

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALPHONSO JAMES, et al,

Plaintiff,

v.

BRIAN RIORDAN, et al,

Civil Action No. 13-1667 (ES)

MEMORANDUM OPINION

that correspondence was returned to the Court marked "Undeliverable" (D.E. No. 26).

3. Based on Plaintiff's failure to again provide the Court with his current address, Defendants filed a motion to dismiss for lack of prosecution on June 30, 2015 (D.E. No. 28).

Thereafter, on July 10, 2015, Plaintiff submitted a letter detailing recent events in his life and providing the Court with his current address (D.E. No. 29) (D.A. No. 29). As a result, the Court denied

Defendants' motion without prejudice, but permitted Defendants to re-file should Plaintiff fail to update his address again (D.E. No. 30) (D.A. copy of that order sent to the latest address that

5. This case falls into the category of cases identified by the Third Circuit where no extensive *Poultis* analysis is required. Local Civil Rule 10.1 requires Plaintiff to provide the Court with an up-to-date mailing address. In Civil Rule 10.1. On three separate occasions in this matter, Plaintiff has moved to a new address and failed to update the Court, despite being expressly advised that he must do so. Most recently, when dismissing Defendant's prior motion to dismiss, the Court expressly stated that Defendant could renew their motion should Plaintiff fail to keep his address current. Despite the Court's order, Plaintiff did not respond to the instant Motion to

7. With regard to the first factor, a *pro se* plaintiff is responsible for his failure to attend a pretrial conference or otherwise comply with a court's orders. *Id.* at 259. As discussed above, Local Civil Rule 1011 requires a party to update their address with the Court within 10 days of any change. Plaintiff failed to do so on three different occasions and since July 2015, the Court has not had a valid address at which it can reach him. As a *pro se* litigant, Plaintiff is responsible for this failure, and the first *Powit* factor weighs in favor of dismissal. *Id.* dismissal. *Id.*; see also *Emerson v. Thiel Coll.*, 296 F.3d 484, 490 (3d Cir. 2000) (because plaintiff is proceeding *pro se*, his failure to

as consistent non-response to interrogatories, or consistent tardiness in complying with court orders.”). As previously discussed, Plaintiff was instructed on several occasions to keep his address current. His repeated failure to do so and lack of any explanation for the most recent failure weighs in favor of dismissal.

10. There are insufficient facts to warrant an inference of bad faith or willfulness, which is the fourth *Povlis* factor. Under this factor, the Court must consider whether the conduct was “the type of willful or contumacious behavior which was characterized as flagrant bad faith.” *Id.*

sixth factor, courts use the standard for a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Poulis*, 747 F.2d at 869-70. Here, the Court conducted its initial screening of the Complaint and determined that it could proceed under 28 U.S.C. §§ 1915, 1915A, an analysis similar to the 12(b)(6) standard. (D.E. No. 3). Based on that previous Order, the Court finds that Plaintiff's claims are meritorious for purposes of the final *Poulis* factor.

13. Upon balancing the *Poulis* factors, the Court finds that the Complaint should be dismissed. The first, second, third and fifth factors all weigh in favor of dismissal, while only the fourth and sixth weigh against dismissal. Moreover, when looking at the factors as a whole, the Court is left with no alternative other than dismissal. Plaintiff has repeatedly failed to keep his address current and both the Court and Defendants are unable to contact him. As a result, a case that began in 2013 is still in its earliest stages with no ability to move forward.

14. Based on the foregoing, the Court will dismiss the Complaint; however the dismissal will be *without prejudice* at this time. The Court will give Plaintiff 30 days to show cause why the Complaint should not be dismissed *with prejudice*. If Plaintiff fails to respond within the 30 day period, the Court will dismiss this matter *with prejudice* without further discussion. An appropriate order follows.



Esther Salas, U.S.D.J.