

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

BERNARD B. IDLISAN,

Plaintiff,

vs.

**5:12-CV-1790
(MAD/TWD)**

**SUNY UPSTATE MEDICAL UNIVERSITY,
HEATHER BALDWIN, and LINDSAY
PICCOTTI,**

Defendants.

APPEARANCES:

OF COUNSEL:

BERNARD B. IDLISAN
1402 Jefferson Avenue, 1st Floor
Brooklyn, New York 11237
Plaintiff pro se

Mae A. D'Agostino, U.S. District Judge:

ORDER

On December 5, 2012, the Court received for filing a complaint in which Plaintiff *pro se* alleges that he was discriminated against in violation of Title I of the American with Disabilities Act of 1990, 42 U.S.C. §§ 12111 - 12117 (“ADA”) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. (“Title VII”). Plaintiff also asserts claims for attempted bribery. *See* Dkt. No. 1. Magistrate Judge Dancks issued a Report- Recommendation (Dkt. No. 3) recommending that the Court grant Plaintiff’s motion to proceed *in forma pauperis*. Magistrate Judge Dancks also recommended dismissal of certain claims without leave to amend on Eleventh

Amendment grounds, and dismissal of other claims with leave to amend.¹ Neither party objected to Magistrate Judge Dancks' Order and Report-Recommendation.

When a party files specific objections to a magistrate judge's report-recommendation, the district court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). However, when a party files "[g]eneral or conclusory objections or objections which merely recite the same arguments [that he presented] to the magistrate judge," the court reviews those recommendations for clear error. *O'Diah v. Mawhir*, 2011 WL 933846, *1 (N.D.N.Y. 2011) (citations and footnote omitted). After the appropriate review, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

A litigant's failure to file objections to a magistrate judge's report and recommendation, even when that litigant is proceeding *pro se*, waives any challenge to the report on appeal. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (holding that, "[a]s a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point" (citation omitted)). A *pro se* litigant must be given notice of this rule; notice is sufficient if it informs the litigant that the failure to file a timely objection will result in the waiver of further judicial review and cites the pertinent statutory and civil rules authority. *See Frank v. Johnson*, 968 F.2d 298, 299 (2d Cir. 1992); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (holding that a *pro se* party's failure to object to a report and recommendation does not waive his right to appellate review unless the report explicitly states that failure to object will preclude appellate review and specifically cites 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and former 6(e) of the Federal Rules of Civil Procedure).

¹ The Clerk is directed to append Judge Danck's Report-Recommendation to this decision, and familiarity is presumed. (Dkt. No. 3).

After careful review of all of the papers herein, including the Magistrate Judge's Report-Recommendation, and no objections submitted thereto, it is

ORDERED that:

1. Magistrate Judge Dancks' Report-Recommendation and Order is **ADOPTED** for the reasons stated therein.
2. In the event that plaintiff is authorized to file an amended complaint, plaintiff may file an amended complaint within **THIRTY (30) DAYS** of the date of this Order in compliance with the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of New York.
3. The Clerk of the Court shall serve a copy of this Order and Magistrate Judge Dancks' Report-Recommendation and Order on all parties in compliance with the Local Rules.

IT IS SO ORDERED.

Dated: February 7, 2013
Albany, New York



Mae A. D'Agostino
U.S. District Judge