

prosecute. See Fed. R. Civ. P. 41(b). Petitioner filed no response to the Magistrate Judge's September 16, 2015, order. On October 29, 2015, the Magistrate Judge issued a Report and Recommendation in which she recommended that the within action be dismissed with prejudice for failure to prosecute.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court 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). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id.

On November 12, 2015, Petitioner filed a motion to dismiss. Petitioner indicates he "was in lock up for the last two months and I no longer have anyone to help me with my legal work." ECF No. 32. The court construes Petitioner's motion as a motion to dismiss pursuant to Fed. R. Civ. P. 41(a)(2), which provides that, with exceptions not applicable here, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." A dismissal under Rule 41(a)(2) typically is without prejudice. Id. Respondent filed no response in opposition to Petitioner's motion to dismiss.

Petitioner's motion to dismiss (ECF No. 32) is **granted**, without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina
December 2, 2015