SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ROUMALDO RIVERA,

Petitioner,

- v -

CITY OF NEW YORK, NYC HUMAN RESOURCES ADMINISTRATION, OFFICE OF CHILD SUPPORT ENFORCEMENT

Respondents.

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INDEX NO. 150413/2022

MOTION DATE 02/14/2022[1]

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-14 were read on this motion to/for ARTICLE 78.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to challenge petitioner's inclusion in a tax refund offset program is granted and respondents' motion (MS002) to dismiss is denied.

Background

Petitioner observes that this proceeding arises out of a Family Court support proceeding commenced by a former partner (the proceeding was commenced about three years after the child was born). A support magistrate issued an order directing petitioner to pay child support in

[1] The Court observes that these motions were marked fully submitted more than two years ago. Although this proceeding was only transferred to this part earlier this week, the Court apologizes for the absurd delay in the resolution of this proceeding.

the amount of $1,572.50 per month in a decision dated April 4, 2018. Petitioner was also directed to pay retroactive child support from October 12, 2012 through April 6, 2018 for $103,138.65.

Petitioner contends that he filed an objection concerning the retroactivity issue. In August 2018, a judge modified the support magistrate's order and found that petitioner only had to pay retroactive child support from December 11, 2015 through April 6, 2018 (NYSCEF Doc. No. 4). He observes that his ex-partner (with whom he shares a child that is the basis of this proceeding) filed two petitions in Family Court in 2020 relating to the retroactive sums but that both petitions were dismissed. He claims that since the order, he has paid $1,197.37 every two weeks, which comprises the $1,572.50 in child support plus $786.25 for the retroactive amount.

In other words, petitioner claims that he was ordered to pay child support and retroactive child support, and he has been doing that. Nobody claims he is in arrears.

Petitioner alleges that in February 2021, he was told by JPMorgan Chase Bank that there was a restraint on his bank accounts for $30,000 issued by a child support office for respondents. He later learned that $60,000 in total was frozen. He insists that he is paying the retroactive sums and that they were not arrears subject to a lien. Petitioner includes an email from respondents dated March 9, 2021 in which an attorney notes that a vacate notice was sent to Chase Bank (NYSCEF Doc. No. 8). And so in February 2021 respondent erroneously froze his accounts and in March 2021 they unfroze it.

Petitioner contends that in September 2021, he received a tax offset notice stating that he was overdue on payments and unpaid support arrears for over $25,000. He insists this was based on the same erroneous calculation from earlier in 2021 that led to the restraints on his bank

account. Petitioner claims he complained again to respondents but they insisted the amount due was correct. He then commenced this proceeding to challenge that denial.

Respondents move to dismiss the petition. They admit that they placed a restraint on petitioner's bank account and then removed it when he objected. But they claim that he owes more than $20,000 in unpaid arrears. Respondents admit that they have an income withholding on petitioner's wages for current support due and for $786.00 to satisfy past due retroactive arrears. However, they claim that despite taking this action they are not barred from implementing other enforcement measures on the past due amounts.

In opposition, petitioner emphasizes that respondents' decision did not state any basis for their determination and that it directly contradicted their prior actions in March 2021. He argues that respondents' arguments are all based on the erroneous assumption that when a Court finds that retroactive amounts are due, they automatically become child support arrears. Petitioner points to the account statement submitted by respondents that shows that there are zero arrears on petitioner's account.

In reply, respondents ask the Court to ignore the caselaw cited by petitioner in support of the notion that retroactive sums due are not arrears. They claim that they can take enforcement measures to seek past due child support.

Discussion

"It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record and once it has been determined that an agency's conclusion has a sound basis in reason, the judicial function is at an end. Indeed, the determination of an agency, acting pursuant to its authority and within the orbit of its expertise,

is entitled to deference and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record" (*Partnership 92 LP v State Div. of Hous. and Community Renewal*, 46 AD3d 425, 428-29 [1st Dept 2007], *affd* 11 NY3d 859 [2008] [internal quotations and citations omitted]).

The Court's analysis begins with the administrative determination at issue (NYSCEF Doc. No. 11) which merely says that respondents correctly calculated the amount due. Of course, this determination does not really address the issue at hand, which is whether respondents were entitled to put petitioner in the tax refund offset program. That notice, dated September 3, 2021 (NYSCEF Doc. No. 10) notes that petitioner was placed in the tax refund offset/passport denial program because he owed more than $25,000 and directed that he pay the entire amount by October 29, 2021. It states that his amount is "overdue payments and unpaid arrears" (*id*.).

The history of this proceeding makes petitioner's placement in this program curious, at best. First, this is not a situation in which petitioner failed to pay child support he was ordered to pay. Rather, the child's mother brought a petition years after the child was born and petitioner was ordered to pay a retroactive amount (the effective date was later changed by the Family Court) to account for the first few years of the child's life.

Second, petitioner has been making the required payments. Respondents' account statement supports petitioner's allegations. NYSCEF Doc. No. 23 states that as of January 23, 2022, petitioner's support arrears totaled **zero**, in direct contravention of the tax refund offset notice that claimed he was more than $20,000 in arrears. This exhibit also contains payment history and shows that petitioner has made bi-weekly payments since 2018 (*id*.). Critically, respondents do not argue that petitioner has missed payments.

And third, respondents do not dispute that they readily removed restraints on petitioner's bank account arising out of the retroactive total due. Petitioner apparently argued that he was making payments and respondents then removed the restraints.

That raises a question of why, suddenly, petitioner was placed in the tax refund offset program and told he had to pay all of the retroactive amounts within two months despite the fact that he was making payments toward the retroactive amount for years prior to this notice. Respondents provide no explanation whatsoever for petitioner's inclusion in this program except to say that they are entitled to take these steps. That, of course, does not make something rational.

How could it be rational for petitioner to make consistent payments for nearly four years only to suddenly be penalized for not paying off the retroactive amount all at once? What was the point of making regular payments? Respondents cited to no court order or even a judgment requiring petitioner to pay the retroactive amount all at once.

And petitioner points out that at least one court has found that retroactive child support is not the same as arrears. "Since respondent was current in his payments there can be no arrears. Retroactive support . . . constitutes arrears only if not paid when due" (*Matter of Richardson on Behalf of Lanier v Junious*, 134 Misc 2d 148, 150 [Fam Ct 1986] [enjoining the intercepting of respondent's tax refunds]).

Respondents insist that the Court should not follow this decision. This Court finds that this rationale makes sense. The only reason not to follow it is to give respondents unchecked discretion to freeze accounts and put people into collection programs even when, on this record, the person is making their payments. Tellingly, respondent's attorney's opposition appears to suggest that the agency can do whatever it wants, whenever it wants. In this Court's view, one

of the purposes of an Article 78 proceeding for the Court to scrutinize an agency's action so that an agency is not granted unfettered discretion without any oversight. The record here shows that respondents have conflated the difference between retroactive and arrears and cite no rational justification for their disparate treatment of petitioner's account.

The fact is that respondent's own account information for petitioner states that he does not have any arrears and yet they put him in a program for having arrears. That is fundamentally irrational and respondents do not cite a rational reason for this obvious discrepancy. When faced with this fact, respondents only offer general references to numerous statutes. But they do not provide a cogent reason for putting petitioner in the tax refund offset program.

Summary

To be clear, the Court's decision makes no finding about the amount due. That means that the recipient of the child support payments is not a necessary party. The Court merely finds that respondents did not cite a rational reason for including petitioner in the tax refund offset program. Respondents had no problem with petitioner making payments towards both ongoing child support and the retroactive amount for years. And then, for some unexplained reason, they restrained his bank account despite the fact that he was making payments. When confronted about this issue, they removed the restraints only to then put petitioner in another program meant to penalize him for arrears although respondents' own statements say petitioner has no arrears.

It may be the routine practice to conflate retroactive child support payments with arrears but that does not make the agency action here rational. Respondents engaged in a course of conduct for years and then attempted to penalize petitioner by declaring all amounts due at once without offering any valid reason for that change in enforcement.

As there are no facts in dispute, the Court grants the petition without permitting respondents to answer (*Matter of Tamsen v Licata*, 94 AD3d 1566, 1569 [4th Dept 2012]).

Accordingly, it is hereby

ADJUDGED that the petition is granted to the extent that the tax refund offset notice to petitioner is vacated and petitioner must be removed from that enforcement program (the court observes that nothing prevents enforcement actions if petitioner falls into arrears in the future); and it is further

ORDERED that petitioner is entitled to recover costs and disbursements against respondents upon presentation of proper papers therefor.

3/21/2024
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**