

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

RICHARD B. FAGAN,	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 15-cv-30049-MAP
	)	
MASS MUTUAL LIFE INVESTORS'	)	
SERVICES, INC., ET AL.,	)	
Defendants.	)	

MEMORANDUM AND ORDER REGARDING  
REPORT AND RECOMMENDATION FOR SUMMARY DISMISSAL  
(Dkt. Nos. 2 & 5)

June 10, 2015

PONSOR, U.S.D.J.

This complaint contains an application to proceed in forma pauperis and was therefore preliminarily screened by Magistrate Judge Katherine A. Robertson. On April 24, 2015, Judge Robertson recommended that the application to proceed in forma pauperis be approved, based on Plaintiff's limited resources, but that the complaint be dismissed for failure to comply with the one-year limitation contained in Fed. R. Civ. P. 60 and, in addition, based upon the doctrines of claim preclusion and absence of jurisdiction. (Dkt. No. 5.) On May 8, 2015, Plaintiff filed his objection. (Dkt. No. 6.)

Having reviewed the Report and Recommendation de novo, this court will adopt it and will dismiss the complaint. It is unnecessary, in light of the very scrupulous factual

recitation and legal analysis contained in the Report and Recommendation, to outline in lengthy detail this court's reasoning. The anchor of the court's decision is on three points.

First, Judge Robertson is quite correct that the one-year limit set forth in Fed. R. Civ. P. 60(c)(1) is an absolute bar to reopening in this case. As Judge Robertson notes, the court's final judgment entered on June 11, 2013, and the complaint in the current case was not filed until more than eighteen months later. Moreover, a review of the pleading in this case makes it clear that, with minor exceptions, it simply repeats the allegations contained in the earlier-filed lawsuit. As Judge Robertson notes, this court granted summary judgment in that case, and this court's ruling was affirmed by the First Circuit. Finally, with regard to the only two claims that are not fatally flawed based upon the Rule 60 one-year limitation or for claim preclusion, the court simply lacks subject matter jurisdiction.

For the foregoing reasons, the court hereby ADOPTS Judge Robertson's Report and Recommendation (Dkt. No. 5). Based upon this, the complaint is ordered DISMISSED. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor  
MICHAEL A. PONSOR  
U. S. District Judge