

Westchester County

George Latimer
County Executive

Department of Law
John M. Nonna
County Attorney

June 7, 2023

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, NY 10601

Re: Legislation authorizing the County Attorney to commence a special proceeding:
to vacate a mistakenly filed satisfaction of judgment; and
to order the return of \$1,105.13 in incorrectly remitted funds

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize the County Attorney to commence a special proceeding on behalf of the Acting Commissioner/Sheriff of the Westchester County Department of Public Safety (the "Westchester County Sheriff") for a Judgment under Article 4 of the Civil Practice Law and Rules (i) vacating a mistakenly filed satisfaction of judgment; and (ii) ordering the return of incorrectly remitted funds in the amount of one thousand one hundred five and 13/100 dollars (\$1,105.13).

The issue here is very straightforward. However, this Office lacks the authority to commence the proposed proceeding without Board authorization (*see* Charter and Administrative Code of Westchester County [hereinafter, "Laws of Westchester County" or "LWC"] § 158.11 [3], [4] [defining the County Attorney's authority to institute proceedings]; LWC ch 273, art I [defining the Department of Public Safety's powers and omitting reference to any authority to initiate proceedings]).

Relevant Background

Among its many duties, the Westchester County Department of Public Safety's Civil Unit (the "Sheriff's Office") is tasked with processing the requests of individuals holding money judgments ("Judgment Creditors") to collect the property of those who owe the money ("Judgment Debtors") from third parties ("Garnishees"). This processing often takes the form of serving letter demands on one of the local banks (*i.e.*, the Garnishee). If the Judgment Debtor has funds in his or her bank account, the Garnishee sends the Sheriff's Office a check. The Sheriff's Office then remits the check's proceeds, less processing fees, to the Judgment Creditor. Once the judgment is paid off in full, the Sheriff's Office sends the Westchester County Clerk's Office paperwork notifying it of same. The Westchester County Clerk's Office then marks the judgment "satisfied."

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*Please be advised that service by facsimile
is not accepted.



On May 11, 2022, the Sheriff's Office misattributed a check to the wrong judgment. As a result of that misattribution, the Sheriff's Office distributed the check's proceeds to the Judgment Creditor, distributed the overage to the Judgment Debtor, and caused the Clerk's Office to mark the judgment satisfied. The funds incorrectly distributed to the Judgment Creditor totaled eight hundred fifty-six and 10/100 dollars (\$856.10). The overage incorrectly distributed to the Judgment Debtor totaled two hundred forty-nine and 03/100 dollars (\$249.03). Pursuant to statutory and decisional law, a satisfaction of judgment can only be vacated by court order.

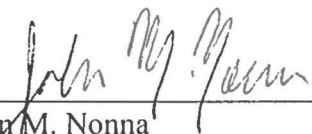
Proposed Proceeding

To vacate the satisfaction of judgment and to prompt return of the incorrectly distributed funds, this Office proposes a special proceeding pursuant to Article 4 of the Civil Practice Law and Rules. The anticipated respondents include the Judgment Creditor to the incorrectly satisfied judgment (AAA Property Tax Appeal LLC) and the Judgment Debtors thereto (Lee and Mindy Diamond). The commencement papers have already been drafted and circulated for review.

Requested Authority

For the foregoing reasons, I recommend commencing a special proceeding for a court order (i) vacating a mistakenly filed satisfaction of judgment; and (ii) ordering the return of incorrectly remitted funds in the amount of one thousand one hundred five and 13/100 dollars (\$1,105.13). The Sheriff's Office concurs in this recommendation.

Very truly yours,



John M. Nonna
County Attorney

JMN/stc

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Honorable Board, would authorize the County Attorney to commence a special proceeding (i) vacating a mistakenly filed satisfaction of judgment; and (ii) ordering the return of incorrectly remitted funds in the amount of one thousand one hundred five and 13/100 dollars (\$1,105.13). The satisfaction of judgment was mistakenly filed as a result of a clerical error in the Civil Unit of the Westchester County Department of Public Safety (the “Sheriff’s Office”). That clerical error was also the cause of the incorrectly remitted funds.

Pursuant to statutory and decisional law, a satisfaction of judgment can only be vacated by order of the court. The County Attorney has therefore recommended commencing a special proceeding for a court order (i) vacating a mistakenly filed satisfaction of judgment; and (ii) ordering the return of incorrectly remitted funds.

Your Committee concurs with the County Attorney and therefore recommends that the Board approve the accompanying Act authorizing the County Attorney to initiate such a special proceeding.

An affirmative vote of a majority of the Board is required to pass this Act.

Dated: White Plains, New York
June __, 2023

ACT NO. 2023

AN ACT authorizing the County Attorney to commence a special proceeding to vacate a mistakenly filed satisfaction of judgment and to order the return of incorrectly remitted funds.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

1. The County Attorney is authorized to commence a special proceeding on behalf of the Acting Commissioner/Sheriff of the Westchester County Department of Public Safety pursuant to Article 4 of the Civil Practice Law and Rules to vacate a mistakenly filed satisfaction of judgment and to order the return of incorrectly remitted funds.
2. The County Attorney or her designee be and hereby is authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary and desirable to accomplish the purposes hereof.
3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Proceeding to Vacate Satisfaction of Judgment

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ -0

Total Current Year Revenue \$ _____

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four years: _____

Prepared by: Sean T. Carey

Title: Associate County Attorney

Department: Law

NO

Reviewed By: _____



Budget Department

6/13/23

If you need more space, please attach additional sheets.