

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

D15219
Y/hu

_____AD3d_____

Argued - March 29, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2006-07445

DECISION & ORDER

Glenn Bernoudy, appellant, v County of Westchester,
et al., respondents.

(Index No. 3866/06)

Stephen R. Krawitz, LLC, New York, N.Y., for appellant.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz
and Thomas G. Gardiner of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Bellantoni, J.), dated June 29, 2006, which granted the defendants' motion to dismiss the complaint based on his failure to comply with General Municipal Law § 50-h.

ORDERED that the order is affirmed, with costs.

A party who has failed to comply with a demand for examination pursuant to General Municipal Law § 50-h is precluded from commencing an action against a municipality (*see Patterson v Ford*, 255 AD2d 373; *Heins v Board of Trustees of the Incorporated Village of Greenport*, 237 AD2d 570; *Arcila v Incorporated Village of Freeport*, 231 AD2d 660).

The Supreme Court properly granted the defendants' motion to dismiss the complaint, since the hearing pursuant to General Municipal Law § 50-h was adjourned at the plaintiff's request, and he commenced this action without rescheduling a new hearing date after the last adjournment (*see*

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Scalzo v County of Suffolk, 306 AD2d 397, 398). Contrary to the plaintiff's contentions, his incarceration does not constitute an exceptional circumstance excusing his failure to be examined (*see Zapata v County of Suffolk*, 23 AD3d 553; *Scalzo v County of Suffolk, supra*).

SCHMIDT, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court