UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

NOEL DANDY	:	
	:	
v.	:	C.A. No. 18-00647-WES
	:	
TRAVELERS AID HOUSING, LP, et al.	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Plaintiff Noel Dandy commenced this lawsuit on November 30, 2018. (ECF Doc. No. 1). He is proceeding pro se and has been allowed to proceed in forma pauperis. He sues Travelers Aid Housing and the United States Department of Housing and Urban Development ("HUD"). Defendants have responded to Plaintiff's Complaint with separate Motions to Dismiss. (ECF Doc. Nos. 18, 19). Their Motions have been referred to me for preliminary review, findings and recommended disposition. 28 U.S.C. § 636(b)(1)(B); LR Cv 72(a). For the reasons that follow, I recommend that Defendants' Motions to Dismiss be GRANTED.

Background

Plaintiff is a prolific pro se litigant. The present case is the seventh lawsuit filed by Plaintiff in this Court in which he has sought and obtained in forma pauperis status. (See C.A. Nos. 04-449, 08-167, 10-286, 10-288, 10-289, 10-291). Each of Plaintiff's previous six lawsuits were dismissed either as frivolous and/or for failure to state a claim. Although the subject matter of the present Amended Complaint differs from the Complaints he filed previously, each of the Complaints has suffered from the same basic deficiencies.

In a July 2010 Report and Recommendation in C.A. No. 10-288, the Court noted that Plaintiff's previous Complaints have been "incoherent, disjointed, confusing, and largely incomprehensible" and that "no purpose would be served by affording Plaintiff an opportunity to file an amended complaint in this matter." (C.A. No. 10-288, ECF Doc. No. 3 at p. 4.) The Court went on to note that in C.A. No. 04-449, it "made a significant effort to guide" Plaintiff but that his Complaint "contain[ed] multiple, unrelated causes of action…lack[ed] a short and plain statement of the grounds on which the Court's jurisdiction depends…[was] incoherent…conclusory and [did] not give fair notice of the bases of Plaintiff's claim(s)…." Id. at n. 2. Similarly, in C.A. No. 10-291, the Court reviewed Plaintiff's Complaint and determined it was "confusing and conclusory" and that it failed to "give the named Defendants fair notice of either the legal or factual bases for his claims." (C.A. No. 10-291, ECF Doc. No. 3 at p. 3.)

In the present case, the Court determined that Plaintiff's initial Complaint failed to comply with Rule 8, Fed. R. Civ. P., and ordered Plaintiff to file an Amended Complaint or risk dismissal of his Complaint. In its Memorandum and Order, the Court noted that Plaintiff's Complaint was over fifty pages in length, that it totaled more than two hundred pages with Exhibits, and that it contained information that was "immaterial" and "impertinent." (ECF Doc. No. 5 at p. 1). In response, Plaintiff filed his Amended Complaint which is currently before the Court.

Plaintiff's Amended Complaint remains disorganized, confusing and conclusory. Although not a model of clarity, Plaintiff appears to contend that he suffered a "denial of housing" based on age and disability, a "water intrusion" on the property, an unspecified personal injury and that Defendants failed to provide a housing decision to him within ten days of his hearing date. He states that his claims arise under the Americans with Disabilities Act, 42 U.S.C. § 12101,

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, the Fair Housing Act, 42 U.S.C. § 3601 and the Federal Torts Claims Act, 28 U.S.C. § 2680(b).

Travelers Aid's Motion to Dismiss

Travelers Aid has moved to dismiss Plaintiff's Amended Complaint on several grounds, including a failure to comply with Rules 8, 18 and 20 of the Federal Rules of Civil Procedure, as well as a substantive failure to state a claim. To begin, Travelers Aid contends that the Amended Complaint does not comport with Rule 8, Fed. R. Civ. P. To comply with Rule 8, a complaint must "give the defendant fair notice of what the...claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). After a review of the Amended Complaint, the Court agrees with Travelers Aid that, despite the revisions made by Plaintiff, it still fails to clearly articulate his claims and the grounds upon which they rest.

Rule 8's "short and plain statement" mandate serves several functions. "The statement should be short because unnecessary length places an unjustified burden on the court and on the party who must respond to it....The statement should be plain because the principle function of pleadings under the Federal Rules is to give the adverse party fair notice of the claim asserted to enable him to answer and prepare for trial." Laurence v. Wall, C.A. No. 07-066ML, 2007 WL 1875795 at *2 (D.R.I. June 27, 2007) (citations omitted). "Although the requirements of Rule 8(a)(2) are minimal...[,] minimal requirements are not tantamount to nonexistent requirements." Uzamere v. United States, C.A. No. 13-505S, 2013 WL 5781216 *15 (D.R.I. Oct. 25, 2013) (quoting Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61, 68 (1st Cir. 2004)). In the present case, the allegations and legal claims are reviewed under a less stringent standard since they have been put forth by a pro se litigant. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972).

However, pro se plaintiffs are still required to comply with substantive and procedural law, such as Rule 8. Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997).

After a thorough review of the Amended Complaint, I conclude that it does not adequately inform Defendants or the Court as to the relevant facts and claims. Instead, Defendants and the Court are left attempt to piece together the claims that Plaintiff seeks to assert. "In short, as Judge Easterbrook summarized, 'Rule 8(a) requires parties to make their pleadings straight forward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud.'" Parker v. Learn the Skills Corp., No. 03-6936, 2004 WL 2384993 (E.D. Pa. Oct. 25, 2004) (quoting United States, ex. rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003)). The failure to comply with Rule 8 is fatal to the Amended Complaint.

Additionally, Travelers Aid notes that the Amended Complaint spans allegations that range from "discrimination based on an unknown disability, race, age, failure to properly make repairs and cruel and unusual actions by [Travelers Aid]." Travelers Aid contends that these events are "not interconnected" and that they do not belong in the same lawsuit. (ECF Doc. No. 18-1 at pp. 5-6). Rule 18(a) permits a plaintiff to bring multiple claims against a defendant in a single action. However, "it does not permit the joinder of unrelated claims against different defendants." Spencer v. Bender, No. CA 08-11528-RGS; 2010 WL 1740957 at *2 (D. Mass. April 28, 2010) (citing George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)). Finally, Rule 20 governs the permissive joinder of multiple parties in a single complaint. In particular, Rule 20(a)(2) provides that separate persons or entities may be joined in one complaint as defendants if there is a claim "asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all defendants will arise in the action." The Amended Complaint also violates the joinder rules of Fed.

R. Civ. P. 18 and 20 because it attempts to pursue unrelated claims against different defendants. The deficiencies outlined above support dismissal of the claims asserted against Travelers Aid, and I recommend that its Motion to Dismiss (ECF Doc. No. 18) be GRANTED.

HUD's Motion to Dismiss

Next, the Court turns to the arguments set forth by HUD. Although the Court has identified the Amended Complaint's deficiencies with respect to the Federal Rules, HUD sets forth several grounds for dismissal that warrant separate discussion. As a preliminary matter, HUD notes that it is an executive department of the U.S. Government, therefore, a suit against HUD is a suit directly against the United States. (ECF Doc. No. 19 at p. 6). HUD points out that in order to bring claims directly against the United States, there must be an express waiver of sovereign immunity. Id. (citing United States v. Nordic Vill., Inc., 503 U.S. 30, 33 (1992)). The burden of demonstrating a waiver of sovereign immunity rests with Plaintiff. Id. at pp. 6-7. Here, there has been no waiver of the United States' sovereign immunity as to any of the claims pursued against HUD. Because the United States has not waived its sovereign immunity, the Court lacks subject matter jurisdiction over it to adjudicate the purported claims.

In addition to his failure to comply with Rule 8, and the lack of subject matter jurisdiction, HUD reviews each claim set forth in the Amended Complaint, and argues additional reasons that each possible claim fails. To begin, HUD notes that the Court must construe Plaintiff's claim that his First and Fourteenth Amendment rights were violated as a claim under the authority of Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971), which permits a claim against a federal official for deprivation of a federally protected right. The claim is only cognizable as a Bivens claim because that is the sole vehicle for recovery where a plaintiff asserts constitutional injury by a federal actor. Nevertheless, a Bivens action may not be asserted

against a federal agency, and must be lodged against government officers in their individual capacities. Here, there are no government officers sued in their individual capacities, and the United States has not waived sovereign immunity. Rather, Plaintiff sues only the office itself, a federal agency, as a Defendant. However, as previously discussed, "[i]t is well established that neither an FTCA action nor a Bivens action can be brought against a federal agency." Correia v. Dep't of Homeland Sec., C.A. No. 08-352S, 2009 WL 68733 at *2 (D.R.I. Jan. 6, 2009) (citations omitted). Such claims are barred by the United States' sovereign immunity from suit. Levesque v. United States, No. 09-CV-426-PB, 2010 WL 1994842 at *3 (D.N.H. May 18, 2010).

The same fate awaits Plaintiff's cause of action for money damages under the FHA against HUD. While the FHA provides a mechanism for a private citizen, such as Plaintiff, to seek relief through HUD for discriminatory housing actions, it does not provide a right of suit against HUD itself. Instead, to seek relief under the FHA, a complainant is required to file an administrative complaint with HUD, 42 U.S.C. § 3610(a)(1)(A)(i), and allow HUD to determine if "reasonable cause" exists to believe a discriminatory housing practice has occurred. HUD is responsible for that determination and for issuing a charge on behalf of a complainant or for dismissing the complaint. Plaintiff's direct claims against HUD under the FHA are not cognizable and must also be dismissed.

Next, Plaintiff's purported ADA claim against HUD is also easily dispatched, because the ADA "does not provide for suits against the federal government." Feliciano-Hill v. Principi, 439 F.3d 18, 22 n.1 (1st Cir. 2006). HUD further contends that to the extent Plaintiff asserts a personal injury claim, it is cognizable only under the FTCA and should be dismissed because Plaintiff failed to exhaust his administrative remedies. (ECF Doc. No. 19 at p. 10). Before a claimant is entitled to bring such a claim, he must, as a precondition to a lawsuit, file an administrative claim with the

Agency as required by 28 U.S.C. § 2675(a). See Mucci v. United States, Civil No. 09-cv-350-PB, 2010 WL 1633413 at *2 (D.N.H. April 22, 2010). Plaintiff did not file an administrative claim and exhaust his available remedies, thus the Court lacks subject matter jurisdiction over any FTCA claim.

The only remaining claim asserted against HUD is under the Rehabilitation Act, and that claim fails under Fed. R. Civ. P. 12(b)(6) because Plaintiff has not alleged any acts or omissions that are specifically tied to HUD. Without specifically tying HUD to the discriminatory action that Plaintiff alleges, he has not stated a viable claim. See, e.g., Morales v. Related Mgmt. Co. LP, No. 13-cv-8191 (KMK), 2015 WL 7779297 at *11 (S.D.N.Y Dec. 2, 2015).

Conclusion

This is the seventh pro se Complaint filed by Plaintiff in this Court in recent years. Each of these Complaints has been filed IFP, and subsequently dismissed as frivolous, i.e., lacking an "arguable basis either in law or in fact." While Plaintiff's Complaints have been dismissed as frivolous, I do not believe his efforts to seek redress in this Court are malicious but rather are the result of his pro se status and a lack of understanding of what grievances legitimately give rise to a legal claim and what is necessary to invoke the jurisdiction and venue of the Federal Court.

Although Plaintiff, of course, has the right to seek redress in this Court, he does not have the right to abuse the process and waste the Court's limited resources by regularly filing frivolous lawsuits. Thus, pursuant to Fed. R. Civ. P. 11 and the Court's inherent power to address abuse of the Court process, I recommend that this District Court issue an appropriate order to limit Plaintiff's ability to file complaints in this Court without completely denying his access. See Azubuko v. MBNA Am. Bank, 396 F. Supp. 2d 1, 7 (D. Mass. 2005) ("a district court has the power to enjoin a party from filing frivolous and vexatious lawsuits"). In particular, I recommend

that the District Court enter the following Order to address Plaintiff's pattern of filing frivolous lawsuits:

> Plaintiff Noel Dandy is prohibited from filing any additional complaints or other papers in this Court, except for filings in currently-pending cases to object to a Report and Recommendation of a Magistrate Judge or to effect an appeal from this Court, without first obtaining the prior written approval of a District Judge of this Court. If Plaintiff Noel Dandy wishes to file any additional complaints or other papers in this Court, he shall file a written petition seeking leave of Court to do so. The petition must be accompanied by copies of the documents sought to be filed, and a certification under oath that there is a good-faith basis for filing them in Federal Court. The Clerk of Court shall accept the documents, mark them received and forward them to a District Judge of this Court for action on the petition for leave to file.

For the foregoing reasons, I also recommend that the District Court GRANT Defendants' Motions to Dismiss (ECF Doc. Nos. 18 and 19) and DISMISS Plaintiff's Amended Complaint in its entirety and with prejudice.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 28, 2019