

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BYRON J. HORN,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION,
in its capacity as receiver for K Bank,

Defendant.

Civil Action No. ELH-11-2127

ORDER

Byron J. Horn, the self-represented plaintiff, is a former employee of K Bank, a Maryland bank that is now under the receivership of the Federal Deposit Insurance Corporation (the “FDIC”), defendant. Mr. Horn filed this suit against the FDIC, in its capacity as receiver, under 12 U.S.C. § 1821(d)(6), seeking to recover unpaid commissions in the amount of \$27,000, to which he claims he is entitled under the terms of his employment agreement with K Bank. In addition to actual damages of \$27,000, plaintiff seeks treble damages and attorneys’ fees.¹

The FDIC filed a motion to dismiss (the “Motion”) (ECF 11), which the Court has treated, after notice to the parties, as a motion for summary judgment pursuant to Rules 56 and 12(d) of the Federal Rules of Civil Procedure. *See* ECF 13. The FDIC’s motion is principally based on its decision, after suit was filed, to allow Mr. Horn’s claim. The FDIC has issued a “Notice of Allowance of Claim,” which it describes as a “receivership certificate,” to Mr. Horn

¹ Plaintiff does not identify the legal basis for his claim for treble damages and attorneys’ fees. However, treble damages and attorneys’ fees can be recovered for withholding of wages in certain circumstances under the Maryland Wage Payment and Collection Law (“MWPCCL”), Md. Code (2008 Repl. Vol., 2011 Supp.), § 3-507.2(b) of the Labor and Employment Article.

in the full amount of \$27,000. *See* ECF 14-1. The FDIC asserts that, as a matter of law, the receivership certificate constitutes a full satisfaction of Mr. Horn's actual damages claim. It further contends that the treble damages and attorneys' fees sought by Mr. Horn are barred by 12 U.S.C. § 1825(b)(3), a provision of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), which states that, "[w]hen acting as a receiver," the FDIC "shall not be liable for any amounts in the nature of penalties or fines." Mr. Horn has not responded to the Motion, and the time for him to do so has expired. *See* Local Rule 105.2(a); Fed. R. Civ. P. 6(d). The Court now rules without a hearing, pursuant to Local Rule 105.6.

The FDIC has cited ample case law supporting its position that its issuance of a receivership certificate to plaintiff in the amount of \$27,000 constitutes a full satisfaction of plaintiff's actual damages claim. *See, e.g., Battista v. FDIC ex rel. Bank of Newport*, 195 F.3d 1113, 1116 (9th Cir. 1999) ("There is no question that the FDIC may pay creditors with receiver's certificates instead of with cash."); *Adagio Inv. Holding Ltd. v. FDIC ex rel. Conn. Bank of Commerce*, 338 F. Supp. 2d 71, 74 n.4 (D.D.C. 2004); *Franklin Bank v. FDIC ex rel. Financial Center Bank, N.A.*, 850 F. Supp. 845, 847-49 (N.D. Cal. 1994). Plaintiff may ultimately receive monetary payments from the FDIC, potentially up to the amount of the certificate, as and to the extent that the assets of K Bank are distributed by the receiver according to a statutory system of priority established by 12 U.S.C. § 1821(d)(11)(A).

I am also satisfied that treble damages under the MWPCCL are "in the nature of penalties or fines," within the meaning of 12 U.S.C. § 1825(b)(3); treble damages cannot be awarded against the FDIC in its capacity as receiver. *See, e.g., Alexander v. Washington Mutual, Inc.*, Civ. No. 07-4426, 2011 WL 2559641, at *4-6 (E.D. Pa. June 28, 2011) (holding that treble

damages under the Real Estate Settlement Procedures Act are “penalties” barred by 12 U.S.C. § 1825(b)(3)); *Atta Poku v. FDIC*, Civ. No. RDB-08-1198, 2011 WL 1599269, at *3-4 (D. Md. April 27, 2011); *Cassese v. Washington Mutual, Inc.*, 711 F. Supp. 2d 261, 272-273 (E.D.N.Y. 2010); *King v. Long Beach Mortgage Co.*, 672 F. Supp. 2d 238, 246 (D. Mass. 2009).

The case law is not so clear that attorneys’ fees are also “in the nature of penalties or fines” under 12 U.S.C. § 1825(b)(3). *See, e.g., Atta Poku, supra*, 2011 WL 1599269, at *4-5 (declining to resolve whether recovery of attorneys’ fees under the Maryland Consumer Protection Act is barred by 12 U.S.C. § 1825(b)(3)). Nevertheless, I am satisfied that plaintiff is not entitled to recover attorneys’ fees in this action for another reason: he has not incurred any attorneys’ fees. Mr. Horn is not represented by an attorney in this case. Rather, he is self-represented. It is well settled that a self-represented party ordinarily is not eligible to receive an award of attorneys’ fees. *See, e.g., Bond v. Blum*, 317 F.3d 385, 398-99 (4th Cir. 2003); *Rhoads v. FDIC ex rel. Standard Fed. Sav. Bank*, 286 F. Supp. 532, 541 (D. Md. 2003); *Frison v. Mathis*, 188 Md. App. 97, 101-09, 981 A.2d 57, 59-63 (2009).

Accordingly, it is, this 8th day of December, 2011, by the United States District Court for the District of Maryland, ORDERED:

1. Defendant’s Motion to Dismiss (ECF 11), construed as a motion for summary judgment pursuant to Fed. R. Civ. P. 12(d), is GRANTED;
2. The Clerk is directed to ENTER JUDGMENT in favor of defendant, the Federal Deposit Insurance Corporation; and
3. The Clerk is directed to CLOSE this case.

/s/
Ellen Lipton Hollander
United States District Judge