

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 10-CV-393
(GLS/DRH)

ROBERT H. WILLIAMS,

Defendant.

APPEARANCES:

OF COUNSEL:

SOLOMON AND SOLOMON, P.C.
Counsel for Plaintiff
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Albany, New York 12212-5019

DOUGLAS M. FISHER, ESQ.

ROBERT H. WILLIAMS
Defendant Pro Se
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REPORT-RECOMMENDATION and ORDER

Plaintiff United States of America commenced this action under 28 U.S.C. § 1345 seeking recovery of payments on a student loan on which defendant pro se Robert H. Williams ("Williams") had defaulted. Compl. (Dkt. No. 1). The complaint was filed on April 2, 2010. on June 30, 2010, a conference was held by telephone with counsel for the United States and Williams pursuant to Fed.R.Civ.P. 16. See Docket Entry dated 6/30/10. During that conference, Williams renewed his request to the United States that this action be dismissed in light of his disability pursuant to such an exception allowed by the United States. The United States advised that Williams must complete and forward certain forms requesting the exception and the agency involved would then make an administrative determination of the request within

sixty-ninety days thereafter. A further status conference was held on November 29, 2010 during which the United States confirmed that it had received all necessary completed forms from Williams by August 30, 2010 but that it required an additional several weeks to complete its review of the application. Docket Entry dated 11/30/10. A further telephone conference was held with counsel for the United States and Williams on December 20, 2010. During that conference, the United States advised that their review still had not been completed but requested that this action be dismissed without prejudice in anticipation of the completion of such review. Williams did not object to the dismissal but requested that the dismissal be made with prejudice. Williams asserted that the United States had all necessary information regarding his disability since 2005 and in light of the passage of time, the dismissal should be with prejudice.

It appears to the undersigned that the United States is entitled to conduct a review of Williams' application on its merits and that the updated information provided by Williams in August 2010 is relevant to that determination and to whether Williams qualifies for the exception allowed by the United States. The request of the United States is reasonable in light of the inordinate delay in determining Williams' application. If Williams' application is granted, he will be so notified and if it is not, the United States may recommence the action and Williams by then raise the appropriateness of the denial in whatever form he deems appropriate.

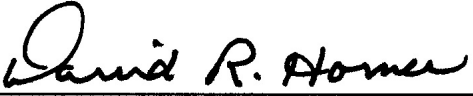
Accordingly, it is hereby

RECOMMENDED that the request of the United States that this action be dismissed without prejudice should be **GRANTED** and this action should be **DISMISSED** without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court “within fourteen (14) days after being served with a copy of the . . . recommendation.” N.Y.N.D.L.R. 72.1(c) (citing 28 U.S.C. §636(b)(1)(B)-(C)). **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Small v. Sec’y of HHS, 892 F.2d 15 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

IT IS SO ORDERED.

Dated: December 20, 2010
Albany, New York



United States Magistrate Judge