

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No.07-cv-02116-REB-KMT

PETER EDWARD a/k/a DAVID BLESSING,

Plaintiff,

v.

ROBERT E. DUBRISH,
OPTION ONE MORTGAGE CORPORATION, et al.
HENRY J. PAULSON, US Secretary of the Treasury, and
MICHAEL B. MUKASEY, U.S. Attorney General as alien property custodian,

Defendants.

**ORDER ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) **Defendant Robert E. Durbish's Third Motion To Dismiss** [#67]¹ filed October 23, 2008; (2) **Defendant Option One Mortgage Corporation's Motion To Dismiss Pursuant To F.R.C.P. 19** [#69] filed October 23, 2008; (3) the **Recommendation of United States Magistrate Judge** [#91] filed April 15, 2009; and (4) the **Recommendation of United States Magistrate Judge** [#104] filed May 19, 2009. On April 24, 2009, the plaintiff filed an objection [#92] to the magistrate judge's recommendation [#91]. On May 28, 2009, the plaintiff filed a document captioned **Plaintiff's Acceptance of Magestrate (sic) Tafoya's**

¹ “[#67]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s electronic case filing and management system (CM/ECF). I use this convention throughout this order.

Recommendation of May 19, 2009 [#105]. In that filing, referring to the magistrate judge's May 29, 2009, recommendation [#104], the plaintiff says he "accepts Magistrate Tafoya's recommendation of dismissal without prejudice, for lack of jurisdiction, pursuant to the *Younger Abstention Doctrine*." *Plaintiff's Acceptance of Magestrate (sic) Tafoya's Recommendation of May 19, 2009* [#105].

Because the plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See** *Erickson v. Pardus*, 551 U.S. 89, ___, 127 S. Ct. 2197, 2200 (2007); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the April 15, 2009, recommendation [#91] to which the plaintiff has stated objections [#92], and I have considered carefully the recommendation, objections, and applicable law. No party has filed an objection to the May 19, 2009, recommendation [#104] of the magistrate judge. Thus, I am required to review that recommendation only for plain error. **See** *Morales-Fernandez v. Immigration & Naturalization Service*, 418 F.3d 1116, 1122 (10th Cir. 2005). Both recommendations are detailed and well-reasoned. Finding no error, much less plain error, in the magistrate judge's reasoning and recommended dispositions, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendations proposed by the magistrate judge should be approved and adopted.

To summarize, the April 15, 2009, recommendation [#91] addresses defendant Robert E. Durbish's motion to dismiss [#67]. For the reasons stated in the magistrate judge's recommendation [#91], defendant Durbish's motion to dismiss [#67] is granted. The May 19, 2009, recommendation [#104] addresses defendant Option One Mortgage

Corporation's motion to dismiss [#69]. The magistrate judge recommends, correctly, that this motion should be denied. However, the magistrate judge recommends, correctly, that the plaintiff's claims against defendants Option One Mortgage Corporation, Henry J. Paulsen, and Michael B. Mukasey must be dismissed for lack of jurisdiction.

THEREFORE, IT IS ORDERED as follows:

1. That the plaintiff's objections [#92] to the magistrate judge's recommendation [#91] are **OVERRULED**;
2. That the **Recommendation of United States Magistrate Judge** [#91] filed April 15, 2009, is **APPROVED AND ADOPTED** as an order of this court;
3. That the **Recommendation of United States Magistrate Judge** [#104] filed May 19, 2009, is **APPROVED AND ADOPTED** as an order of this court;
4. That **Defendant Robert E. Durbish's Third Motion To Dismiss** [#67] filed October 23, 2008, is **GRANTED**;
5. That **Defendant Option One Mortgage Corporation's Motion To Dismiss Pursuant To F.R.C.P. 19** [#69] filed October 23, 2008, is **DENIED**;
6. That the plaintiff's claims against defendant Robert E. Durbish are **DISMISSED** under FED. R. CIV. P. 12(b)(6);
7. That the plaintiff's claims against defendants Option One Mortgage Corporation, Henry J. Paulsen, and Michael B. Mukasey are **DISMISSED** without prejudice under the **Younger** abstention doctrine;
8. That **JUDGMENT SHALL ENTER** in favor of the defendant, Robert E. Dubrish, against the plaintiff, Peter Edward a/k/a David Blessing; and

9. That the defendant, Robert E. Dubrish, is **AWARDED** his costs to be taxed by the Clerk of the Court under Fed.R.Civ.P. 54(d) and D.C.COLO.LCivR 54.1.

Dated June 15, 2009, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge