

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D13530  
Y/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 15, 2006

ROBERT W. SCHMIDT, J.P.  
STEPHEN G. CRANE  
PETER B. SKELOS  
STEVEN W. FISHER, JJ.

---

2006-03592

DECISION & ORDER

In the Matter of Richard Volino, respondent,  
v Metropolitan Transportation Authority, et al.,  
appellants.

(Index No. 2124/06)

---

Wallace D. Gossett, Brooklyn, N.Y. (Anita Isola of counsel), for appellants.

Rayo & Fontanelli, P.C., Brooklyn, N.Y. (Mark J. Rayo and Louis A. Badolato of counsel), for respondent.

In a proceeding for leave to serve a late notice of claim pursuant to General Municipal Law § 50-e, the Metropolitan Transportation Authority and New York City Transit Authority appeal from an order of the Supreme Court, Kings County (Hinds Radix, J.), dated March 3, 2006, which granted the petition.

ORDERED that the appeal by the defendant Metropolitan Transportation Authority is dismissed; and it is further,

ORDERED that the order is affirmed insofar as appealed from by the defendant New York City Transit Authority; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

Since the Metropolitan Transportation Authority did not file any papers in opposition to the petition, it is not aggrieved by the order appealed from (*see* CPLR 5511).

January 30, 2007

Page 1.

MATTER OF VOLINO v METROPOLITAN TRANSPORTATION AUTHORITY

The Supreme Court providently exercised its discretion in granting the petitioner leave to serve a late notice of claim against the New York City Transit Authority (*see* Public Authorities Law § 1212[2]; General Municipal law § 50-e[5]; *Matter of Morales v New York City Tr. Auth.*, 15 AD3d 580; *Matter of Carter v City of New York*, 5 AD3d 480; *Sayad v New York City Tr. Auth.*, 246 AD2d 639).

SCHMIDT, J.P., CRANE, SKELOS and FISHER, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court