

FILED
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11:30 am, Apr 11, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

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WILLIAM BAHNSEN,

Plaintiff,

-against-

ORDER
17-CV-4545 (SJF)(AYS)

TOWN OF BROOKHAVEN,

Defendant.

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FEUERSTEIN, District Judge:

Pending before the Court is the electronic Report and Recommendation of the Honorable Anne Y. Shields, United States Magistrate Judge, entered March 6, 2018 (“the Report”), recommending that the motion of defendant Town of Brookhaven (“defendant”) seeking to dismiss the claims of plaintiff William Bahnsen (“plaintiff”) in the original complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be denied without prejudice to renewal upon the filing of an amended complaint. Pursuant to the minute order of proceedings held before Magistrate Judge Shields on March 5, 2018, to which the Report refers, *inter alia*, (a) plaintiff was granted leave to file an amended complaint, limited to his age discrimination claims, within ten (10) days from the date thereof¹; and (b) defendant was directed to file a letter within ten (10) days from the date the amended complaint was filed, informing the Court whether it elected (i) to renew its original motion to dismiss, (ii) to request a briefing schedule for a new dispositive motion, or (iii) to file an answer to the amended complaint. A copy of the Report was served upon counsel for all parties via ECF on March 6, 2018.

¹ By electronic order entered on March 14, 2018, Magistrate Judge Shields, *inter alia*, granted plaintiff’s request for an extension of time to file the amended complaint until March 19, 2018.

Neither party filed any timely objections to the Report, nor sought an extension of time to do so. Indeed, plaintiff filed an amended complaint on March 19, 2018 and defendant filed a letter in accordance with the Report on March 29, 2018. Specifically, defendant requested in its March 29, 2018 letter that its motion to dismiss plaintiff's claims in the original complaint "be renewed as against the Amended Complaint to the extent set forth [therein]." Accordingly, Judge Shields's Report is accepted to the extent that defendant's original motion to dismiss is construed as a renewed motion to dismiss the amended complaint and is respectfully referred to Magistrate Judge Shields for a report and recommendation. Defendant's March 29, 2018 letter shall be construed as a supplemental brief to the renewed motion to dismiss, to which plaintiff shall file any response by no later than April 30, 2018. Defendant shall file any reply thereto by no later than May 11, 2018.

SO ORDERED.

/s/
SANDRA J. FEUERSTEIN
United States District Judge

Dated: April 11, 2018
Central Islip, New York