

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

RONALD COURTS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 3:10-1157
	)	Judge Trauger/Bryant
WALDEN SECURITY,	)	
	)	
Defendant.	)	

TO: The Honorable Aleta A. Trauger

**REPORT AND RECOMMENDATION**

Defendant Walden Security has filed its amended motion to dismiss for plaintiff's failure to prosecute and failure to comply with the Federal Rules of Civil Procedure and orders of the Court (Docket Entry No. 33). As grounds for its motion, defendant cites docket entries indicating that mail addressed to plaintiff by the Clerk has been returned by the Post Office as "unclaimed." In addition, defendant asserts that plaintiff has failed to serve initial disclosures and responses to written discovery and has failed to respond to correspondence from defense counsel regarding these shortcomings.

Plaintiff Courts, who is proceeding pro se, has filed a response in opposition (Docket Entry No. 34). In his response plaintiff implies, but does not state explicitly, that he failed to receive certified mail at his address because he was not at home when the Post Office attempted delivery.

In consideration of the facts that (1) plaintiff is proceeding pro se and, therefore, is entitled to some leniency that

the Court would not normally extend to a licensed attorney, (2) plaintiff has filed a response indicating his intention to prosecute this case, and (3) defendant has not yet filed a motion to compel discovery, the undersigned Magistrate Judge finds that defendant's motion to dismiss for failure to prosecute and for failure to serve discovery is premature and should be denied at this time. Nevertheless, plaintiff should be admonished that he is obligated to attend to his obligations to make discovery, and that a continuing failure to do so may cause his case to be dismissed.

#### **RECOMMENDATION**

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that defendant's motion to dismiss be **DENIED** as premature.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

**ENTERED** this 19th day of September 2011.

s/ John S. Bryant \_\_\_\_\_  
JOHN S. BRYANT  
United States Magistrate Judge