

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES HARMAN,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:17-0135
	:	
v.	:	(MANNION, J.)
	:	
KATRINA TOBASH and BB&T BANK,	:	(CARLSON, M.J.)
	:	
Defendants	:	
	:	

MEMORANDUM

Pending before the court is the report of Magistrate Judge Martin C. Carlson, which recommends that the plaintiff's motion for summary judgment be dismissed without prejudice. (Doc. 9). Upon review, the report and recommendation of Judge Carlson will be adopted in its entirety.

By way of relevant background, the plaintiff filed the instant action on January 25, 2017, in which he alleges that the defendants engaged in a racketeering scheme of which he was a victim. (Doc. 1). The complaint was served upon the defendants, after which a motion to dismiss was filed on March 9, 2017. (Doc. 5).

On March 10, 2017, the plaintiff filed a motion for summary judgment in which he argues that he is entitled to judgment as a matter of law because "[t]he defendants have failed to deny any of the claims [and] [f]ailure to deny is an admission the claims are true." (Doc. 7).

On March 13, 2017, Judge Carlson filed the instant report, in which he

recommends that the plaintiff's motion for summary judgment be dismissed without prejudice because the plaintiff's motion rests on an erroneous legal and factual premise. Because the defendants currently have pending a motion to dismiss the plaintiff's claims, Judge Carlson correctly provides that they are not required to submit an answer which admits or denies the factual allegations presented in the plaintiff's complaint. It is only after the motion to dismiss is resolved, and if the complaint is not dismissed, that the defendants will be required to admit or deny the facts alleged in the complaint. See Fed.R.Civ.P. 12(a)(4). As a result, Judge Carlson recommends that the plaintiff's motion for summary judgment be dismissed without prejudice. No objections have been filed to Judge Carlson's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The court has reviewed the reasons presented by Judge Carlson for recommending that the plaintiff's motion for summary judgment be dismissed without prejudice. Because the court agrees with the sound reasoning that led Judge Carlson to the conclusions in his report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: March 31, 2017

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