**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF NEW YORK**

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**ALFRED MARION WALKER,**

**Plaintiff,**

**v.**

**3:16-CV-1503 (BKS/DEP)**

**CITY OF BINGHAMTON, *et al.*,**

**Defendants.**

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**Appearances:**

**Alfred Marion Walker**
Endicott, NY
Plaintiff, pro se

**Hon. Brenda K. Sannes, U. S. District Judge**

**MEMORANDUM-DECISION AND ORDER**

On December 16, 2016, Plaintiff *pro se* Alfred Walker filed this action against various public entities and officials, including the City of Binghamton, together with a motion for leave to proceed *in forma pauperis* (IFP). (Dkt. Nos. 1-2). On December 21, 2016, United States Magistrate David E. Peebles denied Plaintiff's motion without prejudice because Plaintiff failed to include any information concerning his financial status in his application, and the Court was "therefore unable to make any meaningful assessment of plaintiff's financial status." (Dkt. No. 4, pp. 2-3). Magistrate Judge Peebles directed Plaintiff to either pay the $400.00 filing fee or submit a proper IFP application by January 6, 2017. (Dkt. No. 4, p. 3). Magistrate Judge



Dockets.Justia.com

Peebles noted that if Plaintiff failed to comply with the Order, the Court would issue a report recommending that the case be dismissed. (*Id.*). This Order was mailed to Plaintiff, but returned to the Court with a notation "insufficient address unable to forward," on January 3, 2017. (Dkt. No. 6).[1] Plaintiff has not paid the filing fee or submitted a proper IFP application.

On January 18, 2017, Magistrate Judge Peebles issued a Report and Recommendation recommending that Plaintiff's complaint be dismissed, without prejudice, for failure to pay the required filing fee or to obtain leave to proceed without prepayment of fees. (Dkt. No. 7). The Report and Recommendation was mailed to Plaintiff, but returned to the Court on January 31. 2017 with a notation on the front of the envelope "wrong post location." (Dkt. No. 9). However, on January 20, 2017, Plaintiff filed a document entitled "Writ of Error Qua Corum Nobis Residant Re: Order to Cure Deficiencies" which was docketed as an Objection to the Report and Recommendation. (Dkt. No. 8). For the reasons set forth below, the Report and Recommendation is adopted in its entirety.

This Court reviews *de novo* those portions of the Magistrate Judge's findings and recommendations that have been properly preserved with a specific objection. *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); 28 U.S.C. § 636(b)(1)(C). Findings and recommendations as to which there was no properly preserved objection are reviewed for clear error. *Id.* "A proper objection is one that identifies the specific portions of the [Report and Recommendation] that the objector asserts are erroneous and provides a basis for this assertion." *Kruger v. Virgin Atlantic Airways, Ltd.*, 976 F. Supp. 2d 290, 296 (E.D.N.Y. 2013) (citation

[1] The back of the envelope that was returned to the Court contains a handwritten notation which is only partially legible, stating "same address as provide [sic] in my paperwork . . . as I'm not in any federal territory district or zone." (Dkt. No. 6, p. 2).

omitted). Properly raised objections must be "specific and clearly aimed at particular findings" in the Report. *Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009). Findings and recommendations as to which there was no properly preserved objection are reviewed for clear error. *Id.* "To the extent . . . that the party makes only conclusory or general arguments . . . the Court will review the Report strictly for clear error." *DiPilato v. 7-Eleven, Inc.*, 662 F Supp. 2d 333, 339 (S.D.N.Y. 2009).

In this case, Plaintiff's submission is styled as a court order rescinding Magistrate Judge Peebles' Order on December 21, 2016, denying leave to proceed *in forma pauperis*. (Dkt. No. 8, pp. 1, 13-14). The Court has been unable to decipher any specific objection to any portion of the Report and Recommendation issued on January 18, 2017. The Court has, therefore, reviewed the Report and Recommendation for clear error and found none.

**WHEREFORE**, for the foregoing reasons, it is hereby

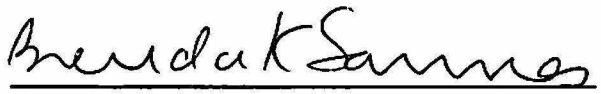
**ORDERED** that Magistrate Judge Peebles' Report and Recommendation (Dkt. No. 7) is ADOPTED in all respects; and it is further

**ORDERED** that Plaintiff's complaint in this case is DISMISSED, without prejudice, for failure to pay the required filing fee or to obtain leave to proceed in the case without prepayment of fees; and it is further

**ORDERED** that the Clerk of the Court shall serve a copy of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

**IT IS SO ORDERED**.

Dated: March 30, 2017



Brenda K. Sannes
U.S. District Judge