

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THOMAS P. DUNN,

Plaintiff,

-v-

5:15-CV-0809
(DNH/TWD)

DEUTSCHE BANK NATIONAL TRUST,
as Trustee, SELECT PORTFOLIO SERVICING,
BANK OF AMERICA, BAC HOMELOANS
SERVICING LLP, GILLIAN BROWN, ESQ.,
PATRICK J. HABER,

Defendants.

APPEARANCES:

THOMAS P. DUNN
Plaintiff, Pro se
7085 Lakeshore Road
Cicero, NY 13039

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Thomas P. Dunn brought this action alleging violations of the Truth and Lending Act, 15 U.S.C. § 1601 *et. seq.* and other related claims. On July 10, 2015, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge, advised by Report-Recommendation that plaintiff's complaint be dismissed without leave to amend. Plaintiff submitted objections to the Report-Recommendation along with a Motion for Reconsideration of the Report-Recommendation. See ECF No. 14 & 15.

A motion for reconsideration may only be granted upon one of three possible grounds: "(1) an intervening change in law, (2) the availability of evidence not previously

available, and (3) the need to correct a clear error of law or prevent manifest injustice.”
Shannon v. Verizon N.Y., Inc., 519 F. Supp. 2d 304, 307 (N.D.N.Y. 2007) (D.J. Kahn).

First, the Report-Recommendation submitted by the Magistrate Judge is non-binding and thus, not properly subject to a motion for reconsideration. Second, plaintiff has failed to demonstrate grounds upon which a motion to reconsider may be granted. However, the points raised in plaintiff’s motion to reconsider have been treated as objections to the Report-Recommendation.

Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is ORDERED that:

1. Plaintiff’s request for a temporary restraining order and motion for a preliminary injunction are **DENIED**;

2. Plaintiff’s first cause of action for violations of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and fifth cause of action for violation of Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 are **DISMISSED** under the *Rooker-Feldman* doctrine for lack of subject matter jurisdiction;

3. Plaintiff’s third cause of action under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, fourth cause of action for submission of false claims to the government, and eighth cause of action for violation of 42 U.S.C. § 1983 are **DISMISSED WITHOUT LEAVE TO AMEND** for failure to state a claim;

4. The Court declines to exercise its discretion to exercise supplemental jurisdiction over plaintiff’s state law claims concerning breach of contract, fraud, fraudulent concealment,

intentional infliction of emotional distress and invasion of privacy (second, sixth, seventh and ninth causes of action), without prejudice to refile in state court;

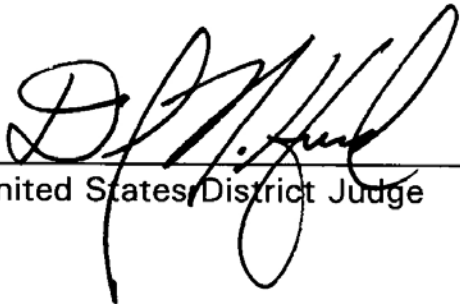
5. The complaint is **DISMISSED**;

6. Plaintiff's motion for reconsideration (ECF No. 14) and amended motion for reconsideration (ECF No. 15) are **DENIED**; and

7. The Clerk serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules.

The Clerk of the Court shall enter judgment and close this case.

IT IS SO ORDERED.



United States District Judge

Dated: September 24, 2015
Utica, New York