

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D29349
O/kmb

_____AD3d_____

Submitted - November 12, 2010

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-09357

DECISION & ORDER

In the Matter of Albin Lobaina, appellant, v Human Resources Administration, Office of Child Support Enforcement, respondent.

(Index No. 4505/09)

Albin Lobaina, Miami, Florida, appellant pro se.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and Scott Shorr of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the respondent Human Resources Administration, Office of Child Support Enforcement, dated October 28, 2008, which, inter alia, determined that the petitioner owed child support arrears, the petitioner appeals from stated portions of an order and judgment (one paper) of the Supreme Court, Queens County (Kitzes, J.), entered June 10, 2009, which, inter alia, granted those branches of the respondent's motion which were pursuant to CPLR 3211(a)(1),(7), and (10) to dismiss the proceeding, and, in effect, dismissed the proceeding.

ORDERED that the order and judgment is affirmed insofar as appealed from, with costs.

On a motion pursuant to CPLR 3211(a)(7), "only the petition is considered, all of its allegations are deemed true, and the petitioner is accorded the benefit of every possible inference" (*Matter of Brown v Foster*, 73 AD3d 917, 918; see *Matter of Miller v Mulligan*, 73 AD3d 781, 783; *Matter of Bloodgood v Town of Huntington*, 58 AD3d 619, 621). "Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense

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to the asserted claims as a matter of law” (*Leon v Martinez*, 84 NY2d 83, 88; *see Teitler v Pollack & Sons*, 288 AD2d 302).

Here, the petition failed to set forth allegations sufficient to make out a claim that the respondent’s determination that the petitioner owed \$19,965.22 in child support arrears was “made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion” (CPLR 7803[3]; *see Matter of Miller v Mulligan*, 73 AD3d at 783). Moreover, the documentary evidence submitted by the respondent conclusively established a defense to this proceeding as a matter of law (*see Matter of Owens Rd. Assoc., LLC v Town Bd. of Town of Goshen*, 50 AD3d 908).

The petitioner’s remaining contentions either are without merit or need not be reached in light of our determination.

Accordingly, the proceeding was properly dismissed.

MASTRO, J.P., DILLON, ENG and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court