

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HUMPHREY O. UDDOH,

Plaintiff,

v.

SELECTIVE INSURANCE COMPANY
OF AMERICA et al.,

Defendants.

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Civil Action No. 13-2719 (SRC)

OPINION & ORDER

CHESLER, District Judge

This motion comes before the Court on the request for default against Defendant Selective Insurance Company of America (“Selective”) by Plaintiff Humphrey O. Uddoh, and Selective’s motion to dismiss the Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(5), for insufficient service of process. For the reasons stated below, the request for default will be denied and the motion to dismiss will be denied.

The *pro se* Plaintiff filed the Complaint against Selective and other defendants on April 29, 2013. No proof of service to any defendant appears on the docket. On June 3, 2013, Plaintiff filed a request for entry of default against Selective, as well as other defendants. Selective then filed the instant motion to dismiss.

Selective contends that it has never been properly served with the Complaint. Plaintiff contends that he served Selective by certified mail, and that this constitutes proper and sufficient service. Selective responds that service by mail is neither sufficient under the Federal Rules of Civil Procedure, nor under New Jersey Court Rule 4:4-4, relevant here because Selective is a

citizen of the State of New Jersey.

New Jersey Court Rule 4:4-4 has special subsections regarding service by mail:

- (b) Obtaining In Personam Jurisdiction by Substituted or Constructive Service.
 - (1) By Mail or Personal Service Outside the State. If it appears by affidavit satisfying the requirements of R. 4:4-5(b) that despite diligent effort and inquiry personal service cannot be made in accordance with paragraph (a) of this rule, then, consistent with due process of law, in personam jurisdiction may be obtained over any defendant as follows:
...
 - (C) mailing a copy of the summons and complaint by registered or certified mail . . .
- (c) Optional Mailed Service. Where personal service is required to be made pursuant to paragraph (a) of this rule, service, in lieu of personal service, may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto, and provided further that default shall not be entered against a defendant who fails to answer or appear in response thereto.

Plaintiff has not properly served Selective under any of the service provisions of the New Jersey Court Rules. Plaintiff has filed no affidavit demonstrating that, despite diligent effort and inquiry, personal service could not be made. New Jersey Court Rule 4:4-4(c) bars entry of default based on service by certified mail. Plaintiff's request for entry of default against Selective will be denied.

Although Plaintiff has not properly served the Complaint on Selective, Selective's motion to dismiss the Complaint for insufficient service of process will be denied because it is premature. Federal Rule of Civil Procedure 4(m) gives Plaintiff 120 days to effect service, and time has not yet run out. Selective's motion will be denied, but may be renewed if proper service

has not been effected once the time for service has run.

For these reasons,

IT IS on this 5th day of August, 2013, hereby

ORDERED that Plaintiff's request for default against Defendant Selective Insurance Company of America is **DENIED**; and it is further

ORDERED that Defendant's motion to dismiss the Complaint (Docket Entry No. 6) is **DENIED**.

s/ Stanley R. Chesler
Stanley R. Chesler, U.S.D.J