

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable R. Brooke Jackson

Civil Action No. 12-cv-00950-RBJ-KLM

EUGENE BYNES,

Plaintiff,

v.

LIBERTY ACQUISITIONS SERVICING, LLC,

Defendant.

ORDER ADOPTING AND AFFIRMING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This matter is before the Court on the November 8, 2012 Recommendation of Magistrate Judge Kristen L. Mix [docket #35]. As relevant here, the Recommendation addresses defendant's Motion to Dismiss Plaintiff's Amended Complaint [#10]. The Recommendation is incorporated herein by reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. Despite this advisement, no objection to Magistrate Judge Mix's Recommendation was filed by either party. "In the absence of timely objection, the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[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").

The Court has reviewed the relevant pleadings concerning the Recommendation.

Because matters outside the pleadings were considered, the motion to dismiss is treated as a motion for summary judgment. Fed. R. Civ. P. 56(d). That is a difference in form, not substance. The Court concludes that the Magistrate Judge's analyses and recommendations are correct, and that "there is no clear error on the face of the record." Fed. R. Civ. P. 72 advisory committee's note. Therefore, the Court ADOPTS the Recommendation of The United States Magistrate Judge as the findings and conclusions of this Court.

Accordingly, it is ORDERED that the Recommendation of the United States Magistrate Judge [#35] is AFFIRMED and ADOPTED. Defendant's Motion to Dismiss Plaintiff's Amended Complaint [#10] is DENIED.

DATED this 30th day of January, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style. The signature is positioned above a horizontal line.

R. Brooke Jackson
United States District Judge