

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHRIS WINGATE,

Plaintiff,

- against -

ANNA M. CROSS CENTER ET AL.,

Defendants.

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12 Civ. 2134 (JGK)

12 Civ. 5666 (JGK)

12 Civ. 6530 (JGK)

Memorandum Opinion and  
Order

JOHN G. KOELTL, District Judge:

In its Order of January 30, 2014, the Court warned the plaintiff that his failure to participate in discovery by responding to discovery requests, and failure to participate in his cases by appearing for conferences with the Court, could result in the dismissal of his cases without prejudice for failure to prosecute. In its Order of January 30, 2014, the Court also referred the plaintiff's cases to Magistrate Judge Freeman for purposes of settlement.

On March 20, 2014, Magistrate Judge Freeman issued a scheduling order in which she advised the plaintiff that his failure to maintain current contact information, and his failure to appear in court, would result in her recommending to this Court that the plaintiff's cases be dismissed without prejudice for failure to prosecute. In her March 20, 2014 order, Magistrate Judge Freeman also scheduled another conference for April 1, 2014.

On April 1, 2014, the plaintiff did not appear for his conference at the appointed time. After waiting for thirty minutes, a period during which the plaintiff did not appear, Magistrate Judge Freeman adjourned the conference.

Later that day, the plaintiff contacted Magistrate Judge Freeman's Chambers and stated that he was now in court and ready for his conference. Magistrate Judge Freeman's deputy informed the plaintiff that his conference had been adjourned, and instructed the plaintiff to submit a letter explaining why he had been absent from previous conferences, and late for the conference scheduled for April 1, 2014. The plaintiff did not submit the explanatory letter.

Accordingly, on April 16, 2014, Magistrate Judge Freeman issued an order directing the plaintiff to show cause in writing no later than May 7, 2014 why she should not recommend that the plaintiff's cases be dismissed without prejudice for failure to prosecute. Magistrate Judge Freeman informed the plaintiff that his response to the Order to Show Cause should include a specific explanation of any circumstances that had affected the plaintiff's ability to appear in Court as directed, and that the plaintiff's response should state whether the plaintiff wished to proceed with his actions. The record does not reflect any response.

In its Order of May 20, 2014, this Court ordered the plaintiff to respond in writing to the Order to Show Cause by Tuesday June 10, 2014. The Court advised the plaintiff that if the plaintiff failed to comply with the Court's May 20, 2014 Order, then the Court would dismiss the plaintiff's cases for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

The plaintiff has not complied with the Court's Order of May 20, 2014. Moreover, the plaintiff's failure to participate in his case now spans over six months. The plaintiff has been instructed repeatedly, both by this Court and the Magistrate Judge, that the failure to appear in Court and to participate in his cases would result in dismissal of his cases without prejudice for failure to prosecute. Dismissal without prejudice, rather than dismissal with prejudice, is proper because courts considering dismissal for failure to prosecute pursuant to Rule 41(b) must consider the efficacy of lesser sanctions. See Reeder v. Hogan, 515 F. App'x 44, 45 (2d Cir. 2013) (summary order) (quoting Lewis v. Rawson, 564 F.3d 569, 576 (2d Cir. 2009)).

Accordingly, the plaintiff's cases are **dismissed without prejudice** for failure to prosecute. **The Clerk is directed to close each case.**

**SO ORDERED.**

**Dated: New York, New York  
July 1, 2014**

\_\_\_\_\_/s/\_\_\_\_\_  
**John G. Koeltl  
United States District Judge**