

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOROTHY PONIATOWSKI,

Plaintiff,

15-cv-1330 (PKC)

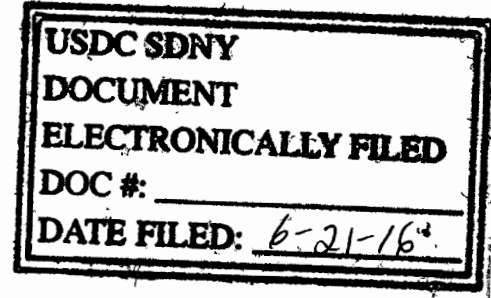
-against-

ORDER ADOPTING REPORT  
AND RECOMMENDATION

JEH JOHNSON,

Defendant.  
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CASTEL, U.S.D.J.



Plaintiff Dorothy Poniatowski, proceeding in forma pauperis and on her own behalf pro se, filed her complaint on February 23, 2015. (Docket # 2.) She brings a single claim of employment discrimination against Jeh Johnson, the Secretary of the United States Department of Homeland Security, in his official capacity. (Docket # 2.) On April 8, 2015, the undersigned referred this case to Magistrate Judge Sarah Netburn for general pretrial supervision. (Docket # 7.)

On May 9, 2016, Magistrate Judge Netburn issued a Report & Recommendation (“R & R”) recommending that this case be dismissed without prejudice for failure to prosecute. (Docket # 35.) The R & R advised Poniatowski of her right to object to the R & R, but Poniatowski has submitted no objections and has made no other communications with the Court.

In reviewing a report and recommendation, 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).

As described in the R & R, in nine instances, Poniatowski either failed to appear at court-ordered conferences or missed court-ordered deadlines. (R & R at 3-4.) On three occasions, Magistrate Judge Netburn warned Poniatowski that failure to comply with court orders could result in dismissal for failure to pursue her claims. (R & R at 3-4.)

Amid this history of repeated non-compliance, Poniatowski once appeared in a September 2015 telephonic court conference, and family members communicated with Magistrate Judge Netburn to explain that Poniatowski was in ill health. (R & R at 1-2.) Indeed, on December 4, 2015, Magistrate Judge Netburn stayed all deadlines for 60 days after Poniatowski's husband stated that Poniatowski was temporarily unable to prosecute her case for personal reasons. (R & R at 2.) Once those 60 days lapsed, Poniatowski's non-compliance continued. (R & R at 2-3.)

As described in the R & R, Poniatowski's non-compliance has persisted since July 2015; she was warned three times that failure to comply with court orders could result in dismissal; the delay has prejudiced defendants; and the failure to comply with Court orders "has made it impossible for the Court to manage this litigation." (R & R at 3-4.) This is sufficient to warrant dismissal for failure to prosecute. See, e.g., Baptiste v. Sommers, 768 F.3d 212, 216 (2d Cir. 2014).

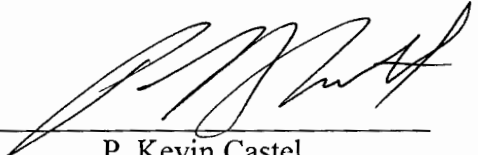
This Court concludes that the R & R is thorough, well-reasoned and based in law. The R & R is therefore adopted, and this case is dismissed without prejudice.

CONCLUSION.

The R & R is adopted in its entirety, and the action is dismissed without prejudice. (Docket # 35.) The Clerk is directed to close this case.

This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and in forma pauperis status is denied. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.



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P. Kevin Castel  
United States District Judge

Dated: New York, New York  
June 21, 2016