

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DIAMOND JUNIOR,

Plaintiff,

v.

18-CV-1014
DECISION AND ORDER

ERIE COUNTY MEDICAL CENTER
CORPORATION,

Defendant.

On September 14, 2018, the pro se plaintiff, Diamond Junior, commenced this action, alleging discrimination by her former employer. Docket Item 1. On October 18, 2018, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 6. On May 3, 2019, the defendant moved to dismiss the amended complaint, Docket Item 30; on May 24, 2019, Junior responded, Docket Item 34; and on June 5, 2019, the defendant replied, Docket Item 35. On August 19, 2019, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the defendant's motion should be granted in part and denied in part. Docket Item 37. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ.

P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the defendant's motion in part and deny it in part.

For the reasons stated above and in the R&R, the defendant's motion to dismiss, Docket Item 30, is GRANTED in part and DENIED in part. Specifically, it is "granted to the extent that it seeks dismissal of [the] plaintiff's Title VII claims for disparate treatment, hostile work environment, and constructive discharge for alleged conduct occurring prior to September 2017, retaliation claims under Title VII and the NYSHRL, and failure to hire claims under Title VII and the NYSHRL, but otherwise" is denied. Docket Item 37 at 23. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of October 18, 2018, Docket Item 6.

SO ORDERED.

Dated: September 9, 2019
Buffalo, New York

s/ Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE