

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

DONALD JONES,

Plaintiff,

v.

Case No: 2:16-cv-597-FtM-29MRM

BANK OF AMERICA and STATE OF  
FLORIDA,

Defendants.

---

**OPINION AND ORDER**

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #14), filed November 30, 2016, recommending that the Motion to Reopen Case (Doc. #10) be granted, the Affidavit of Indigency (Doc. #2) be denied, and the Amended Complaint (Doc. #13) dismissed. Plaintiff filed a Motion Answering Report and Recommendation [sic] (Doc. #15) on December 12, 2016, which was construed as an objection.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); United States v. Powell, 628 F.3d 1254, 1256 (11th Cir. 2010). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). See also United States v. Farias-Gonzalez, 556 F.3d

1181, 1184 n.1 (11th Cir. 2009). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong., § 2 (1976)). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994).

Plaintiff initiated his Complaint (Doc. #1) on August 1, 2016, along with a request to proceed *in forma pauperis*. Upon review, the Magistrate Judge conducted a review of the Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and found that the pleading was deficient both for the failure to clearly articulate federal jurisdiction and for the failure to state a claim. Plaintiff was directed to file an Amended Complaint in compliance with the Order (Doc. #4). After the deadline expired, the Magistrate Judge issued an Order to Show Cause (Doc. #5) directing plaintiff to show cause and to also file an Amended Complaint. Once again finding no compliance, the Magistrate Judge issued a Report and Recommendation (Doc. #6) recommending dismissal of the case for failure to prosecute. Plaintiff did not file an objection, and on October 21, 2016, the Court issued an Opinion and Order (Doc. #7) adopting the Report and Recommendation and dismissing the case. Judgment (Doc. #8) issued on October 25, 2016.

The same day, on October 25, 2016, plaintiff filed a Motion for the Court to Mail Order to P.O. Box (Doc. #9). The Magistrate Judge noted the change of address, directed the Clerk to forward copies of documents to plaintiff, but stated that the "case remain[ed] dismissed and closed." (Doc. #11.) On the same day, plaintiff filed his Motion to Reopen the Case (Doc. #10). The Court took the request under advisement pending plaintiff's compliance with the previous requirement to file an Amended Complaint, and pending review for purposes of proceeding *in forma pauperis*. (Doc. #12.) This time plaintiff complied and filed an Amended Complaint (Doc. #13), and therefore the Magistrate Judge recommended granting the request to reopen the case for further consideration.

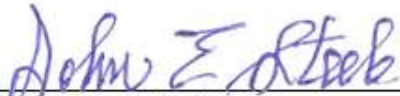
The Magistrate Judge reviewed the Amended Complaint pursuant to 28 U.S.C. § 1915, and found that the allegations remain unclear and the Amended Complaint suffered from the same deficiencies as previously noted. Plaintiff generally takes issue with the Magistrate Judge's findings. After a careful and complete review of the findings and recommendations, as well as the record in this case, the Court adopts the Report and Recommendation and will overrule the objection.

Accordingly, it is now

**ORDERED:**

1. Plaintiff's Motion Answering Report and Recommendation [sic] (Doc. #15), construed as an Objection, is **overruled**.
2. The Report and Recommendation (Doc. #14) is hereby **adopted** and the findings incorporated herein.
3. Plaintiff's Motion to Reopen the Case (Doc. #10) is **GRANTED** to the extent that plaintiff complied with the Magistrate Judge's Order (Doc. #4) and filed an Amended Complaint.
4. Plaintiff's Affidavit of Indigency (Doc. #2), construed as a motion to proceed *in forma pauperis*, is **DENIED**.
5. The Clerk shall enter judgment dismissing the Amended Complaint without prejudice, terminate all pending deadlines as moot, and close the file.

**DONE and ORDERED** at Fort Myers, Florida, this 20th day of December, 2016.

  
\_\_\_\_\_  
JOHN E. STEELE  
SENIOR UNITED STATES DISTRICT JUDGE

Copies:  
Hon. Mac R. McCoy  
All Parties of Record