subsequently terminated, the Advertising Agreement was ultimately performed in full. The fact that the total contract amount was divided into monthly payments are of no consequence to Walters' contractual right to his 50% commission of the entire $21,000, as the V.I. Lottery contract had a one year term.

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[16] Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black's Law Dictionary, Eighth Edition.
[17] *In the Matter of the Estate of Small*, 57 V.I. 416, 430 (VI. 2012).
[18] *Turnbull v. Turnbull*, 2011 V.I. Supreme LEXIS 4, *15 (VI. 2011)
[19] *Id.* at *14. (emphasis added).

Therefore, Walters is entitled to payments from DJ Avalanche from March 2016 until October 2016.

CONCLUSION

Once a contract is terminated, "neither party is liable for further transactions." However, terminating a contract does not affect obligations that accrued or rights that vested prior to termination. Therefore, Walters is entitled to compensation for the contracts he procured before his contract with DJ Avalanche was terminated. Therefore, the Judgment will be affirmed.

An Order consistent with this Opinion shall follow.

DATED: June 30, 2017

Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

By:
DONNA D. DONOVAN
Court Clerk Supervisor 6/30/2017