

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KELLY G. PACIFICO,

Plaintiff,

Case No. 15-cv-11841
Hon. Matthew F. Leitman

v.

NATIONSTAR MORTGAGE,
LLC, *et al*,

Defendants.

**ORDER (1) GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO DISMISS (ECF #11) AND (2) DISMISSING
THE CLAIMS FOUND IN COUNTS II, III, IV, and V OF THE
COMPLAINT**

On April 20, 2015, Plaintiff Kelly G. Pacifico (“Pacifico”) filed a summons and complaint in the Oakland County Circuit Court. (*See* Compl., ECF #1-2, Pg. ID 11.) Defendants Nationstar Mortgage, LLC and Bank of New York Mellon, as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2003-40A (collectively, “Defendants”) removed Pacifico’s action to this Court on May 21, 2015. (*See* Notice of Removal, ECF #1.)

Pacifico’s Complaint consists of five counts: Count One alleges violations of the Real Estate Settlement Procedures Act (RESPA); Count Two is a negligence claim; Count Three alleges wrongful foreclosure; Count Four alleges breach of

contract; and Count Five alleges “fraudulent misrepresentation by servicer.” (*See* Compl., ECF #1-2, Pg. ID 11.) On March 31, 2016, Defendants moved to dismiss the Complaint (the “Motion”). (*See* ECF #11.)

On February 05, 2016, the assigned Magistrate Judge issued a report and recommendation (the “R&R”) in which she recommends that the Court grant in part and deny in part the Motion. (*See* ECF #16 at 13, Pg. ID 310.) Specifically, the Magistrate Judge recommends that the Court grant the Motion with respect to counts II-V of the Complaint, but deny the Motion with respect to Count I, which is Pacifico’s RESPA claims. (*Id.*)

At the conclusion of the R&R, the Magistrate Judge instructed the parties that “[e]ither party to this action may object to and seek review of this Report and Recommendation, but must act within fourteen days of service.” (*Id.* at 13-14, Pg. ID 31011.) The parties were also told that the “[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (*Id.*)

Neither Pacifico nor Defendants have filed any objections to the R&R. As the Magistrate Judge informed the parties, the failure to file an objection to a report and recommendation waives any further right to appeal. *See Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to

object releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Therefore, **IT IS HEREBY ORDERED** that: (1) the Magistrate Judge's recommendation to grant in part and deny in part the Motion is **ADOPTED**; (2) Defendants' Motion to Dismiss (ECF #11) is **GRANTED IN PART** and **DENIED IN PART** and (3) the claims found in Counts II, III, IV, and V of the Complaint are **DISMISSED**.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: February 27, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 27, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(313) 234-5113