[* 1]

=AMENDED ORDER=

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

PRESENT: MARCY S. FRIEDMAN PART 57
Justice

Matter of Abalos

INDEX NO. 113114/07

MOTION DATE

-v-

MOTION SEQ. NO. 001

New York City Human Resources Admin. MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that ~~this motion~~ the Court's decision and order dated December 4, 2008 in the above-captioned proceeding is hereby amended to correct the ~~caption~~ index number ~~on~~ the order to "113114/07."

The court's order otherwise remains in full force and effect.

FILED
FEB 11 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 2-2-09

MARCY S. FRIEDMAN J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

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

PRESENT: FRIEDMAN PART 57

Hon. Marcy S. Friedman Justice

INDEX NO. 113114/07

JARVIS OVALLES

-v-

MOTION DATE

MOTION SEQ. NO. 001

NY STATE DEPT OF CHILD SUPPORT ENFORCEMENT

MOTION CAL. NO.

The following papers, numbered 1 to ____ were read on this ~~motion~~ petition to/for ART 78

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	2, 3
Replying Affidavits	4

Cross-Motion: ☑ Yes ☒ No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is dismissed per decision/order dated 12-4-08. The cross-motion by the State respondent is denied as moot By stip. dated 2-19-08 The petition was discontinued against said respondent.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 12-4-08

Hon. Marcy S. Friedman J.S.C.

Check one: X FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

---------- x

113114/07

IN THE MATTER OF THE APPLICATION OF
JARVIS OVALLES,

Index No.: 113114/08

Petitioner,

DECISION/ORDER

- against -

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,

Respondent.

---------- x

This Article 78 proceeding was initially brought by petitioner, pro se, against the New York State Department of Child Support Enforcement. By order dated November 1, 2007, this court granted petitioner's motion to add the New York City Human Resources Administration ("HRA") as a respondent. Petitioner subsequently appeared by counsel, and by stipulation dated February 14, 2008, discontinued the proceeding as against the State respondent. The caption of the proceeding is amended to reflect HRA as the respondent.

Petitioner challenges a determination of the HRA Support Collection Unit, dated May 30, 2007, regarding arrears owed by petitioner for the support of his minor child ("child support determination"). As a threshold matter, HRA contends that this Article 78 proceeding is barred by the statute of limitations. This contention is without merit. The original court file, of which this court takes judicial notice (see Bookazine Co. v. J&A Bindery, Inc., 61 AD2d 919 [1st Dept 1978]), shows that the petition was filed on September 28, 2007, within four months of the child

support determination. To the extent that the petition seeks review of the child support determination, it is therefore timely. (See CPLR 217[1].) The determination states on its face that it is "final" and may be reviewed by Article 78 proceeding. HRA's further contention that petitioner has failed to exhaust administrative remedies is therefore also without merit.[1]

This proceeding grows out of efforts by respondent HRA's Office of Child Support Enforcement to collect arrears allegedly owing pursuant to orders for child support made in favor of the New York City Commissioner of Social Services as assignee of Lisa Ovalles, petitioner's former wife, who applied for public assistance on behalf of petitioner's child. (See Matter of Commissioner of Social Services v Ovalles, Family Court, New York County, Docket No. F-13409/91, Order dated Jan. 21, 1992 [Answer, Ex. 5]; Matter of Support Proceeding [Alvarado v Ovalles], Family Court, Bronx County, Docket No. F-23053/06 [Answer, Ex. 14], Order dated Apr. 17, 2007.) After HRA served an execution for arrears accrued under these orders, petitioner filed an administrative challenge which was determined by the child support determination at issue.

The child support determination is made on a pre-printed form on which the agency has checked off various boxes. The form notes that petitioner is challenging the amount for child support arrears shown to be due from petitioner to HRA in an Article 52 execution. The form lists several possible objections to HRA's collection efforts. The box that is checked off to

---

[1]Petitioner also annexes a determination of the United States Department of State, dated July 31, 2003, finding petitioner ineligible for a passport because he owes child support arrears exceeding $5000. He requests that respondent be required to contact the passport agency and release any restrictions that would prevent him from obtaining a U.S. passport. (See Petition, Wherefore Clause.) As petitioner was advised at the hearing of the petition, to the extent he seeks relief from the determination of the Department of State, this relief is not available in this Article 78 proceeding.

describe petitioner's claim is "wrong amount": "The amount shown in the notice to judgment debtor/obligor which was served on you by the SCU [Support Collection Unit] is not correct because a payment you made was not credited to you, or because your court order changed the amount of your child support obligation, or your arrears balance was changed as a result of a change in your court order." The determination then checks off the following box for findings of fact. "Other": "Your claim is denied, based on the fact, at the time your bank account was restrained, you owed arrears. Please pay off arrears soon."

In opposition to the petition, HRA annexes an Account Statement showing that petitioner's child support arrears through October 24, 2007 totaled $80,225.79. This statement contains a detailed breakdown of payments received from petitioner on account of child support arrears. (See Amended Answer, Ex. 1.) Petitioner does not dispute that HRA properly credited all of the payments that petitioner made directly to HRA. Rather, petitioner claims that in 1994, his marriage was dissolved by a Florida divorce decree which incorporated a separation agreement governing child support, that he has made all payments due under the Florida decree for child support directly to his former wife, and that the Florida decree "trumps" the New York Family Court orders. Respondent argues that it is entitled to enforce the facially valid orders of the New York Family Court and that petitioner is not entitled to a credit for any payments made directly to his former wife. (See Amended Answer, ¶¶75-89.)[2]

Respondent has enforced the New York Family Court support orders by income

[2]Petitioner's claim that he was unaware of the New York Family Court support orders is flatly contradicted by the documentary evidence. Petitioner appeared in 1991 Family Court proceeding and sought a downward modification of his child support obligations. (See Amended Answer, Exs. 6, 9.) He also appeared by counsel in the 2006 Family Court proceeding. (See id., Exs. 12, 13.)

executions issued against petitioner since 2001. (See Amended Answer, Ex. 1.) Yet, petitioner makes no showing that he ever applied to Family Court to vacate the orders based on the Florida divorce decree or that he ever, before commencing the instant Article 78 proceeding, sought a determination in any court that the New York orders were not valid in light of the Florida decree. Even assuming arguendo that the validity of the Family Court orders may now be challenged under the guise of a challenge to the amount of an Article 52 execution, petitioner rests on the bare assertion, unsupported by any citation to legal authority, that the Florida decree is controlling as to his support obligations. Petitioner wholly fails to address the legal issue of which of the orders should be recognized for purposes of continuing exclusive jurisdiction. (See Family Court Act [Interstate Family Support Act] § 580-207.) On this record, petitioner thus makes no showing that the challenged determination is arbitrary and capricious.

It is accordingly hereby ORDERED that the petition is dismissed.

This constitutes the decision, order, and judgment of the court.

Dated: New York, New York
December 4, 2008

MARCY FRIEDMAN, J.S.C.