

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MICHAEL SAMMONS,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

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CIVIL ACTION NO. SA-16-CA-1054-FB

**ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court are the Report and Recommendation of the United States Magistrate Judge (docket no. 30), plaintiff's written objections (docket no. 31) thereto, defendant's response (docket no. 32) in opposition to plaintiff's written objections.

Where no party has objected to a Report and Recommendation of the United States Magistrate Judge, the Court need not conduct a de novo review of the Report and Recommendation. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether it is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report and Recommendation to which objection is made requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review

when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

The Court has thoroughly analyzed plaintiff's submission in light of the entire record. As required by Title 28 U.S.C. § 636(b)(1)(c), the Court has conducted an independent review of the entire record in this cause and has conducted a de novo review with respect to those matters raised by the objections. After due consideration, the Court concludes plaintiff's objections lack merit.

Plaintiff, proceeding *pro se*, filed this action against the United States alleging an unconstitutional taking of his property in violation of the Fifth Amendment to the United States Constitution. Plaintiff contends he is the holder of “non cumulative preferred stock” issued by the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home loan Mortgage Corporation (“Freddie Mac”), the value of which was destroyed when the United States Department of Treasury and the Federal Housing Finance Agency amended a stock purchase agreement with Fannie Mae and Freddie Mac in order to stabilize the economy in 2012. He alleges this agreement expropriated his property interest in his preferred stock, destroyed his reasonable investment-backed expectations and permanently deprived him of the economic value of his shares. Plaintiff now seeks compensation in the amount of \$900,000 from the United States.

Defendant contends plaintiff's takings claim must be brought before the Court of Federal Claims, an Article I tribunal, while plaintiff argues jurisdiction is properly maintained in this Article III Court. The Magistrate Judge found that congressional delegation of decision-making to the Court of Federal Claims via the Tucker Act does not violate Article III. The report therefore concludes that this Court lacks subject matter jurisdiction over plaintiff's complaint and recommends that defendant's motion to dismiss pursuant to Rule 12(b)(1) be granted.

Plaintiff argues “that all of the Article III legal arguments presented by the Magistrate Judge were refuted” by Professor Michael P. Goodman in his law review article, *Taking Back Takings Claims: Why Congress Giving Just Compensation Jurisdiction to the Court of Federal Claims is Unconstitutional*, 60 Vill. L. Rev. 83 (2015). Although Professor Goodman argues that takings claims must be brought before Article III judges, he calls on Congress—not the courts—to rectify the problem. (Docket no. 16, Exhibit 1, pages 55-62). Accordingly, plaintiff’s reliance on Professor Goodman’s article is misplaced.

IT IS THEREFORE ORDERED that the Report and Recommendation of the United States Magistrate Judge (docket no. 30) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff’s Motion for Declaratory Judgment (docket no. 3) is DENIED and the United States of America’s Motion to Dismiss and Opposition to Plaintiff’s Motion for Declaratory Judgment on Jurisdiction (docket no. 15) is GRANTED IN PART as to the 12(b)(1) dismissal and DISMISSED AS MOOT as to the 12(b)(6) dismissal. Plaintiff’s claims against defendant the United States of America are DISMISSED WITHOUT PREJUDICE to refiling in the proper court.

IT IS FURTHER ORDERED that motions pending with the Court, if any, are Dismissed as Moot and this case is CLOSED.

It is so ORDERED.

SIGNED this 9th day of March, 2017.


FRED BIERY
UNITED STATES DISTRICT JUDGE