

**Hidalgo v Support Collection Unit of NYC Dept. of  
Social Servs.**

2023 NY Slip Op 34385(U)

December 14, 2023

Supreme Court, New York County

Docket Number: Index No. 150743/2023

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE P. BLUTH **PART** **14**

*Justice*

-----X

WALTER HIDALGO

Petitioner,

- v -

SUPPORT COLLECTION UNIT OF NYC DEPARTMENT  
OF SOCIAL SERVICES,

Respondent.

-----X

**INDEX NO.** 150743/2023

**MOTION DATE** 12/13/2023

**MOTION SEQ. NO.** 001 002

**DECISION + ORDER +  
JUDGMENT ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 31, 32, 34

were read on this motion to/for ARTICLE 78.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to vacate a final determination made by respondent about petitioner’s child support arrears is denied. Respondent’s motion (002) to dismiss the petition is granted.

**Background**

This proceeding arises out of a May 22, 2014 order of support issued by New York County Family Court that required petitioner to pay \$266.92 semi-monthly as support for his child. Over the years, the entity to whom petitioner was supposed to make these payments changed. Originally, petitioner was to pay the Department of Social Services because the family was receiving public assistance and then he was directed to pay the child’s custodial parent when the parent no longer got public assistance.

Public assistance for petitioner's child was reopened on April 27, 2020 and thereafter respondent started to enforce the child support order over the next couple of years. In a letter dated May 20, 2022, it informed petitioner that he owed \$13,346.00 (NYSCEF Doc. No. 24). Petitioner was then subject to various enforcement mechanisms including income withholding, property execution and the tax refund offset-passport denial process. This latter program entails respondent intercepting funds from tax refunds if the outstanding amount exceeds \$500 and risks cancellation or other negative consequences on a person's passport.

Petitioner challenged his inclusion in this tax refund offset and requested a conference (NYSCEF Doc. No. 25). Respondent denied the request in September 2022 and noted that a review of petitioner's account showed that the amount due was correct (NYSCEF Doc. No. 26).

Respondent moves to dismiss on the ground that it is not an entity that can be sued; it observes that petitioner had to sue the City of New York as respondent is a unit and subdivision of the City of New York. It also observes that petitioner was removed from the property execution process (the bank account restraint) because his bank account balance fell below the minimum threshold.

With respect to the tax return issue, respondent observes that the notice petitioner received contained four separate bases upon which he could challenge his inclusion in this enforcement program. They included (1) "You are not the person identified on the Special Notice coupon as the "Support Payor" who owes support," (2) "There is no court order for support," (3) "The information on the Special Notice about the amount of support you owe is incorrect" or (4) "There is a court order providing that the support you owe is not to be certified for the tax refund offset process" (NYSCEF Doc. No. 4). Respondent points out that petitioner's challenge failed to cite to any of these issues.

In other words, respondent acknowledges that petitioner requested a conference but questions why it should have held a conference when petitioner did not identify what areas he wanted to discuss or why he thought he should be exempt from these collection efforts. Respondent also argues that it did try to set up a conference but that petitioner did not cooperate. It points out that petitioner elected to appoint a representative with respect to his challenge (an attorney based in Annapolis, Maryland) but did not include a phone number for this person (NYSCEF Doc. No. 6). Respondent acknowledges that petitioner was entitled to require that respondent speak with this representative but petitioner had to provide information sufficient to schedule a prompt conference.

In reply, petitioner points out that he made a valid request for a conference and argues that it was respondent who refused to set up the conference. He explains that on January 20, 2023 he discovered that his personal checking account was seized when he unsuccessfully tried to use a debit card. Petitioner argues that he (along with his attorney) then called respondent on January 23, 2023 and was told he could submit a mistake of fact form to challenge the seizure of his bank account. He claims that after doing this, respondent restored his bank account but he never got a refund for the processing fee related to the property execution on this bank account. Petitioner claims that courts have permitted claimants to name respondent (instead of the City of New York) and, in any event, cross-moves for leave to amend to add this respondent.

Petitioner claims he was deprived of due process and that respondent had no rational basis for denying his challenge.

Respondent argues in reply that petitioner's bank account was seized because at the time of the restraint, he owed \$11,528.41, which exceeds the threshold for such a hold. It points out that his mistake of fact submission was denied (NYSCEF Doc. No. 49) but that respondent

restored access to the bank account because the funds in the account were \$3,000 or less and there was an income withholding order in place.

## Discussion

In an Article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*Matter of Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013]).

The central issue in this proceeding is respondent’s decision to deny petitioner a conference. The Court finds that decision was rational. The notice informing petitioner that he was going to be included in the tax refund offset program (NYSCEF Doc. No. 4) identifies four areas that petitioner could point to as part of a challenge. Those same justifications are included on the form petitioner submitted and yet *he left them all blank*, although he requested a conference (NYSCEF Doc. No. 5). It was rational for respondent to reject the request for a conference where petitioner did not explain why he wanted a conference at all.

In other words, it was petitioner’s burden, initially, to show why he should not be placed in the tax refund offset program and he wholly failed to do so. The Court observes that this form includes ample space where a challenger can expound on his or her own reasons and include documentation (*id.*). Petitioner did not do that; he simply marked a box requesting a conference without marking anything else and now complains that he did not get that conference. The clear purpose of this conference is to evaluate the defenses raised in the form; it is not intended to be

the start of a general discussion or a means to delay a case. That respondent may have attempted to reach a resolution or hold a conference afterwards is of no moment.

Moreover, petitioner acknowledges in his affidavit that he may be liable for some additional child support (NYSCEF Doc. No. 8, ¶ 17) although he makes substantive arguments about what his share should be based on the care provided to his child. He does not argue, however, that he paid any of the outstanding amounts or any of the other reasons/defenses identified in the form. In any event, nothing prevents petitioner from making the correct application to alter or modify the child support order in the proper forum.

The proceeding before this Court concerns respondent's rational decision to deny petitioner a conference where he did not cite any reason to hold a conference. And with respect to the processing fee, respondent demonstrated in reply that it is not required to pay that amount. It rejected petitioner's submission that this was a mistake. Instead, respondent had the right person and that person owed the money – respondent only restored access to the bank account because the funds fell below the threshold.

Because respondent has participated in this action, the Court need not make a decision about whether or not the City of New York must be added as a respondent (in any event, petitioner cross-moved for leave to amend to add this party and the issue is moot). The Court focuses on the merits as all parties have had a full and fair chance to make arguments in this proceeding.

## Summary

As respondent points out, it has a responsibility to enforce child support orders. That is exactly what it did here given the tens of thousands of dollars in arrears owed by petitioner. It


utilized the various enforcement mechanisms as part of its mandate to ensure that child support is paid. And when petitioner attempted to challenge one of those efforts, he did not sufficiently identify the nature of his objection and so respondent rationally rejected that challenge without holding a conference. There was no reason to hold a conference where petitioner did not explain why he wanted that conference.

Petitioner’s claims that he was unaware that the order was still in effect or his arguments about how the child support order should, essentially, be modified to account for recent events is not pertinent to this proceeding although they are certainly understandable. But this Court is not Family Court; this decision is narrowly confined to a review of respondent’s denial of petitioner’s request for a conference (the action cited in the petition).

Accordingly, it is hereby

ADJUDGED that the petition (MS001) is denied, respondent’s motion (MS002) to dismiss is granted and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent, having an address at 60 Lafayette Street, New York, New York 10013, does recover from petitioner, having an address at 119 South Highland Avenue, Apt. 5F, Ossining, New York 10562 costs and disbursements in the amount of \$ \_\_\_\_\_, as taxed by the Clerk upon presentation of proper papers therefor, and that respondent have execution therefor.

<u>12/14/2023</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE