

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

| | | |
|--|---|----------------------------|
| George Cleveland, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 8:09-626-HMH-WMC |
| |) | |
| vs. |) | OPINION & ORDER |
| |) | |
| City of Seneca SC; Bonnie Moses, |) | |
| individually and in her official capacity as |) | |
| election manager, director, poll worker for |) | |
| the City of Seneca SC; Rick Lacey, |) | |
| individually and in his official capacity as |) | |
| Seneca Recreation Director; Terry Mullikin, |) | |
| individually and in his official capacity as a |) | |
| grounds man employed by the Seneca |) | |
| Recreation Department; Mayor Pro Tem |) | |
| Ronnie O’Kelly, individually and in his |) | |
| official capacity as Mayor Pro Tem for the |) | |
| City of Seneca; Seneca Police Department; |) | |
| Police Chief John Covington, individually |) | |
| and in his official capacity as Police Chief |) | |
| for the City of Seneca; Officer(s) John |) | |
| Doe(s) in their official capacity as police |) | |
| officers for the City of Seneca, |) | |
| |) | |
| Defendants. |) | |

This matter is before the court with the Report and Recommendation of United States Magistrate Judge William M. Catoe, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 of the District of South Carolina.¹ George Cleveland (“Cleveland”) filed a

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1) (2006).

motion for default judgment against Defendants on September 25, 2009. Defendants filed a response on September 29, 2009. In his Report and Recommendation, Magistrate Judge Catoe recommends denying Cleveland's motion for default judgment.

Cleveland filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that many of Cleveland's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. However, Cleveland submitted one specific objection to the magistrate judge's Report. He asserts that the magistrate judge erred in "granting a second answer to Plaintiff[s] motion to amend complaint dated August 19, 2009." (Objections 2.)

Cleveland filed a motion to amend the complaint on July 16, 2009. Defendants filed a timely response in opposition on August 3, 2009. An order granting Cleveland's motion to amend the complaint was entered on August 7, 2009 and Cleveland's amended complaint was filed on August 10, 2009. Subsequently, on August 19, 2009, Defendants filed an answer to the amended complaint. Cleveland objects to the magistrate judge's finding that Defendants filed a timely answer to Cleveland's amended complaint. (Id. generally). According to Cleveland,

Defendants' answer to the amended complaint "was late pursuant to this court[s] August 03, 2009 deadline." (Id. at 2.) This objection is without merit.

An answer to the amended complaint was not due on August 3, 2009, as the motion to amend the complaint was still pending. The motion was granted on August 7, 2009. Cleveland's amended complaint was filed on August 10, 2009. Defendants filed an answer to the amended complaint nine days after it was filed. "[A]ny required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 10 days after service of the amended pleading, whichever is later." Fed. R. Civ. P. 15(a)(3). Accordingly, Defendants' answer was timely and Cleveland's objection is without merit. Based on the foregoing, the court adopts the Report and Recommendation of Magistrate Judge Catoe and denies Cleveland's motion for default judgment.

It is therefore

ORDERED that Cleveland's motion for default judgment, docket number 36, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
October 15, 2009

NOTICE OF RIGHT TO APPEAL

The Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.