

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FOR ONLINE PUBLICATION ONLY

DEPARTMENT OF HOMELESS SERVICES;
NYC CIVIL COURT/HOUSING PART;
STATE OF NEW YORK; MARIAN
MOORER, DHS Program Administrator; S.
GARCIA, DHS Peace Officer; JANE DOE,
DHS Peace Officer; JOHN DOE, DHS Peace
Officer; KURT SCHREIBER, Corporation
Counsel DHS; LOUIS VILLELLA, Court
Administrator/NYC Housing Court,

Respondents,

- versus -

SYDNEY HENSON-BEY,

Petitioner.

MEMORANDUM
AND ORDER

15-CV-1304 (JG)(LB)

JOHN GLEESON, United States District Judge:

On March 10, 2015, Sydney Henson-Bey, proceeding *pro se*, filed a notice of removal regarding a summons issued to him by the Department of Homeless Services and a pending housing court case in the Civil Court of the City of New York, Housing Part, Index Number #13604. Henson-Bey's submission did not include a filing fee or a request to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915. Nor did it contain the requisite "copy of all process, pleadings, and orders served upon such defendant" in the civil action he seeks to remove from state court. *See* 28 U.S.C. § 1446. By letter mailed March 16, 2015, Henson-Bey was provided with an IFP form and instructed that in order to proceed, he must return the completed IFP request or the \$400 filing fee, along with the state court documents within 14 days from the date of the letter. ECF No. 2. On April 6, 2015, Henson-Bey provided an

“Affidavit of Fact” in lieu of the IFP request along with documents from the Housing Part of the Civil Court of New York, County of Queens, Index Number 13604/14, in which he is the petitioner. ECF No. 4. On July 21, he submitted a “Notice of Default Judgment.” Henson-Bey’s application to proceed IFP is denied as set forth below and the action is dismissed.

DISCUSSION

A. *Filing Fee*

Under 28 U.S.C. § 1914(a), the filing fee to commence a civil action is \$350, plus an additional cost of \$50, for a total of \$400. Under 28 U.S.C. § 1915, the Court may waive the filing fee upon finding a plaintiff indigent. *Fridman v. City of New York*, 195 F. Supp. 2d 534, 536 (S.D.N.Y. 2002) (“Leave to proceed in forma pauperis may be granted ‘in any suit, action or proceeding, civil or criminal, or appeal therein’ to a litigant who ‘submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefore.’” (quoting 28 U.S.C. § 1915(a)(1))). “The decision of whether to grant a request to proceed *in forma pauperis* is left to the District Court’s discretion under § 1915.” *Id.*

In his “Affidavit of Fact,” Henson-Bey objects to the request for financial information, and maintains that, as a Moorish National, his only requirement under the United States Constitution is to provide that he “does not have, or possess, any gold or silver coins.” ECF No. 4 at 3. It is not Henson-Bey’s “prerogative to decide what is or is not relevant information to disclose on [his] IFP application.” *Chriswell v. Big Score Entertainment, LLC*, No. 11-CV-861, 2013 WL 3669074, at *3 (N.D. Ill. July 12, 2013) (citing *Moorish Nat’l Republic v. City of Chicago*, No. 10-C-1047, 2011 WL 1485574, at *4 (N.D. Ill. Apr. 18, 2011)). “By censoring what financial information to present,” Henson-Bey has “thwart[ed] the purpose

of the IFP application.” *Id.* I conclude that Henson-Bey’s financial declaration, in which the only financial information provided, is that he does not have any gold or silver coins, does not support a finding of indigency. Accordingly, Henson-Bey’s IFP application is hereby denied and the action is dismissed without prejudice.

B. *Deficiencies of the Removal Petition*

In addition, the petition for removal is defective. The federal removal statute, 28 U.S.C. § 1446(b), states in relevant part as follows:

The notice of removal of a civil action or proceeding shall be filed *within 30 days* after the receipt by *the defendant*, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based

28 U.S.C. § 1446(b) (emphasis added). The Supreme Court has held that “statutory procedures for removal are to be strictly construed,” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002), “because the federal courts are courts of limited jurisdiction and because removal of a case implicates significant federalism concerns.” *In re NASDAQ Mkt. Makers Antitrust Litig.*, 929 F. Supp. 174, 178 (S.D.N.Y. 1996).

Here, among the problems with Henson-Bey’s removal petition are: (1) according to the papers he has submitted, he is the petitioner, not the defendant (or respondent) in the underlying housing court action; (2) most of the parties he has named in this action are not parties in the underlying state action; and (3) the underlying state court action he seeks to remove was initiated in October 2014, and since Henson-Bey clearly had a copy of the initial pleading because he filed it, it was filed in this Court well beyond the 30 day window to remove the action; and (4) he has not alleged a basis for this Court’s jurisdiction. 28 U.S.C. § 1441. Thus, even if plaintiff’s request to proceed *in forma pauperis* had been granted or he had paid the filing

fee, Henson-Bey's notice of removal is insufficient to invoke the jurisdiction this Court and this action would be remanded to state court pursuant to 28 U.S.C. § 1447.

CONCLUSION

Accordingly, I deny Henson-Bey's application to proceed *in forma pauperis* because I find that his financial declaration does not support a showing of indigency and dismiss the action without prejudice. The Clerk of Court is respectfully directed to send a copy of this Order to the Clerk of Court for the Civil Court of the City of New York, Queens County, Housing Part, 89-17 Sutphin Boulevard, Jamaica, New York 11435. I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

So ordered.

John Gleeson, U.S.D.J.

Dated: September 26, 2015
Brooklyn, New York