

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YOLANDA MICATOVICH,

Plaintiff,

-against-

**REPORT AND
RECOMMENDATION**
CV-08-4553 (FB) (JMA)

GE HEALTHCARE and GENERAL ELECTRIC
COMPANY,

Defendants.

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A P P E A R A N C E S:

Martin Segundo Vasquez
38-08 Junction Blvd.
Corona, NY 11368
Attorney for Plaintiff

AZRACK, United States Magistrate Judge:

Plaintiff brings this action against defendants pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and alleges that she is a victim of racial discrimination. For the reasons set forth below, I respectfully recommend that the complaint be dismissed without prejudice for plaintiff's failure to timely effectuate service of the summons and complaint.

I. Background

Plaintiff commenced this action on November 10, 2008. (See Dkt. No. 1.) By order dated November 20, 2008, an initial conference was scheduled for February 18, 2009. (See Dkt. No. 2.) On February 18, 2009, plaintiff's counsel informed the Court that, despite being registered with the Court's Electronic Case Filing system, he did not receive notice of the conference, and that, in any event, service of process had yet to be completed. (See Scheduling Order dated February 18,

2009.) Accordingly, the initial conference was rescheduled for March 18, 2009. (Id.) However, plaintiff's counsel did not appear at the initial conference and a review of the docket sheet revealed that plaintiff had failed to effectuate service within the 120 day time period contemplated by Fed. R. Civ. P. 4(m). (See Order to Show Cause dated March 18, 2009). Therefore, plaintiff was directed to electronically file a written explanation why this action should not be dismissed for failure to timely serve defendants. (Id.) To date, plaintiff has failed to file any response to the Order to Show Cause.

II. Discussion

Rule 4(m) of the Federal Rules of Civil Procedure provides, in pertinent part, that:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

As noted above, plaintiff in this case filed the complaint approximately eight months ago. Plaintiff neither completed service of the summons and complaint on defendants within the period for effecting service provided by Rule 4(m), nor has plaintiff filed a response to the March 18, 2009 Order to Show Cause, nor has he filed any submission in an attempt to show good cause for his failure to timely effectuate service. Accordingly, I respectfully recommend that the complaint be dismissed.

III. Conclusion

For the forgoing reasons, I respectfully recommend that the instant action be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

Any objections to this report and recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within ten (10) days of receipt of this report. Failure to file

objections within the specified time waives the right to appeal the District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6.

SO ORDERED.

Dated: July 16, 2009
Brooklyn, New York

/s/
JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE