

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ **AUG 28 2017** ★

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JAMES BEAZER,

LONG ISLAND OFFICE

Plaintiff,

ORDER
15-CV-4587 (JFB) (AYS)

-against-

NEW YORK STATE OFFICE OF MENTAL
HEALTH-CREEDMOOR PSYCHIATRIC
CENTER, ANN MARIE BARBAROTTA,
VIODELDA HO-SHING, SUSAN ADAMS, DON
HUFFMAN, RONALD ERMANN, VICTOR
MARSHALL,

Defendants.

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JOSEPH F. BIANCO, District Judge:

Before the Court is a Report and Recommendation (“R&R,” ECF No. 30) from Magistrate Judge Shields recommending that the Court grant defendants’ motion to dismiss (ECF No. 24). The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (*See* R&R, dated June 5, 2017, at 25.) Defendants served the R&R on *pro se* plaintiff on June 7, 2017. (ECF No. 32.) Accordingly, the date for filing any objections has since expired, and plaintiff has not filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety, and grants defendants’ motion to dismiss plaintiff’s complaint.

Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the

consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S. at 155)).

Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly, IT IS HEREBY ORDERED that defendants' motion to dismiss is granted with prejudice with respect to plaintiff's 42 U.S.C. § 1983 and Fourteenth Amendment claims; plaintiff's Title VII discrimination claims against the individual defendants; and any claims arising from the Arbitration Consent Award. Plaintiff's Title VII discrimination claim against defendant New York State Office of Mental Health-Creedmoor Psychiatric Center OMH and his Title VII retaliation claim against all defendants, as well as any state law claims, are dismissed without prejudice. If plaintiff intends to file an amended complaint, he may file an amended complaint within thirty days of this Order. Plaintiff is warned that if he fails to file an amended complaint within thirty days, the Court may dismiss the federal claims with prejudice, without further notice, for failure to prosecute, pursuant to Rule 41(b) of the Federal

Rules of Civil Procedure.

The Court certifies 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 the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.



JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: August 21, 2017
Central Islip, NY