

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARNOLD H. LICHTENSTEIN,

Plaintiff

v.

CONSOLIDATED SERVICES GROUP,
INC., et al.,

Defendants

Civil No. 95-34-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Defendant Fryer filed a Motion for Summary Judgment (Docket No. 62) and a Motion for Sanctions under Fed. R. Civ. P. 11 against Plaintiff's attorney, Ralph Dyer (Docket No. 57). The Court subsequently referred both matters to Magistrate Judge David Cohen.¹ Judge Cohen recommended that Fryer's Motion for Summary Judgment be granted (Docket No. 110), and the Court subsequently affirmed the Recommended Decision (Docket No. 116). The magistrate judge then addressed the Motion for Sanctions under Fed. R. Civ. P. 11. He presented his findings to the Court in the form of a decision granting the motion and ordering Dyer to pay attorney fees (Docket No. 131). Dyer moved to vacate the magistrate judge's decision on the grounds that the magistrate judge lacked the jurisdiction both to enter the decision and to

¹ The Court's referral did not specify the applicable provision of the Federal Magistrates Act, 28 U.S.C. §§ 631 et seq.

impose the monetary sanctions (Docket No. 134).

A district court may refer matters to a magistrate judge pursuant to 28 U.S.C. § 636(b).² The standard of review employed by the district court depends upon the nature of the matter in question.³ 28 U.S.C. § 636(b); Fed. R. Civ. P. 72. Although the magistrate judge treated the matter as designated under section 636(b)(1)(A), the Court will treat the matter as referred to the magistrate judge pursuant to section 636(b)(3).⁴ The Court will

² The Federal Magistrates Act provides several categories of referral. Section 636(b)(1)(A) permits a judge to "designate a magistrate to hear and determine any pretrial matter pending before the court . . .," with eight exceptions. Section 636(b)(1)(B) allows a judge to "designate a magistrate to conduct hearings . . . and to submit to a judge of the court proposed findings of fact and recommendations for disposition, by a judge of the court, of any motion excepted in subparagraph (A)" Finally, section 636(b)(3) provides that "[a] magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States."

³ There are two different standards of review by the district court: (1) the "clearly erroneous or contrary to law" standard; and (2) the de novo determination. 28 U.S.C. § 636(b)(1)(A)-(B); Fed. R. Civ. P. 72. Decisions made by magistrate judges under section 636(b)(1)(A) are reviewed under the "clearly erroneous and contrary to law" standard. In reviewing recommended decisions presented by magistrate judges pursuant to section 636(b)(1)(B), the district court makes a de novo determination. Jacobsen v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 594 F. Supp. 583, 585 (D. Me. 1984). The statute does not provide a standard of review for magistrate action in referrals under section 636(b)(3).

⁴ In making this choice, the Court makes no determination of whether a motion for Rule 11 sanctions should be considered a "pretrial" matter. The Court simply exercises its power to refer matters to the magistrate judge pursuant to section 636(b)(3).

review Judge Cohen's recommended decision de novo.⁵

Accordingly, it is hereby ORDERED that Attorney Dyer's Motion to Vacate be, and it is hereby, DENIED, and that Attorney Dyer may file objections to Judge Cohen's Recommended Decision pursuant to Rule 72(b) within ten (10) days of the entry of this Order. Defendant Fryer will respond to Dyer's objections within

⁵ Although the statute does not specify which standard of review applies to action taken pursuant to section 636(b)(3), the Court determines that the nature of the matter referred governs the choice. The standard of review for pretrial matters referred under section 636(b)(1) depends on whether the matter is "dispositive of a claim or defense of a party." Fed. R. Civ. P. 72. Dispositive matters receive a de novo determination by the district court judge. Fed. R. Civ. P. 72(b). Although the First Circuit has not yet addressed the question of whether Rule 11 sanctions are dispositive or nondispositive, Lancellotti v. Fay, 909 F.2d 15, 17 n.2 (1st Cir. 1990), the Court follows the precedents of the Sixth and Seventh Circuits in concluding that Rule 11 sanctions are dispositive. Bennett v. General Caster Serv. of N. Gordon Co., 976 F.2d 995, 998 (6th Cir. 1992) (holding that an order imposing Rule 11 sanctions is "dispositive of the Rule 11 matter and, consequently, dispositive of a 'claim' of a party."); Retired Chicago Police Ass'n v. City of Chicago, 76 F.3d 856, 869 (7th Cir.), cert. denied, 117 S. Ct. 305 (1996) ("[A] request for sanctions, regardless of when made, is a dispositive matter capable of being referred to a magistrate judge only under § 636(b)(1)(B) or § 636(b)(3)." Thus, the Court is satisfied that it should make a de novo determination of dispositive matters referred to the magistrate judge pursuant to section 636(b)(3).

(10) days. Fed. R. Civ. P. 72(b). The Court RESERVES decision on Attorney Dyer's request for oral argument on the merits of the Rule 11 Motion for Sanctions until the Court receives any written submissions filed pursuant to this Order.

GENE CARTER
District Judge

Dated at Portland, Maine this 19th day of September, 1997.