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JUN 15 2004

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By: *J Reed* Deputy Clerk

YVETTE BOYKIN,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	1:03-CV-3467-MHS
	:	
BANK OF AMERICA, N.A.,	:	
EQUICREDIT CORPORATION OF	:	
AMERICA, STATE OF NEW YORK	:	
DIVISION OF HUMAN RIGHTS, and	:	
U.S. DEPARTMENT OF HOUSING AND:	:	
URBAN DEVELOPMENT,	:	
	:	
Defendants.	:	

ORDER

This matter is before the Court on defendants' motions to dismiss. The Court's rulings are set forth below.

Background

On November 14, 2003, plaintiff, who is proceeding pro se, filed this action pursuant to various federal statutes, regulations, and constitutional provisions. Plaintiff claims that defendants Bank of America, N.A. and Equicredit Corporation of America (collectively, the "Bank") denied plaintiff's loan refinancing application on the basis of her race, gender, and age and the

property's location in a predominantly African-American neighborhood. Plaintiff filed a complaint with defendant United States Department of Housing and Urban Development (HUD). HUD referred the complaint to defendant State of New York Division of Human Rights (DHR). Plaintiff contends that HUD and DHR "failed to ensure that the investigation of the subject complaint was complete and adequate prior to issuing a no probable cause determination and closing the complaint."

On March 15, 2004, the Bank waived service of summons, and on April 9, 2004, the Bank filed its motion to dismiss. HUD filed its motion to dismiss on April 19, 2004. The record does not show that DHR has been properly served and DHR has not answered or otherwise appeared in this action.

Discussion

The only concern of the Court at this stage is whether, construing the complaint in the light most favorable to plaintiff, Hargrave v. McKinney, 413 F.2d 320 (5th Cir. 1969), plaintiff will be able to prove a set of facts in support of his claims which would entitle him to relief. Milburn v. United States, 734 F.2d 762, 765 (11th Cir. 1984). The complaint need not, and indeed should not, plead

evidence. In Re Beef Antitrust Litig., 600 F.2d 1148 (5th Cir. 1979), cert. denied, 449 U.S. 905 (1980). “A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

In its motion to dismiss, the Bank argues that plaintiff's claims against the Bank under the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., (FHA), the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., (ECOA), and 42 U.S.C. §§ 1981 and 1982 (Civil Rights Act) must be dismissed as time-barred and that plaintiff's claim against the Bank under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq., (Title VI) must be dismissed because the Bank is not a recipient of federal funding and plaintiff is not an intended beneficiary of federal funding as contemplated by Title VI.

HUD argues in its motion to dismiss that (1) plaintiff cannot state a FHA claim against HUD because HUD did not make available loans or financial assistance as contemplated by the FHA; (2) plaintiff cannot state a FHA claim based on HUD's determination that plaintiff lacked probable cause to proceed

because HUD did not issue a final order that is subject to review in a district court; (3) and all of plaintiff's other claims should be dismissed because the United States is immune from suit for money damages arising from constitutional violations.

In her responses, styled as a motions to deny defendants' motions to dismiss, plaintiff concedes that she cannot recover from the Bank on her Title VI and ECOA claims and that she cannot recover any money damages from HUD. Plaintiff did not respond to the Bank's motion to dismiss plaintiff's Civil Rights Act claims. Plaintiff argues, however, that her FHA claim against the Bank is not time-barred because the statute of limitations was tolled while HUD and DHR processed her administrative complaint and that she is entitled to injunctive relief against HUD because HUD violated her right to due process of law when HUD did not review DHR's determination that plaintiff's claims had no merit. Plaintiff filed a letter from HUD to plaintiff to support her arguments.

The Court concludes that plaintiff has alleged sufficient facts at this stage to support the timeliness of her FHA claim. The Court denies the Bank's motion to dismiss plaintiff's FHA claim as untimely without prejudice to the Bank's right

to raise the timeliness issue after discovery in a motion for summary judgment. The Court grants the Bank's motion to dismiss concerning plaintiff's ECOA, Title VI, and Civil Rights Act claims as unopposed.

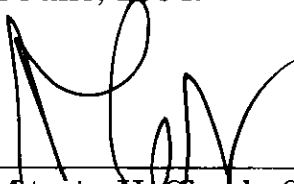
The Court grants HUD's motion to dismiss. Plaintiff fails to state a claim against HUD because HUD is not a party to plaintiff's underlying claim of discrimination; HUD was compelled by the FHA to refer plaintiff's complaint to DHR, see 42 U.S.C. § 3610(f); and plaintiff cannot seek judicial review of HUD's actions because she has an adequate alternative remedy, i.e. her private action against the Bank, see Godwin v. Sec'y of Housing and Urban Dev., 356 F.3d 312 (D.C. Cir. 2004).

Summary

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART defendants Bank of America, N.A.'s and Equicredit Corporation of America's motion to dismiss [#5-1]; DISMISSES all of plaintiff's claims except her FHA claim against defendants Bank of America, N.A. and Equicredit Corporation of America; GRANTS defendant United States Department of Housing and Urban Development's motion to dismiss [#6-1]; DENIES plaintiff's motions to deny

motions to dismiss [#7-1, #9-1]; GRANTS plaintiff's motion to amend motion to deny motion to dismiss [#8-1]; and ORDERS plaintiff to show cause in writing within ten (10) days from the date of entry of this order why defendant State of New York Division of Human Resources should not be dismissed for plaintiff's failure to serve defendant in accordance to Fed. R. Civ. P. 4. The Clerk is DIRECTED to submit this matter at the expiration of ten (10) days.

IT IS SO ORDERED, this 10 day of June, 2004.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia

ENTERED ON DOCKET

JUN 17 2004

**By: LUTHER D. THOMAS
Deputy Clerk**