

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SARIT SHMUELI	:	
Plaintiff,	:	<u>MEMORANDUM OPINION</u>
	:	<u>AND ORDER</u>
v.	:	
	:	17 CV 3734 (VB)
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	
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Briccetti, J.:

Before the Court is Magistrate Judge Judith C. McCarthy’s Report and Recommendation (“R&R”), dated July 19, 2018 (Doc. #27), on defendant’s motion to dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), or, in the alternative, for summary judgment pursuant to Fed. R. Civ. P. 56. (Doc. #19). Because plaintiff failed to exhaust her administrative remedies, Judge McCarthy recommended granting defendant’s motion to dismiss and dismissing the case without prejudice to refile after plaintiff has exhausted her administrative remedies.

For the following reasons, the Court adopts the R&R. Defendant’s motion to dismiss is GRANTED. This case is DISMISSED WITHOUT PREJUDICE.

Familiarity with the factual and procedural background of this case is presumed.

A district court reviewing a magistrate judge’s report and recommendation “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). Parties may raise objections to the magistrate judge’s report and recommendation, but they must be “specific[,] written,” and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); see also 28

U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail. See Fed. R. Civ. P. 6(d).

Insofar as a report and recommendation addresses a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Neither party objected to Judge McCarthy's thorough and well-reasoned R&R.

The Court has reviewed the R&R and finds no error, clear or otherwise.

CONCLUSION

The R&R is adopted as the opinion of the Court.

Defendant's motion to dismiss is GRANTED. (Doc. #19).

This case is DISMISSED WITHOUT PREJUDICE to refiling after plaintiff has exhausted her administrative remedies.

The Clerk is instructed to enter Judgment accordingly and close this case.

The Clerk is further directed to (i) terminate the motion (Doc. #19), and (ii) mail a copy of this Memorandum Opinion and Order to plaintiff at the address on the docket.

Dated: September 14, 2018
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge