

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LISA PURZAK,

Plaintiff,

-against-

LONG ISLAND HOUSING SERVICES,
INC., et al.,

Defendants.
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JOSEPH F. BIANCO, District Judge:

ORDER

12-CV-1747 (JFB) (SIL)

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

★ **MAR 08 2018** ★

LONG ISLAND OFFICE

On October 18, 2017, Magistrate Judge Steven I. Locke held a status conference in which he issued a Report and Recommendation (the "R&R," ECF No. 92) through an oral ruling on the record. Magistrate Judge Locke's recommendations were recorded in the "Minute Order" summarizing his oral ruling. (ECF No. 92.) In his R&R, Magistrate Judge Locke recommended that the Court deny defendants' motion to dismiss for failure to prosecute. (*Id.* at 1.) Magistrate Judge Locke directed defendants to "notify the Court whether they intend to file objections to the district judge on or before October 25, 2017, in which case the Court may issue a more extended report consistent with the record at oral argument and the reasoning above." (*Id.* at 2.) As instructed, on October 25, 2017, defendants submitted a letter notifying the Court that "Defendants do not intend to file objections to district judge and will rely upon the record at oral argument." (ECF No. 93.) Defendants have not since submitted any additional letters regarding their motion to dismiss. For the reasons set forth below, the Court adopts the well-reasoned R&R in its entirety and denies defendants' motion to dismiss.

Where there are no objections to a report and recommendation issued by a magistrate

judge, the Court may adopt the report and recommendation without *de novo* review. See *Thomas v. Arn*, 414 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*, 414 U.S. at 155)).

Although defendants have 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. Magistrate Judge Locke considered the circumstances under the applicable legal standard and correctly determined that dismissal was unwarranted given, *inter alia*, the hardships that plaintiff has suffered and the lack of any prejudice to defendants. In sum, having conducted a review of the Complaint, the motion papers, and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that defendants’ motion to dismiss (ECF No. 83) is denied.

IT IS FURTHER ORDERED that defendants serve a copy of this Order on plaintiff.

SO ORDERED.

Dated:

March 8, 2018
Central Islip, New York

Joseph F. Bianco
United States District Judge