

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

RONALD SATISH EMRIT :
 :
 v. : C.A. No. 16-543S
 :
 PROVIDENCE HOUSING :
 AUTHORITY, et. al. :

**REPORT AND RECOMMENDATION
FOR SUMMARY DISMISSAL PURSUANT TO 28 U.S.C. § 1915(e)**

Lincoln D. Almond, United States Magistrate Judge

Background

On October 3, 2016, Plaintiff filed a pro se Complaint accompanied by an Application to Proceed Without Prepayment of Fees including the \$400.00 per case filing fee. (Document Nos. 1 and 2). Plaintiff's Application (Document No. 2) filed pursuant to 28 U.S.C. § 1915 has been referred to me for determination. 28 U.S.C. § 636; LR Cv 72. After reviewing Plaintiff's Application signed under penalty of perjury, I conclude that Plaintiff is financially unable to pay the fees and costs of this proposed civil case and thus, Plaintiff's Application to Proceed Without Prepayment of Fees (Document No. 2) is GRANTED.

Having granted IFP status, I am required by statute to further review Plaintiff's Complaint sua sponte under 28 U.S.C. § 1915(e)(2) and to dismiss if it is "frivolous or malicious," "fails to state a claim on which relief may be granted" or "seeks monetary relief against a defendant who is immune from such relief." For the reasons discussed below, I recommend that Plaintiff's Complaint be DISMISSED because it is "frivolous," "fails to state a claim on which relief may be granted," and/or "seeks monetary relief against a defendant who is immune from such relief." See 28 U.S.C. § 1915(e)(2)(B).

Facts

Plaintiff is disabled, unemployed and homeless, with a prior mailing address in Las Vegas, Nevada. (Document No. 1 at p. 2). He states that he previously was a tenant on a Section 8 voucher in Las Vegas, Nevada with his former girlfriend, and although he no longer lives there, he continues to receive mail at that address. Id. at pp. 4-5. He filed this pro se Complaint against the Providence Housing Authority, Rhode Island Housing Authority and the United States Department of Housing and Urban Development (“HUD”). Plaintiff asserts that he has applied for Section 8 housing “within the last three years” with the City of Providence Housing Authority and that he “recently” received a letter stating that he was placed on a waiting list for subsidized housing. Id. at p. 4. He indicates that he applied for subsidized housing “throughout the United States.” Id.

His Complaint alleges a variety of claims, all grounded in his belief that he should have been provided preferential treatment regarding his placement on the waiting list for subsidized housing. See, e.g., Document No. 1 at ¶¶ 30, 35, 42, 48, 53, 58, 64, 74. He also states that “access to subsidized housing should be considered...an implied fundamental right.” See, e.g., Document No. 1, ¶¶ 43, 49, 54, 59, 65, 75. Plaintiff’s Complaint contains a variety of claims including negligence, violation of the Equal Protection clause of the Fourteenth Amendment, violation of the Due Process clause of the Fifth and Fourteenth Amendments, violation of the Privileges and Immunities clause, violation of 12 U.S.C. § 1706e, violation of the Housing Act of 1937, violation of the Americans with Disabilities Act, violation of the Fair Housing Act, intentional infliction of emotional distress, and material breach of contract. Plaintiff seeks \$500,000.00 and “injunctive relief and/or specific performance such that both of the defendants will be required to make accommodations for the plaintiff’s disabilities...” (Document No. 1 at p. 18).

Standard of Review

Section 1915 of Title 28 requires a federal court to dismiss an action brought thereunder if the court determines that the action is frivolous, fails to state a claim or seeks damages from a defendant with immunity. 28 U.S.C. § 1915(e)(2)(B). The standard for dismissal of an action filed in forma pauperis is identical to the standard for dismissal on a motion to dismiss brought under Fed. R. Civ. P. 12(b)(6). See Fridman v. City of N.Y., 195 F. Supp. 2d 534, 538 (S.D.N.Y. 2002). In other words, the court “should not grant the motion unless it appears to a certainty that the plaintiff would be unable to recover under any set of facts.” Roma Constr. Co. v. aRusso, 96 F.3d 566, 569 (1st Cir. 1996). Section 1915 also requires dismissal if the court is satisfied that the action is “frivolous.” 28 U.S.C. § 1915(e)(2)(B)(i). A claim “is frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Discussion

This Court is recommending that Plaintiff’s Complaint be summarily dismissed pursuant to 28 U.S.C. § 1915(e)(2). In making this recommendation, this Court has taken all of the allegations in Plaintiff’s Complaint as true and has drawn all reasonable inferences in his favor. Estelle v. Gamble, 429 U.S. 97 (1976). In addition, this Court has liberally reviewed Plaintiff’s allegations and legal claims since they have been put forth by a pro se litigant. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972). However, even applying these liberal standards of review to Plaintiff’s Complaint, dismissal is required.

The Section 8 Housing Choice Voucher Program is a Federal Government program for assisting low-income families in obtaining affordable housing. Participants choose housing that meets the requirements of the Program. Housing Choice Vouchers are administered locally by Public Housing Agencies (“PHAs”). The PHAs receive federal funding from the United States Department

of Housing and Urban Development (“HUD”) to administer the Voucher Program. Once housing is chosen, contracts are signed between the PHA and the landlord and the landlord and the tenant. The tenant pays a percentage of his or her monthly income to the landlord towards the contract rent, and the PHA pays the difference. Demand for Vouchers exceeds their supply, and often long waiting lists develop. See Castro v. Bayonne Hous. Auth., No. CIV. 10-403 (DRD), 2010 WL 1849997 at *1 (D.N.J. May 7, 2010); www.rhodeislandhousing.org (last visited October 19, 2016). Under HUD regulations, a public housing authority may admit an applicant with certain characteristics as a special admission from the waiting list. 24 C.F.R. § 982.202(b)(3). This is discretionary with the housing authority, and “[a]n applicant does not have any right or entitlement to be listed on the PHA waiting list, to any particular position on the waiting list, or to admission to the programs.” 24 C.F.R. § 982.202(c). Castro v. Bayonne Hous. Auth., No. CIV. 10-403 (DRD), 2010 WL 1849997 at *4 (D.N.J. May 7, 2010).

In the present case, Plaintiff does not allege he was denied a Voucher by reason of his disability. Instead, he claims he was placed on the waiting list for a Voucher in the same manner as any other applicant for a Voucher. What he sought was preferential treatment in the form of being moved to the top of the waiting list ahead of any disabled or non-disabled applicants. Instead of seeking administrative remedies, however, he filed the present action seeking damages. The present Complaint fails, as a preliminary matter, because he failed to exhaust his administrative remedies as required by statute. See Kabando v. United States, No. 1:15cv1040 JCC/JFA, 2015 WL 5052665 at *3 (E.D. Va. Aug. 26, 2015) (noting exhaustion requirement); Castro, 2010 WL 1849997 at *3 (same).

Moreover, Plaintiff has not alleged any plausible facts that he was denied a housing Voucher or denied a request to be placed at the head of the waiting list because of his alleged disability. Any cause of action based on discrimination requires some factual allegations rendering plausible the conclusion that defendants' conduct was motivated by a plaintiff's membership in a protected class.

In addition to the substantive failure of the Complaint, the Court must address the Plaintiff's status as prolific pro se litigant, who is not new to this Court. In his previous cases filed in this Court, Plaintiff was Ordered to "cease from using the e-mail address of the Court, any member of the Court or court employee" due to the voluminous emails being sent to the Court. (See Document No. 78 in C.A. No. 13-181ML). Additionally, he was Ordered to refrain from filing any motions in his other case, "in view of [his] penchant for filing numerous frivolous motions." (See Document No. 68 in C.A. No. 14-106ML). These are unusual but relatively minor sanctions.

The District of Nevada has taken the additional step of declaring Plaintiff a "vexatious filer." (See Document No. 91 in C.A. No. 14-106ML). That Court noted that Plaintiff and his ex-girlfriend had filed numerous lawsuits throughout the country and in Nevada and that by their own admission had declared that they were "looking for a liberal court to lend a sympathetic ear with regard to [their] plight and financial woes caused by a long history of bad luck and a series of unfortunate events." Id. That sentiment is particularly apt, because a search of the national PACER system indicates that the issues presented in the present case also appear to be raised in four other Federal District Courts and that each case was filed within a two-week time period. Those other cases are C.A. No. 16-2022 in the Middle District of Pennsylvania, C.A. No. 16-655 in the District of Arizona, C.A. No. 16-599 in the Middle District of Florida, and C.A. No. 16-1854 in the District of Oregon. Therefore, it is reasonable to conclude that Plaintiff continues to seek the ear of a sympathetic court and is once again raising identical issues throughout the country.

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 filing waves of 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 Ronald Satish Emrit 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 Ronald Satish Emrit 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.

Conclusion

For the reasons stated, Plaintiff's Application to Proceed Without Prepayment of Fees (Document No. 2) is GRANTED. However, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i), (ii) and (iii), I further recommend that Plaintiff's Complaint (Document No. 1) be DISMISSED with prejudice. In addition, I recommend that the above Order be entered to address Plaintiff's history of filing frivolous lawsuits.

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
October 25, 2016