

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02341-BNB

BALIN ALLEN,

Plaintiff,

v.

NATIONAL CITY BANK OF INDIANA, and
FIRST FRANKLIN HOME LOANS,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 27 2010

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

Plaintiff, Balin Allen, initiated this action by filing *pro se* a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a set of documents labeled Exhibits A through G on September 20, 2010. By order dated September 23, 2010, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action and directed Mr. Allen to cure certain enumerated deficiencies if he wished to pursue his claims in this action.

On October 22, 2010, Mr. Allen filed a letter with the Court indicating that he wished to voluntarily dismiss this case pursuant to Federal Rule of Civil Procedure 41(a)(1). Fed. R. Civ. P. 41(a)(1) provides that "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" No answer or motion for summary judgment has been filed by Defendants in this action. Further, a voluntary dismissal under Rule 41(a)(1) is effective immediately upon the filing of a written notice

of dismissal and no subsequent court order is necessary. **See** J. Moore, Moore's Federal Practice ¶ 41.02(2) (2d ed. 1995); **Hyde Constr. Co. v. Koehring Co.**, 388 F.2d 501, 507 (10th Cir. 1968). The Notice, therefore, closes the file as of October 22, 2010. **See Hyde Constr. Co.**, 388 F.2d at 507. Accordingly, it is

ORDERED that the action is dismissed pursuant to Fed. R. Civ. P. 41(a)(1). It is FURTHER ORDERED that the voluntary dismissal is without prejudice and is effective as of October 22, 2010, the date Plaintiff filed the Notice in this action. It is FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 26th day of October, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-02341-BNB

Balin Allen
2830 Edinburgh Court
Fort Collins, CO 80525

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/27/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk