

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Case No. 08-cv-01094-PAB-KLM

KEVIN D. GUARNEROS and
SHERRON L. LEWIS, JR.,

Plaintiffs,

v.

DEUTSCHE BANK TRUST COMPANY AMERICAS,
AURORA LOAN SERVICES, LLC,
KATHERINE E. FISHER,
LAUREN R. SMITH,
CASTLE MEINHOLD & STAWIARSKI, LLC,
STEPHANIE O'MALLEY, and
DIANE BAILEY,

Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Kristen L. Mix filed on June 1, 2009 [Docket No. 59]. The Recommendation states that objections to the Recommendation must be filed within ten days after its service on the parties. *See also* 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on June 2, 2009. No party has objected to the Recommendation.

Court mail addressed to plaintiff Guarneros at his last known address has been returned as undeliverable since September, 2008. Plaintiff Guarneros has failed to inform the court of his current mailing address and therefore bears responsibility for not receiving a copy of the Recommendation, which was also returned as undeliverable.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings”). In this matter, I have reviewed the Recommendation to satisfy myself that there is “no clear error on the face of the record.”¹ See Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, I have concluded that the Recommendation is a correct application of the facts and the law. Accordingly, it is

ORDERED as follows:

1. The Recommendation of United States Magistrate Judge [Docket No. 59] is accepted.
2. Aurora Loan Services LLC's Motion to Dismiss Plaintiffs' Amended Complaint [Docket No. 25] is granted pursuant to Fed. R. Civ. P. 4(m) and 12(b)(5) and otherwise denied as moot.
3. Castle Meinhold & Stawiarski, LLC, Katharine E. Fisher and Lauren R. Smith's Motion to Dismiss Plaintiffs' Amended Complaint for Failure to Effect Service of Process [Docket No. 28] is granted pursuant to Fed. R. Civ. P. 4(m) and 12(b)(5) and otherwise denied as moot.

¹This standard of review is something less than a “clearly erroneous or contrary to law” standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review. Fed. R. Civ. P. 72(b).

4. Aurora Loan Services LLC's Motion for Attorney Fees [Docket No. 55] is granted.

5. Judgment shall enter against Plaintiffs and in favor of defendant Aurora Loan Services, LLC in the amount of \$10,000.00 for attorneys' fees incurred in litigating the motion to dismiss and in the amount of \$492.25 for costs.

6. Judgment shall enter against Plaintiffs and in favor of defendants Castle Meinhold & Stawiarski, LLC, Katherine E. Fisher, and Lauren R. Smith in the amount of \$10,000.00 for attorneys' fees incurred in litigating the motion to dismiss.

7. This matter, and all claims asserted therein, is dismissed without prejudice.

DATED June 30, 2009.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge