

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

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36M

Justice

-----X INDEX NO. 152366/2021
MOTION SEQ. NO. 001

In the Matter of :

JUMAANE WILLIAMS in his official capacity as
NEW YORK CITY PUBLIC ADVOCATE
and THE OFFICE OF THE NEW YORK
CITY PUBLIC ADVOCATE,

Petitioners,

- v -

**DECISION + ORDER ON
MOTION**

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF FINANCE, and THE COMMISSIONER
OF THE NEW YORK CITY DEPARTMENT OF FINANCE
in his official capacity,

Respondents.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for ARTICLE 78.

Petitioners commenced this Article 78 proceeding seeking a judgment ordering respondents to comply with § 1518 of the New York City Charter (“NYC Charter, City Charter, or Charter”) wherein it states that

“prior to causing property tax assessment rolls and warrants to be filed in the respective borough offices Respondents be in receipt of properly executed tax warrants signed by the Public Advocate of the City of New York and counter-signed by the City Clerk and [t]hat prior to the issuing [of] adjusted property tax bills and/or adjusted quarterly statements based on property tax assessment rolls and/or warrants, Respondents be in receipt of properly executed and properly filed tax assessment rolls and/or tax warrants pursuant to § 1518 of the New York City Charter with the signature of both the Public Advocate of the City of New York and the counter-signature of the City Clerk.”

Petitioners also seek an order prohibiting respondents from filing tax assessment rolls and/or tax warrants in the respective borough offices without properly executed tax warrants signed by the Public Advocate of the City of New York and counter-signed by the City Clerk, and from issuing adjusted property tax bills and/or adjusted quarterly statements based on adjustments in property tax rates in the absence of properly executed tax warrants signed by the Public Advocate of the City of New York and counter-signed by the City Clerk. (NYSCEF Doc. No 1, *Petition*).

Petitioners assert the following: In June 2020, the Assistant Director of Finance of the New York City Council emailed The Office of the Public Advocate seeking the Public Advocate’s signature on the property tax warrant to allow the New York City Department of Finance’s (“DOF”)

commissioner to legally collect property tax as part of the budget adoption. (NYSCEF Doc. No. 4, *Email dated June 28, 2020*). On July 1, 2020, in a letter addressed to the Mayor, the Speaker of the New York City Council, and the DOF Commissioner, Jumaane D. Williams, in his capacity as the Public Advocate for the City of New York, expressed his intent not to sign the property tax warrant. (NYSCEF Doc. No. 5, *July 1, 2020 letter*). Petitioners submit that, upon information and belief, despite not having the Public Advocate's signature the DOF and the Commissioner of DOF proceeded to file improperly and unlawfully executed tax warrants and assessments with the respective borough offices. (NYSCEF Doc. No. 6, *Tax Warrant*). Petitioners argue that in November 2020, DOF and the Commissioner of DOF proceeded to issue adjusted property tax bills and adjusted quarterly statements based on the unsigned and, arguably unlawfully executed, tax warrants to taxpayers. (NYSCEF Doc. No. 7, *property tax bill*). Petitioners contend that respondents failed to remedy petitioners' refusal to sign the tax warrants prior to proceeding with defective tax warrants. Petitioners further contend that by proceeding with the defective tax warrants, respondents proceeded without, and in excess of, their jurisdiction and their unlawful reliance on the improperly executed tax warrants and assessments was arbitrary, capricious, and an abuse of discretion.

Respondents oppose the motion and cross-move to dismiss the petition arguing that, as a result of a policy disagreement, the Public Advocate is seeking to transform its ministerial and clerical responsibilities under NYC Charter § 1518 into a power to prevent the respondents from collecting real property taxes after the passage of a duly enacted budget. In their memorandum of law, respondents set forth the legislative history of NYC Charter § 1518; the structure of city government, inclusive of the role of the City Council President which was later transformed into the office of the Public Advocate; and the city budget process followed by the procedures after the enactment of the budget. Respondents submit that the Public Advocate is an independent citywide office with a role defined by NYC Charter § 24, whose principal duties and responsibilities are receiving, reviewing, and forwarding complaints about city services, creating reports and recommendations, and otherwise acting as an advocate for individuals experiencing difficulties accessing city services. Respondents aver that the Public Advocate is a member of the City Council who may participate in discussions of the Council, lacking the power to vote, and its duty to sign warrants to collect real property taxes after the passing of a budget is just one of its ministerial responsibilities.

With respect to the Public Advocate's press release and letter, expressing his intent not to sign the tax warrants, respondents avow that, pursuant to the City Charter, the Council has the sole power to enact the budget, subject to a mayoral veto, which the Council can override with a two-thirds vote, and that the law does not provide discretion to the City Clerk or the Public Advocate to refuse to sign said tax warrants nor does the lack of their signatures prevent, hinder, or invalidate the City's collection of real property taxes. Respondents further argue that they are not required to seek the Public Advocate's compliance with the Charter as to do so would create delays in the collection of taxes necessary to effectuate the budget. Thus, respondents contend that a dismissal is warranted under CPLR 3211(a)(7) as petitioners have failed to state a cognizable claim.

In opposition to respondents' cross-motion, petitioners argue that respondents are subject to the City Charter regardless of the nature of the Public Advocate's duties and thus, the tax warrants without the Public Advocate's signature are improper and unlawful. Petitioners also contend that rather than utilizing improper warrants, respondents should have brought an Article 78 proceeding to compel his performance and that seeking such relief would not delay the collection of taxes as

§1516-a(a) allows respondents to collect taxes at the rate established under the previously filed proper warrants.

CPLR 7803(2) governs the extraordinary writ of prohibition which addresses “whether [a] body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction” (CPLR 7803 [2]). “Prohibition may be maintained solely to prevent or control a body or officer acting in a judicial or quasi-judicial capacity from proceeding or threatening to proceed without or in excess of its jurisdiction ... and then only when the clear legal right to relief appears and, in the court’s discretion, the remedy is warranted” (see *Town of Huntington v NY State Div. of Human Rights*, 82 NY2d 783 [1993] citing, *Matter of Schumer v Holtzman*, 60 NY2d 46, 51[1983]). Furthermore, “[t]he writ is generally not available to correct common procedural or substantive errors and will not lie where its proponent has access to another adequate legal remedy unless, in the rare instance, it would furnish a more complete and efficacious remedy. But even where the writ may be technically appropriate, the court must consider other factors such as the gravity of the potential harm caused by the threatened excess of power or whether other proceedings in law or equity could correct the flaw, in determining whether a proponent’s request should ultimately be granted.” (*Town of Huntington v NY State Div. of Human Rights*, 82 NY2d 783,786 [1993][internal quotation marks omitted]).

New York City Charter § 1518 states that “[i]mmediately upon the completion of the assessment rolls, the city clerk shall procure the proper warrants authorizing and requiring the commissioner to collect the several sums therein mentioned according to law. Such warrants need be signed only by the public advocate and counter-signed by the city clerk. Immediately thereafter and on or before the thirtieth day of June, the assessment rolls of each borough, as corrected according to law and finally completed, or a fair copy thereof, shall be delivered by the public advocate to the commissioner with the proper warrants, so signed and counter-signed, annexed thereto. At the same time the public advocate shall notify the comptroller of the amount of taxes in each book of the assessment rolls so delivered. The commissioner upon receiving the assessment rolls and warrants shall immediately cause the assessment rolls and warrants to be filed in the respective borough offices.”

When considering a motion to dismiss for failure to state a cause of action, pursuant to CPLR 3211(a)(7), the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff/petitioner the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

As an initial matter, insofar as the arguments advanced in support of the petition and the cross-motion heavily address the responsibilities of the petitioners and respondents, as proscribed by § 1518, the court will first address the duties of the parties as directed by the New York City Charter § 1518.

New York City Charter § 1518(1) begins by directing the City Clerk to procure proper warrants “immediately upon the completion of the assessment rolls.” It goes on to explain that these proper warrants will serve to authorize and require the commissioner to collect the several sums therein. In order for the warrants to be considered proper, they “need be signed only by the public advocate and counter-signed by the city clerk.” Thus, it is clear from this provision that the City Clerk is required to immediately procure proper warrants, which are only proper once signed by

both the Public Advocate and the City Clerk, and that these warrants will authorize and require the commissioner to collect the sums mentioned therein. The provision also requires that immediately after and on or before the thirtieth of June, the Public Advocate is to deliver both the assessment rolls with proper warrants to the commissioner and simultaneously notify the comptroller of the amount of taxes in each book of the assessment rolls. What is important to note is that the provision, for a second time, emphasizes that these proper warrants are to be signed by the Public Advocate and counter-signed by the City Clerk.

New York City Charter § 1518(2) states that “[t]he commissioner upon receiving the assessment rolls and warrants shall immediately cause the assessment rolls and warrants to be filed in the respective borough offices.”

Accordingly, tax warrants are not proper unless signed by both the Public Advocate and the City Clerk, the Public Advocate and City Clerk are required to sign said warrants expeditiously, and the commissioner is not authorized to collect those sums called for by said warrants unless said warrants are proper, i.e., signed by the Public Advocate and the City Clerk.

Therefore, the duties as set forth in New York City Charter § 1518 are clear: 1) the City Clerk is tasked with immediately procuring proper tax warrants upon completion of the assessment rolls and countersigning said tax warrants; 2) the Public Advocate is tasked with signing the tax warrants, immediately after or before the thirtieth day of June delivering the signed tax warrants and assessment rolls to the commissioner, and informing the comptroller of the amount of taxes therein; and 3) the commissioner, upon receipt of these proper warrants and assessment rolls, is tasked with filing same in the respective borough offices.

In applying these provisions to this proceeding, the court finds that the petitioners’ have stated a cognizable claim at law as tax warrants are not deemed proper unless signed by the Public Advocate and countersigned by the City Clerk. Thus, respondents filing improper tax warrants, to wit: tax warrants that are not signed by the Public Advocate and countersigned by the City Clerk, is in contravention of the Charter and without and in excess of their jurisdiction.

In a proceeding seeking a writ of prohibition, the court is tasked with discerning whether another remedy, under the law, other than the instant proceeding, was available to petitioners. In consideration of same, the court, while not justifying respondents’ non-compliance with the Charter, cannot ignore the fact that respondents’ compliance with the Charter is dependent upon petitioners’ compliance. Petitioners’ remedy was to sign the tax warrants to avoid this litigation and if not, respondents arguably should have commenced an emergency proceeding seeking to compel Mr. William’s signature rather than file improper tax warrants. Considering all of this, the instant proceeding is appropriate.

However, with respect to respondents’ cross-motion seeking a denial of the petition, dismissal of the proceeding and other and further relief as the court deems just and proper, the court finds that while denial of the petition is not proper as respondents do not deny filing tax warrants bearing only the City Clerk’s signature, granting the petition and allowing petitioners to prevent the budget from being executed is not only improper, it is not in the interest of justice.

In a press release, Jumaane Williams, in his capacity as Public Advocate stated the following: “As we near the final budget vote, it has become clear to me that this budget ignores some of the

most critical elements of reducing NYPD funding and redefining public safety. Unless it meets those needs, I will use my Charter authority as Public Advocate under Ch. 58, Section 1518, to prevent the budget from being executed during the final tax warrant process....” (NYSCEF Doc. No. 36, *Press release June 30, 2020*).

While it is not lost on this court that Mr. Williams’ endeavors here stem from zealous advocacy for New Yorkers, efforts to thwart the collection of taxes is outside of the scope and discretion of the Public Advocate’s role. New York City Charter § 24 outlines the role of the Public Advocate, its election, duties and powers. Some of those duties and responsibilities discussed in New York City Charter § 24(f) include monitoring the operation of the public information and service complaint programs of city agencies and making proposals to improve such programs; reviewing complaints of a recurring and multiborough or city-wide nature relating to services and programs, and making proposals to improve the city’s response to such complaints; receiving individual complaints concerning city services and other administrative actions of city agencies; and investigating and otherwise attempting to resolve such individual complaints except for those which another city agency is required by law to adjudicate, may be resolved through a grievance mechanism established by collective bargaining agreement or contract, or involve allegations of conduct which may constitute a violation of criminal law or a conflict of interest.”

Assuming *arguendo* that Mr. Williams was attempting to resolve complaints pertaining to NYPD funding and public safety by preventing the execution of the budget, this argument is flawed as there is another entity tasked with addressing complaints that involve funding. As it pertains to funding via the budget process, the City Council is the body tasked with hearing, discussing, and ultimately resolving complaints through its budget process and only the mayor has the authority to veto budget resolutions. As it pertains to the Public Advocate’s role in the City Council, New York City Charter § 24(e) states that “[t]he Public Advocate shall have the right to participate in the discussion of the council but shall not have a vote.” Hence, as it pertains to the budget process, the Public Advocate may participate in discussions and advocate for or against specific policies and budget line items but does not have voting authority. More importantly, the Charter does not provide a basis upon which the Public Advocate may refuse to sign the tax warrants, making it clear that the act of signing is procedural and not substantive in nature.

Petitioners argue, in opposition to respondents’ cross-motion, that respondents are not without recourse to collect taxes if they are unable to obtain proper tax warrants, citing to New York City Charter § 1516-a. However, petitioners’ reliance on this provision is both misguided and disingenuous as the press release clearly indicates Mr. Williams’ intention to prevent budget execution. Section 1516-a states that “[n]otwithstanding the provisions of sections fifteen hundred sixteen, fifteen hundred seventeen and fifteen hundred eighteen or any other provisions of law to the contrary: [i]f the city council has not fixed the tax rates for the ensuing fiscal year pursuant to section fifteen hundred sixteen on or before the fifth day of June, the commissioner of finance shall be authorized to complete the assessment rolls using estimated rates and to collect the sums therein mentioned according to law. The estimated rates shall equal the tax rates for the current fiscal year.” This provision is applicable in the event the City Council is delayed in passing a budget and setting the tax rates for the upcoming fiscal year which is not the case here. In the case at bar, it is undisputed that the City Council adopted resolutions establishing property tax rates for the ensuing fiscal year and the Public Advocate, in opposition to certain budget items, refused to sign tax warrants authorizing the collection of those property taxes.

Consequently, as respondents' compliance with the City Charter is dependent upon the Public Advocate's compliance, the petition is granted and respondents are required to present tax warrants to the Public Advocate for signature prior to causing property tax assessment rolls and warrants to be filed in the respective borough offices and the cross-motion is granted solely to the extent that, in the interest of justice, the Public Advocate is required to affix his/her signature to said tax warrants upon receipt and on or before the thirtieth day of June. To find otherwise or to grant the petition without granting respondents' cross-motion for other relief the court deems proper and just would be to allow the Public Advocate to exercise a power not proscribed to it by the City Charter and to further delay the proper execution of a duly passed budget. As such, it is hereby

ORDERED and ADJUDGED that, the court grants petitioners' Article 78 petition seeking to compel respondents to comply with § 1518 of the New York City Charter and that prior to causing property tax assessment rolls and warrants to be filed in the respective borough offices respondents be in receipt of properly executed tax warrants signed by the Public Advocate of the City of New York and counter-signed by the City Clerk; prior to the issuance adjusted property tax bills and/or adjusted quarterly statements based on property tax assessment rolls and/or warrants, respondents be in receipt of properly executed and properly filed tax assessment rolls and/or tax warrants pursuant to § 1518 of the New York City Charter with the signature of both the Public Advocate of the City of New York and the counter-signature of the City Clerk and prohibiting respondents from filing tax assessment rolls and/or tax warrants in the respective borough offices without the properly executed tax warrants signed by the Public Advocate of the City of New York and counter-signed by the City Clerk; and from issuing adjusted property tax bills and/or adjusted quarterly statements based on adjustments in property tax rates in the absence of properly executed tax warrants signed by the Public Advocate of the City of New York and counter-signed by the City Clerk; and it is further

ORDERED that, respondents' cross-motion is granted solely to the extent that, in the interest of justice, upon receipt of property tax assessment rolls and warrants, the Public Advocate shall affix his/her signature to said tax warrants, which shall be countersigned by the City Clerk, and delivered together with the assessment rolls to commissioner in compliance with § 1518 of the New York City Charter and the motion is otherwise denied; and it is

ORDERED that, any relief not expressly addressed herein has nonetheless been considered and is denied.

July 22, 2022



HON. VERNA L. SAUNDERS, JSC

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APPLICATION:

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