

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

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Submitted - June 12, 2007

STEPHEN G. CRANE, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
EDWARD D. CARNI, JJ.

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2006-09445

DECISION & ORDER

Teresa Mandel, etc., appellant, v New York City  
Health and Hospitals Corp., et al., respondents,  
et al., defendant.

(Index No. 42760/03)

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Davis & Hersh, LLP, Islandia, N.Y. (Cary M. Greenberg of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and  
Susan Paulson of counsel), for respondents.

In an action, inter alia, to recover damages for wrongful death, the plaintiff appeals from an order of the Supreme Court, Kings County (Jackson, J.), dated August 16, 2006, which granted the motion of the defendants New York City Health and Hospital Corp., Selvanayagam Niranjan, and Kathirgamathas Kurunathapillai for summary judgment dismissing the complaint insofar as asserted against them for failure to timely serve a notice of claim.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action, inter alia, to recover damages for wrongful death. However, the plaintiff failed to serve a notice of claim within 90 days of being appointed a representative of the decedent's estate (*see* General Municipal Law § 50-e[1][a]; EPTL 1-2.13; SCPA 703[2]; *cf. Mack v City of New York*, 265 AD2d 308). Further, the plaintiff failed to demonstrate any basis upon which to equitably estop the respondents from raising this failure (*see Bender v New York*

September 18, 2007

Page 1.

MANDEL v NEW YORK CITY HEALTH AND HOSPITALS CORP.

*City Health & Hosps. Corp.*, 38 NY2d 662, 668; *Wade v New York City Health & Hosps. Corp.*, 16 AD3d 677). Thus, the Supreme Court properly granted the respondents' motion for summary judgment dismissing the complaint insofar as asserted against them.

CRANE, J.P., RITTER, DILLON and CARNI, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court