

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



DAVID KING,

Plaintiff,

v.

20-CV-1426 (JLS)

LM INSURANCE CORPORATION,

Defendant.

DECISION AND ORDER

On October 5, 2020, Plaintiff David King commenced this action related to the denial of his insurance claim under a homeowner's insurance policy issued by Defendant LM Insurance Corporation. Dkt. 1. On February 26, 2021, Defendant moved to dismiss Plaintiff's second claim in the Amended Complaint (Dkt 12)—deceptive acts and practices in violation of N.Y. Bus. Law § 349—for failure to state a claim. Dkt. 15. On March 4, 2021, this Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 16.

Presently before the Court is Judge Foschio's Report and Recommendation ("R&R"), which recommends that Defendant's motion should be granted and that Plaintiff's second claim should be dismissed without prejudice and with leave to replead.

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

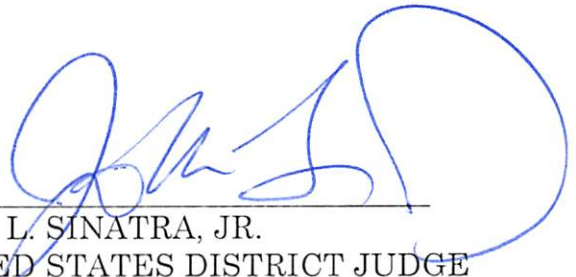
court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate 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 Foschio's R&R and the relevant record. The Court accepts Judge Foschio's recommendation to grant Defendant's motion to dismiss.

For the reasons stated above and in Judge Foschio's R&R, Defendant's motion to dismiss (Dkt. 15) is GRANTED. Plaintiff's second claim is dismissed without prejudice and with leave to replead. The case is referred back to Judge Foschio for further proceedings consistent with the referral order in this case. Dkt. 16.

SO ORDERED.

Dated: July 11, 2022
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE