

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHARYLL PRIMUS)	CASE NO. 5:17-CV-2434
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	AMENDED
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, et al.,)	ORDER ADOPTING REPORT AND RECOMMENDATION IN PART
)	
Defendants.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr., which was issued on August 2, 2018 (ECF #29). Plaintiff, Sharyll Primus (hereafter “Ms. Primus”) does not object to the Report and Recommendation to the extent that it recommends dismissal of the United States Department of Housing and Urban Development (“HUD”). In fact, in her response to the Report and Recommendation, Ms. Primus agrees to voluntarily dismiss HUD from this action. (ECF #30). Ms. Primus does, however, object to the dismissal of the Complaint in so far as that would also dismiss Portage Metro Housing Authority (“PMHA”), which did not seek dismissal, and is not directly addressed in the analysis contained in the Report and Recommendation. For the following reasons, the Report and Recommendation is hereby ADOPTED in part.

Ms. Primus filed an action in the Portage County Court of Common Pleas, against HUD and the Portage Metro Housing Authorities (“PMHA”), appealing an order entered against Ms. Primus by PMHA removing her from the Section 8 housing assistance program. (ECF #1). HUD, as an agency of the United States, removed the action to this Court. HUD now argues that it should be dismissed from this matter for lack of subject matter jurisdiction and failure to state a claim. (ECF #7).

Magistrate Judge Baughman, Jr., ruled in the Report and Recommendation that, in order to maintain an action against HUD, Primus was required to show that “a statutory grant of jurisdiction exists, and that the government has expressly and unequivocally waived its immunity with regarding to the type of claim [she] wishes to raise.” (ECF #29, p. 3). The Report goes on to state that “the complaint here does not identify any legal basis for proceeding against HUD in this matter arising out of a decision by PMHA,” nor does it show that any specific waiver of sovereign immunity exists. Magistrate Judge Baughman, Jr., correctly found that the Complaint does not identify a legal basis to proceed against HUD, or that HUD made a specific waiver of sovereign immunity. He therefore, recommended that the Complaint should be dismissed for lack of jurisdiction.

This Court ADOPTS the Report and Recommendation of Magistrate Judge Baughman, Jr. in so far as it dismisses HUD from this action. (ECF #29). However, as there has been no argument made by any party setting forth a reason to dismiss PMHA from this action, Judge Baughman’s recommendation to dismiss the Complaint in its entirety cannot be adopted. Because the dismissal of HUD eliminates any issues of federal law, and this Court declines to retain jurisdiction over the remaining state law claims, the remainder of the case is hereby remanded to the Portage County Court of Common Pleas.

As to Ms. Primus’ Motion to allow time to consult with potential attorney, (ECF #30), that Motion is DENIED as moot.

IT IS SO ORDERED.

s/ Donald C. Nugent

DONALD C. NUGENT
United States District Court

Date: August 30, 2018