DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

VANESSA M. WILLIAMS,

Plaintiff,

v.

VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE,

Defendant.

1:21-cv-00015-WAL-EAH

TO: Vanessa M. Williams, *Pro Se*

REPORT AND RECOMMENDATION

THIS MATTER comes before the Court *sua sponte*.

In March 2021, pro se Plaintiff Vanessa Williams filed a complaint against Defendant Virgin Islands Bureau of Internal Revenue (the "BIR") alleging that the BIR wrongly declined to apply certain tax credits to her in tax year 2016. *See* Dkt. No. 1. Ms. Williams did not properly effect service of summons or of her complaint. *See* Dkt. No. 7. In July 2021, after the case sat on the docket for several months, then-United States Magistrate Judge George W. Cannon, Jr.[1] issued an Order to Show Cause directing Ms. Williams to provide a written response demonstrating why this matter should not be dismissed for failure to prosecute. Dkt. No. 5. Ms. Williams did not submit a response to the Show Cause Order, so Judge Cannon issued a Report and Recommendation ("R&R") recommending that the case be dismissed. *See* Dkt. No. 7.

[1] Judge Cannon retired from the Bench on April 30, 2022, and Judge Emile A. Henderson III began service as United States Magistrate Judge of the District Court of the Virgin Islands in the St. Croix Division on May 1, 2022.

However, after realizing that Ms. Williams was not served with and did not receive a copy of the original Show Cause Order, the undersigned Magistrate Judge issued a second Order to Show Cause setting a hearing for April 17, 2024. Dkt. No 8. The hearing was meant to provide Ms. Williams with "a final opportunity to explain . . . whether she intends to move this case forward." *Id*.

In an April 17, 2024 Order, the Court noted that Ms. Williams appeared for the Show Cause Hearing and explained that she intended to proceed with litigating this case. *See* Dkt. No. 12. Accordingly, the Court discharged its Order to Show Cause and vacated the recommendation that this case be dismissed. *Id.* The Court provided Ms. Williams with a new deadline of "up to and including June 17, 2024 to properly serve the Defendant." *Id*. The Court also ruled that "if the complaint was not properly served by the deadline, it would recommend to the District Judge that the case be dismissed for failure to prosecute." *Id.* The record reflects that Ms. Williams received a copy of the April 17 Order via certified mail. Dkt. No. 14. No action has been taken by Ms. Williams since she appeared at the April 17, 2024 hearing.

Rule 4(m) of the Federal Rules of Civil Procedure provides that:

> If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). If service has not been effectuated within 90 days, a district court must provide notice to a plaintiff that her complaint is vulnerable to dismissal under Rule 4(m). *See Walker v. Pennsylvania Dep't of Transp.*, 812 F. App'x 93, 94 (3d Cir. 2020). Such notice is designed to "set the stage for [a plaintiff] to make a showing of good cause, the result of which would be a mandatory extension of time to perfect service" or to allow a plaintiff the opportunity to request a discretionary extension to perfect service based on the unique circumstances of her case. *Id*. at 95.

If, after notice is given, service is still not effectuated and the plaintiff has failed to make any showing of good cause that would justify an extension, the district court may dismiss the case. *See Saleem v. Doe*, 850 F. App'x 135, 137-38 (3d Cir. 2021). In *Saleem*, a pro se plaintiff was ordered to show cause why his case should not be dismissed after he failed to timely serve summons on the defendants within 90 days. *Id.* at 136. Following that order, the plaintiff moved for an extension of time to serve the defendants, and the district court granted him a two-month extension to properly effectuate service. *Id*. Four months after the motion for extension was granted, the plaintiff still had not served the defendants. *Id*. On that record, the Third Circuit agreed that the plaintiff "failed to establish good cause" for the delayed service under Rule 4(m) and that the district court did not abuse its discretion in dismissing the complaint. *Id*. at 138; *see also Sykes v. Blockbuster Video*, 205 F. App'x 961, 963 (affirming dismissal under Rule 4(m) where plaintiff "clearly failed to serve [the defendant]" within time required by the Rules).

In the instant matter, the original deadline for service expired over three and a half years ago. The Court eventually granted Ms. Williams an additional two-month extension of time to perfect service, but it also informed her directly that if she did not perfect service by June 17, 2024, her case would be recommended for dismissal. Dkt. No. 12. The June 17, 2024 deadline passed without any response from Ms. Williams or indication that she had attempted to properly serve the BIR. The Court is satisfied that Ms. Williams had sufficient notice that her case was vulnerable to dismissal if she did not perfect service by the deadline.

Moreover, Ms. Williams has not demonstrated good cause for failing to perfect service nearly one year after the latest deadline for service and over three and a half months since the initial deadline imposed by Rule 4(m). Indeed, like the plaintiff in *Saleem*, Ms. Williams has made no showing whatsoever regarding her failure to timely serve the defendant. Considering the factual background and procedural history of this case, the Court finds that issuing another Order to Show Cause why this case should not be dismissed pursuant to Rule 4(m) would be futile; especially since 10 months have already passed since the latest deadline to serve the BIR. Consequently, the undersigned Magistrate Judge hereby **RECOMMENDS** that Plaintiff Vanessa Williams's complaint be **DISMISSED WITHOUT PREJUDICE**.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection." LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

ENTER:

Dated: April 30, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE