

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

D21851  
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Argued - December 16, 2008

REINALDO E. RIVERA, J.P.  
FRED T. SANTUCCI  
EDWARD D. CARNI  
THOMAS A. DICKERSON, JJ.

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2008-01936

DECISION & ORDER

Sally Dinerman, appellant, v NYS Lottery, etc.,  
respondent.

(Index No. 34471/07)

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Sally Dinerman, Brooklyn, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, Albany, N.Y. (Denise A. Hartman and Marcus  
J. Mastracco of counsel), for respondent.

In an action to recover damages for negligence, the plaintiff appeals from an order of the Supreme Court, Kings County (Saitta, J.), dated January 31, 2008, which granted the defendant's pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(2).

ORDERED that the order is affirmed, without costs or disbursements.

The Court of Claims has exclusive jurisdiction over actions for money damages against State agencies, departments, and employees acting in their official capacity in the exercise of governmental functions (*see Morell v Balasubramanian*, 70 NY2d 297, 300; *Schaffer v Evans*, 57 NY2d 992, 994; *Sinhogar v Parry*, 53 NY2d 424, 431). Consequently, the Supreme Court properly granted the defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(2) for lack of subject matter jurisdiction, as the claims in this case arise from acts performed, and determinations made, by State employees in the course of their official duties.

RIVERA, J.P., SANTUCCI, CARNI and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

January 20, 2009

DINERMAN v NYS LOTTERY