Berry v New York State Dept. of Taxation & Fin.
2017 NY Slip Op 31345(U)
June 12, 2017
Supreme Court, New York County
Docket Number: 158919/2016
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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ARTHUR KEVIN BERRY,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF TAXATION and FINANCE AND COMMISSIONER JERRY BOONE,

Defendants.

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DECISION/ORDER
Index No.: 158919/2016

Mot. Seq. 002

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this action for, *inter alia*, declaratory relief, plaintiff, Arthur Kevin Berry ("plaintiff") challenges the constitutionality of the suspension of his driver's license based on outstanding tax liabilities as directed by defendants New York State Department of Taxation and Finance (the "State Tax Department") and Commissioner Jerry Boone pursuant to Section 771-v of New York Tax Law.

Factual Background

According to the complaint, plaintiff, who suffers from a chronic medical condition, works as a part-time consultant for a large pharmaceutical company. Plaintiff uses his driver's license to attend medical appointments, as well as rent cars for work in order to visit plants and offices that are inaccessible by public transportation. Additionally, at least four times a year, plaintiff travels to care for his ailing 86-year old mother in a rural town in Georgia, where the only viable method of travel is by car.

On August 25, 2016, the State Tax Department issued plaintiff a Notice of Proposed Driver's License Suspension Referral ("the Notice") for unpaid income taxes, interest, and

penalties totaling approximately $18,900 for the years 2005, 2007, 2008 and 2010.[1]

Plaintiff alleges that although New York Tax Law § 171-v requires that a taxpayer receive notice of liabilities and rights prior to the suspension of one's driver's license, defendants' notice and hearing were inadequate as they failed to permit him to present evidence of financial hardship. Defendants' interpretation of a "Satisfactory Payment Plan" does not permit him to be placed in "non-payment status." Plaintiff points out that similar Federal (Internal Revenue Service) Tax Procedures allow taxpayers to present evidence of one's inability to pay before a levy can be approved, and permits the taxpayer to qualify for hardship relief, including "Currently Not Collectible" status, which plaintiff is in due to his financial hardship.

Further, while Section 171-v allows a taxpayer with a suspended license to apply for a restricted license, a restricted license only permits an individual to drive to work, school, child care, and medical appointments. All other uses, such as driving out of state and transporting anyone other than a member of one's household to medical appointments, are prohibited. Thus, defendants' notice and hearing procedures fail to permit consideration of whether a restricted license allows plaintiff to effectively manage his affairs or take care of a loved one.

As a result, plaintiff, purportedly to protect taxpayers who may be subjected to improper deprivation of their driver's license, seeks a declaration pursuant to CPLR 3001 that the notice and hearing provided by defendants in their driver's license suspension program is unlawful, invalid, and unenforceable as it violates the United States and New York State Constitutions

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[1] Previously in October 2014, the State Tax Department issued plaintiff a Notice of Proposed Driver's License Suspension Referral and plaintiff challenged the proposed suspension before the State of New York Division of Tax Appeals. In May 2015, the Commissioner cancelled the proposed suspension and the Division of Tax Appeals discontinued the case.

(first cause of action). Plaintiff also claims that (1) defendant failed to provide adequate notice and a hearing in violation of the Due Process Clause of the United States Constitution, 42 USC § 1983 and Article I, §6 of the New York State Constitution (second and third causes of action); (2) defendant's suspension of his driver's license constitutes an excessive fine in violation of the Eighth Amendment of the United States Constitution, 42 USC § 1983 and Article I, §5 of the New York State Constitution (fourth and fifth causes of action); and (3) defendant's failure to consider his inability to pay constitutes unfair discrimination in violation of the Equal Protection Clause of the United States Constitution, 42 USC § 1983 and Article I, § 11 of the New York State Constitution (sixth and seventh causes of action).

Defendants now move pursuant to CPLR §§ 3211(a)(2) and (a)(7), to dismiss plaintiff's complaint for failure to state a claim and lack of subject matter jurisdiction, and for a declaration that New York Tax Law § 171-v is constitutional and was constitutionally applied to plaintiff. Plaintiff lacks standing to assert claims and seek relief on behalf of other taxpayers.

Plaintiff failed to demonstrate that Tax Law § 171-v is unconstitutional "in every conceivable application" so as to represent similarly situated taxpayers, and thus, only has standing to bring claims on behalf of himself. Since New York State provides an adequate remedy for constitutional challenges to determinations under the Tax Law, plaintiff is prohibited from bringing Section 1983 claims. Plaintiff's claim for damages relief under State law may only be heard before the Court of Claims, and thus, must be dismissed. And, state agencies such as the defendant herein, are not "persons" for purposes of liability under Section 1983. Further, economic legislation such as Tax Law § 171-v is rationally related to a legitimate government purpose of raising revenue, and thus, does not violate plaintiff's Equal Protection rights.

Plaintiff's Equal Protection challenge fails also because plaintiff may still submit an application for consideration in the "Offer in Compromise Program"[2] and have his economic circumstances taken into account, which if accepted, would cancel the proposed suspension. Nor does Tax Law § 171-v violate plaintiff's substantive Due Process rights; it does not implicate a "fundamental right" or suspect classification and is rationally related to the legitimate government purpose of raising revenue by ensuring that overdue taxes are paid. And, plaintiff's arguments do not sufficiently raise any ground to find that the notice and hearing provided to plaintiff violated a procedural Due Process right. Plaintiff had a pre-depravation right to challenge the suspension of his license with a full hearing, and a right to appeal. And, notwithstanding the Offer in Compromise Program afforded to plaintiff, plaintiff has no property interest in receiving tax leniency on liabilities he concedes are due and owing. Finally, the suspension of plaintiff's driver's license does not constitute a "fine" under the Eighth Amendment excessive fines clause.

In opposition, plaintiff argues that the Court has subject matter jurisdiction over all of his claims, including plaintiff's 42 USC § 1983 claims and prospective relief sought against defendants, and the limited jurisdiction of the Court of Claims covers monetary relief, and does not include his primary claims for declaratory judgment against an agency of the State and alleged violations of the United States Constitution as alleged here. Plaintiff argues that discovery is necessary in order to fully determine whether defendant's enforcement of the Tax Law violates the US and New York Constitutions, and cure any deficiencies in the complaint.

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[2] According to the defendants' website (Motion, Exhibit C), the Offer in Compromise Program "allows qualifying, financially distressed taxpayers the opportunity to put overwhelming tax liabilities behind them by paying a reasonable portion of their tax debt. We can consider offers in compromise from: individuals . . . that are insolvent" and "individuals who are not insolvent . . . when payment in full would create undue economic hardship."

Plaintiff also has standing to assert the constitutional infirmity of Tax Law § 171-v and its application to himself and others, and alleges sufficient facts to support his challenge to Tax Law § 171-v. Further, defendants failed to implement their license suspension with fairness, consistency, and transparency, and unless defendant can cancel a license suspension based on financial or other hardship, the statute is unconstitutional. It is premature to dismiss plaintiff's "facial" and "as applied" challenge to Tax Law § 171-v. Plaintiff's Due Process claims are also adequately alleged, in that caselaw holds that a driver's license is a property interest that cannot be taken away without procedural Due Process guaranteed by the Fourteenth Amendment and the State will not be burdened by a hardship or other financial exemption. The Offer in Compromise Program is not part of the notice and hearing procedures at issue herein. Punishing people who are unable to pay, as opposed to unwilling to pay, violates the Fourteenth Amendment, Equal Protection and Due Process protections. And, the rational standard of review does not apply in this context, and even assuming it did, fails as to plaintiff's equal protection claims. Plaintiff's financial hardship prevents him from opting for the installment plan offered by defendant, and thus, as discovery will show, the statute discriminates based on wealth. And, there is no rational relationship between raising revenue and classifying based on wealth as the State will not raise money by suspending driver's licenses of indigent people. For the same reasons, Tax Law § 171-v is an improper, excessive fine in that it results in a forfeiture of one's property interest without distinguishing between those able to pay and those willing but unable to pay their taxes. The gravity of losing one's driver's license grossly outweighs the harm caused by one's failure to pay taxes. And, defendant cannot cause the suspension to be lifted because he is unable to pay any portion of the tax.

In reply, defendants add that plaintiff failed to adequately oppose dismissal of his complain in that he failed to distinguish controlling caselaw and misapplies inapplicable caselaw. Defendant ignores that the Offer in Compromise Program permits one to obtain a restricted license and ensures that defendants consider whether the taxpayer is unable to pay basic living expenses and that defendants do not collect income exempt from collection.

Discussion

Pursuant to CPLR 3211 (a)(1), a party may move for judgment dismissing one or more causes of action asserted against him on the ground that "a defense is founded upon documentary evidence." A motion to dismiss on the basis of a defense founded upon documentary evidence may be granted "only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]; *Mill Financial, LLC v. Gillett*, 122 A.D.3d 98, 992 N.Y.S.2d 20 [1st Dept 2014]). "Dismissal pursuant to CPLR 3211(a)(1) is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Mill Financial, LLC v. Gillett*, *supra*, *citing Art and Fashion Group Corp. v. Cyclops Production, Inc.*, 120 A.D.3d 436, 992 N.Y.S.2d 7 [1st Dept 2014]).

In determining a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the Court's role is deciding "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204, 968 NYS2d 459 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, 960 NYS2d 404 [1st Dept 2013]). On a motion to dismiss

made pursuant to CPLR § 3211, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs "the benefit of every possible favorable inference," and "determine only whether the facts as alleged fit into any cognizable legal theory" (*Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, *supra; Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972, 638 NE2d 511 [1994]).

However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack,* 97 AD3d 437, 948 NYS2d 583 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81, 692 NYS2d 304 [1st Dept 1999], *affd* 94 NY2d 659, 709 NYS2d 861, 731 NE2d 577 [2000]; *Kliebert v McKoan*, 228 AD2d 232, 643 NYS2d 114 [1st Dept], *lv denied* 89 NY2d 802, 653 NYS2d 279, 675 NE2d 1232 [1996]), and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275, 401 NYS2d 182, 372 NE2d 17 [1977]; *see also Leon v Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511 [1994]; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150, 730 NYS2d 48 [1st Dept 2001]; *WFB Telecom., Inc. v NYNEX Corp.*, 188 AD2d 257, 259, 590 NYS2d 460 [1st Dept], *lv denied* 81 NY2d 709, 599 NYS2d 804, 616 NE2d 159 [1993]).

At the outset, defendants failed to establish that dismissal of the complaint is warranted based on plaintiff's purported lack of standing to challenge the constitutionality of Tax Law § 171-v. A "party has standing to challenge the constitutionality of a statute only insofar as it has an adverse impact on his own rights" (*Franza v. Carey*, 518 F.Supp. 324 [SDNY 1981] *citing Ulster County Court v. Allen*, 442 U.S. 140, 154-55, 99 S.Ct. 2213, 2223, 60 L.Ed.2d 777 [1979]

and *Broadrick v. Oklahoma*, 413 U.S. 601, 610-11, 93 S.Ct. 2908, 2914-15, 37 L.Ed.2d 830 [1973]). As a general rule, if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations" (*Franza v. Carey*, 518 F.Supp. 324 [SDNY 1981] *citing Ulster County Ct. v Allen*, 442 U.S. 140, 154-155, and *Broadrick v Oklahoma*, 413 US 601). "Under settled standing principles, those who challenge a statute as unconstitutional must demonstrate actual or threatened injury to a protected right." And, "a driver's license is a property interest protected by the Fourteenth Amendment's due process clause" (*Stoianoff v. Commissioner of Motor Vehicles*, 107 F.Supp.2d 439 [SDNY 2000] *citing Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 [1971]).

Here, accepting as true the allegations the complaint, plaintiff adequately alleges that that he suffered an injury to his property interest, *to wit*: the suspension of his driver's license by virtue of the defendants' application of Tax Law § 171-v to him and to anyone who cannot pay a tax liability greater than $10,000. Therefore, plaintiff has standing to challenge Tax Law § 171-v on his own behalf and on behalf of the class of persons falling within the scope of the statute.

Plaintiff's reliance on *Town of Islip v Cuomo* (147 A.D.2d 56541 N.Y.S.2d 829 [2d Dept 1989]) is misplaced (finding a lack of standing where plaintiff "failed to show that their property rights or interests have been injured by the 'actual or threatened' use of that power. The allegedly unconstitutional delegation of legislative power has not been shown, or even alleged, to have affected the plaintiffs in any way")).

Further, dismissal of the complaint on the ground that this Court lacks subject matter

jurisdiction is unwarranted. The gravamen of plaintiff's claim is the suspension of plaintiff's driver's license in violation of the United States and New York Constitutions, and whether plaintiff is entitled to any monetary damages as a result of such violations is dependent on whether Tax Law 171-v or defendants' application thereof was unconstitutional (*see Buonanotte v. New York State Office of Alcoholism and Substance Abuse Services*, 60 A.D.3d 1142, 875 N.Y.S.2d 301 [3d Dept 2009]). And, as to plaintiff's claim for damages as "a direct and proximate result of the above-mentioned acts and omissions," and as "restitution," such damages are merely incidental to his constitutional claims (Amended Complaint, ¶¶74, 78, 83, 88, 94, 99). However, to the degree plaintiff seeks "An award of restitution to Plaintiff for actual injuries and damages," such claim lacks merit and is dismissed, as it is uncontested that defendants have not withheld or received any actual monies from plaintiff.

Turning to the issue of whether plaintiff states a cause of action, since "'[l]egislative enactments enjoy a strong presumption of constitutionality ... parties challenging a duly enacted statute face the initial burden of demonstrating the statute's invalidity 'beyond a reasonable doubt'" (*Amazon.com, LLC v. New York State Dept. of Taxation and Finance*, 81 A.D.3d 183, 913 N.Y.S.2d 129 [1st Dept 2010] *citing LaValle v. Hayden*, 98 N.Y.2d 155, 161, 746 N.Y.S.2d 125, 773 N.E.2d 490 [2002] [internal citations omitted]).

A "plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid', i.e., that the law is unconstitutional in all of its applications" (*Amazon.com, LLC, supra, citing Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 128 S.Ct. 1184, 170 L.Ed.2d 151 [2008]; *Moran Towing Corp. v. Urbach*, 99 N.Y.2d 443, 787 N.E.2d 624, 757 N.Y.S.2d 513 [2003] ("A party mounting

a facial constitutional challenge bears the substantial burden of demonstrating 'that 'in any degree and in every conceivable application,' the law suffers wholesale constitutional impairment'")).

As to plaintiff's claim that the Tax Law 171-v is unconstitutional as applied to him based on his inability to pay and/or indigent status (and also, that a restricted license does not allow him to care for his mother), plaintiff may succeed on an equal protection claim "brought by a class of one," where it is alleged that he or she "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" (*Amazon.com, LLC v. New York State Dept. of Taxation and Finance*, 81 A.D.3d 183, 913 N.Y.S.2d 129 [1st Dept 2010] *citing Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060 [2000]). "'The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents' " (*Amazon.com, LLC, supra, citing Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073). "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes" (*Amazon.com, LLC, supra citing Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 547, 103 S.Ct. 1997, 76 L.Ed.2d 129 [1983]). Consequently, the " 'presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes'" (*Amazon.com, LLC, supra, citing Regan,*

supra).[3]

Tax Law § 171-v, entitled "Enforcement of delinquent tax liabilities through the suspension of drivers' licenses" provides, in relevant part, as follows:

> The [New York State Department of Taxation and Finance] commissioner shall enter into a written agreement with the commissioner of motor vehicles, which shall set forth the procedures for the two departments to cooperate in a program to improve tax collection through the suspension of drivers' licenses of taxpayers with past-due tax liabilities equal to or in excess of ten thousand dollars. For the purposes of this section, the term "tax liabilities" shall mean any tax, surcharge, or fee administered by the commissioner, or any penalty or interest due on these amounts owed by an individual with a New York driver's license, the term "driver's license" means any license issued by the department of motor vehicles, except for a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law, and the term "past-due tax liabilities" means any tax liability or liabilities which have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review.
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> (3) The [New York State Department of Taxation and Finance] shall provide notice to the taxpayer of his or her inclusion in the license suspension program no later than sixty days prior to the date the department intends to inform the commissioner of motor vehicles of the taxpayer's inclusion. However, no such notice shall be issued to a taxpayer whose wages are being garnished by the department for the payment of past-due tax liabilities or past-due child support or combined child and spousal support arrears. Notice shall be provided by first class mail to the taxpayer's last known address as such address appears in the electronic systems or records of the department. Such notice shall include:
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> (a) a clear statement of the past-due tax liabilities along with a statement that the department shall provide to the department of motor vehicles the taxpayer's name, social security number and any other identifying information necessary for the purpose of suspending his or her driver's license . . . .sixty days after the mailing or sending of such notice to the taxpayer;

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[3] As pointed out by defendants, 42 USC § 1983 "does not call for either federal or state courts to award injunctive and declaratory relief in state tax cases when an adequate legal remedy exists" (*National Private Truck Council v. Oklahoma Tax Commn.*, 515 U.S. 582, 589–591, 115 S.Ct. 2351, 132 L.Ed.2d 509); *Tri-State Christian T.V., Inc. v. Dillenberg*, 275 A.D.2d 993, 714 N.Y.S.2d 253 [4th Dept 2000] ("Relief under section 1983 is not available because the State has provided an adequate legal remedy)). Plaintiff's reliance on *Matter of Giaquinto v Commissioner of N.Y. State Dept. of Health* (275 A.D.2d 993, 714 N.Y.S.2d 253 [2008]) to support the relief sought herein against the State Tax Department is misplaced.

(b) a statement that the taxpayer may avoid suspension of his or her license by fully satisfying the past-due tax liabilities or by making payment arrangements satisfactory to the commissioner, and information as to how the taxpayer can pay the past-due tax liabilities to the department, enter into a payment arrangement or request additional information;

(c) a statement that the taxpayer's right to protest the notice is limited to raising issues set forth in subdivision five of this section;

(d) a statement that the suspension of the taxpayer's driver's license shall continue until the past-due tax liabilities are fully paid or the taxpayer makes payment arrangements satisfactory to the commissioner; and

(e) any other information that the commissioner deems necessary.[4]

The Court also notes that Vehicle and Traffic Law provides a mechanism for those with a suspended license to obtain a restricted licenses (*see* VTL 510(4-f)(5) "Any person whose driver's license is suspended pursuant to paragraph two of this subdivision may apply for the issuance of a restricted use license as provided in section five hundred thirty of this title")).[5]

"When the state deprives an individual of property, due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (*Evans v. City of New York*, 308 F.Supp.2d 316 [SDNY 2004] *citing Weigner v. City of New York*, 852 F.2d 646, 649 [2d Cir 1988]). "To determine whether the defendants violated the plaintiff's right to due

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[4] See also Vehicle and Traffic Law ("VTL") §510(4-f). Suspension for failure to pay past-due tax liabilities:

(1) The commissioner shall enter into a written agreement with the commissioner of taxation and finance, as provided in section one hundred seventy-one-v of the tax law, which shall set forth the procedures for suspending the drivers' licenses of individuals who have failed to satisfy past-due tax liabilities as such terms are defined in such section.

[5] VTL §530 governs restricted use licenses, and grants the Commissioner of Motor Vehicles power to issue such a license if it is established that such license "is a necessary incident to the applicant's employment, business, trade, occupation or profession, . . . or enroute [sic] to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of his household. . .and that a denial of such license or privilege would deprive the person of his usual means of livelihood. . . ."

process, "the proper inquiry is whether the state acted reasonably in selecting the means likely to inform persons affected, not whether each [affected person] actually received notice." (*Evans v. City of New York, citing Weigner, supra and Weinstein v. Albright*, No. 00 Civ. 1193, 2000 WL 1154310, at *11 [SDNY Aug. 14, 2000], aff'd, 261 F.3d 127 [2d Cir 2001]).

The "'fundamental requisite of due process of law is the opportunity to be heard'.... 'The hearing must be at a meaningful time and in a meaningful manner'" (*DuPaul v. Jackson*, 8 F.Supp.2d 237, 267) (citations omitted). Here, the notice adequately apprised plaintiff of his rights and obligations pertaining to the suspension of his driver's license, and advised that any of the exemptions did not apply, plaintiff could avoid such suspension by paying the amount due or "set[ting] up a payment plan." Plaintiff does not challenge the timeliness of the notice or the subsequent hearing date provided by defendants. Instead, plaintiff's claim, that he (and others) are not permitted to present evidence of undue financial hardship, is a substantive challenge on the merits of his license suspension hearing. However, such a challenge does not speak to the opportunity to be heard, or the manner or way in which the hearing was held. Instead, any inability to present evidence of financial hardship speaks to the *substance* of the hearing, which does not give rise to a procedural Due Process claim. Thus, plaintiff's claim that defendants' notice and hearing were inadequate as they failed to permit him to present evidence of financial hardship lacks merit. Furthermore, the notice provided to plaintiff expressly states that plaintiff may protest the suspension of his license (as previously done) or contact defendants to "learn[] about other options that may be available to you to resolve your debt." The optional Offer in Compromise Program, including the factors defendants consider to determine eligibility, is posted on defendants' website. And, it is uncontested that plaintiff did not seek to exercise his

option to apply for the Offer in Compromise Program. Plaintiff's criticism that such program is not part of the notice and hearing procedures at issue is unsupported and contradicted by the record.

Inasmuch as plaintiff's challenge constitutes a facial challenge to Tax Law 171-v, the record establishes that evidence of financial hardship *is* permitted within the Offer in Compromise Program, of which plaintiff did not avail himself. The "undue economic hardship provision" is considered "when a taxpayer is unable to pay reasonable basic living expenses." (Motion, Exhibit D). Defendants explain, on their website, that

> "Basic living expenses are those that provide for the health, welfare, and production of income for the taxpayer or the taxpayer's family. We will look to the Internal Revenue Service Collection Financial Standards to help determine a taxpayer's allowable basic living expenses. In addition to basic living expenses, we will consider other factors that can impact an individual's financial condition, including:
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> -taxpayer's age, employment status, and employment history
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> -inability to earn an income because of a long-term illness, medical condition or disability obligations to dependents
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> -extraordinary circumstances such as special educational expenses, medical catastrophe or a natural disaster
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> -inability to borrow against or liquidate assets due to hardship

Contrary to plaintiff's contention, defendants consider a taxpayers' inability to pay as part of the Offer in Compromise Program.

Plaintiff also acknowledges in his Amended Complaint that "Defendants have attempted to implement broader relief policies for indigent taxpayers . . . ." And, as pointed out by defendants, Tax Law 171(15) also grants the Commissioner the authority to "compromise any taxes . . . or judgment for taxes . . . and the penalties and interest in connection therewith, if the

tax debtor . . . is shown by proofs submitted to be insolvent, or shows by proofs that collection in full would cause the tax debtor undue economic hardship, provided that the amount payable in compromise reasonably reflects collection potential or is otherwise justified by the proofs offered by the tax debtor."

New York does not recognize a fundamental right to drive (*see Allen v. New York State Dept. of Motor Vehicles*, 45 Misc.3d 475, 991 N.Y.S.2d 701 [Supreme Court 2014]), and as such, the statute, Tax Law 171-v, is subject to scrutiny under a rational basis standard. The express language of the statute indicates the purpose of raising revenue and collecting moneys from those who have failed to pay their tax liabilities (greater than $10,000). Here, the Offer in Compromise Program, installment payment option, and availability of restricted licenses are clearly rationally related to the defendants' stated goals of raising revenue from those with tax liabilities greater than $10,000. Tax Law 171-v does not classify based on wealth, as plaintiff argues, but classifies based on liabilities greater than $10,000.

For the same reasons, plaintiff's claim that defendant failure to allow him to be placed in "non-payment status" and claim that Tax Law 171-v punishes people based on their indigent status, fails.

Further, Section 171-v allows a taxpayer with a suspended license to apply for a restricted license, which permits an individual, such as plaintiff, to drive to work, medical appointments, and care for members of one's household. Plaintiff failed to establish that driving out of state and transporting anyone other than a member of one's household to medical appointments violates any right guaranteed by the U.S. or New York Constitutions.

And, as to plaintiff's claim that the suspension of his license constitutes an excessive fine, the United States and New York Constitutions declare "nor [shall] excessive fines [be] imposed." U.S. Const. Amend 8; N.Y. Const. Art. 1 § 5. Neither constitution further explains the concept. The Excessive Fines Clause is not limited to criminal prosecutions, but is applicable to civil proceedings where punishment is imposed (*Street Vendor Project v. City of New York*, 10 Misc 3d 978, 811 N.Y.S.2d 555 [Supreme Court, New York County 2005]).

"The Eighth Amendment has been held inapplicable to fines and sanctions "intended to secure compliance and situations where the offending individual has the power to mitigate the accrual of fines or penalties" (*Street Vendor Project v. City of New York*, 10 Misc 3d 978, 811 N.Y.S.2d 555 [Supreme Court, New York County 2005] *citing Kirsh v. City of New York*, 1995 WL 383236, *8, U.S. Dist. LEXIS 8896, *24 [SDNY June 27, 1995] *and Kraebel v. Michetti*, 1994 WL 455468, *7, 1994 U.S. Dist. LEXIS 11796, *32 [SDNY 1994]), aff'd unpublished decision, 57 F.3d 1063 [2d Cir 1995]), *citing Seril v. N.Y. State Division of Housing & Community Renewal*, 205 A.D.2d 347, 613 N.Y.S.2d 157, 157 [1st Dept 1994] (rejecting Eighth Amendment challenge to agency's refusal to lift finding of tenant harassment where owner had option to take actions leading to termination of finding)).[6] The record indicates the continued availability for plaintiff to apply for the Offer in Compromise Program and to have his financial status and inability to pay considered by defendants in order to lift the suspension of his license. These factors militate against a finding that the suspension of plaintiff's driver's license constitutes a fine in violation of the U.S. and New York Constitutions.

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[6] In light of the plain reading of the relevant statutes, plaintiff's complaint, and undisputed nature of the documents submitted by the parties, additional discovery is not required in order to determine the merits of defendants' motion.

Conclusion

Based on the foregoing, it is hereby

ORDERED that defendants' motion Defendants now move pursuant to CPLR §§ 3211(a)(2) and (a)(7), to dismiss plaintiff's complaint for failure to state a claim and lack of subject matter jurisdiction, and for a declaration that New York Tax Law § 171-v is constitutional and was constitutionally applied to plaintiff, is granted pursuant to CPLR §§ 3211(a)(2) and (a)(7), and the complaint is dismissed; and it is further

ORDERED, DECLARED and ADJUDGED that New York Tax Law § 171-v is constitutional and was constitutionally applied to plaintiff; and it is further

ORDERED that the Clerk may enter judgment accordingly; and it is further

ORDERED that defendants shall serve a copy of this order with notice of entry upon plaintiffs within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: June 12, 2017

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.