

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

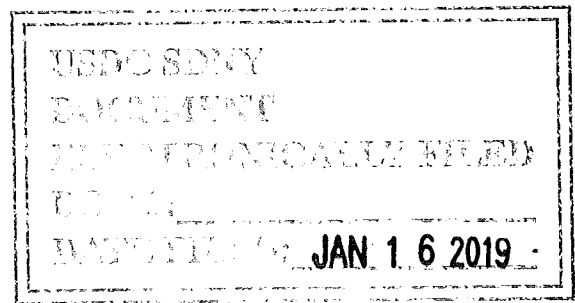
Rinaldo Pierno,

Plaintiff,

–v–

Fidelity Brokerage Services, LLC,

Defendant.



18-cv-3384 (AJN)

ORDER ADOPTING REPORT AND  
RECOMMENDATION

ALISON J. NATHAN, District Judge:

Before the Court is (1) a motion for partial summary judgment brought by pro se Plaintiff Rinaldo Pierno seeking to avoid arbitration, *see* Dkt. Nos. 13-15; and (2) a cross-motion to compel arbitration brought by Defendant Fidelity Brokerage Services, LLC, *see* Dkt. Nos. 24-28. On July 13, 2018, Magistrate Judge Stewart Aaron recommended that Plaintiff’s motion for partial summary judgment be DENIED, Defendant’s cross-motion to compel arbitration be GRANTED, and the Court stay this case pending the outcome of the arbitration. Dkt. No. 29 (“Report and Recommendation”). Plaintiff responded with objections to the Report and Recommendation on July 24, 2018. Dkt. Nos. 30-32. On August 2, 2018, Defendant opposed the objections. Dkt. No. 33. The Court assumes familiarity with the facts of this case. *See generally* Report and Recommendation.

**II. Legal Standard**

A court may “designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition” of certain motions, including motions for injunctive relief and motions to dismiss. 28 U.S.C. § 636(b)(1)(B). A party to the action may file objections to the proposed

findings and recommendations. *Id.* § 636(b)(1)(C). If a party has made a specific objection to a magistrate judge's recommendation, the court reviews them *de novo*. *See, e.g., Amadasu v. Ngai*, No. 05-CV-2585 (RRM) (LB), 2012 WL 3930386, at \*3 (E.D.N.Y. Sept. 9, 2012). Where a party does not object, or simply makes "conclusory or general objections," the district court will review for clear error. *Id.* (citing cases). Under this standard, portions of the report to which no objections were made will be accepted unless they are "facially erroneous." *Bryant v. New York State Dep't of Corr. Servs.*, 146 F.Supp.2d 422, 424–25 (S.D.N.Y.2001); *see also DiPilato v. 7-Eleven, Inc.*, 662 F. Supp. 2d 333, 339–40 (S.D.N.Y. 2009) ("A decision is 'clearly erroneous' when the Court is, 'upon review of the entire record, [ ] left with the definite and firm conviction that a mistake has been committed.'" (quoting *United States v. Snow*, 462 F.3d 55, 72 (2d Cir.2006))).

## **II. The Court Adopts the Report and Recommendation**

This Court has considered Magistrate Judge Aaron's Report and Recommendation and Plaintiff's written submissions regarding objections. Finding no error in Judge Aaron's thorough and well-reasoned Report and Recommendation, the Court hereby overrules the objections and adopts the Report and Recommendations in full as the opinion of the Court. Plaintiff also objected to the Court's referral of dispositive motions to the magistrate judge for a report and recommendation. *See* Dkt. No. 32 at 2-6. However, Federal Rule of Civil Procedure 72 explicitly allows a referral for a report and recommendation without the parties' consent. *See* Fed. R. Civ. P. 72(b). This objection is therefore also overruled.

## **II. Conclusion**

Accordingly, Plaintiff's motion for partial summary judgment is DENIED, Defendant's cross-motion to compel arbitration is GRANTED, and the Court stays this case pending the

outcome of the arbitration. This resolves Docket Numbers 13, 14, 24, and 30. Chambers will mail a copy of this order to the pro se litigant and note its mailing on the public docket.

SO ORDERED.

Dated: January 15, 2019  
New York, New York



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ALISON J. NATHAN  
United States District Judge