

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

D22181  
O/kmg

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Submitted - January 21, 2009

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
EDWARD D. CARNI, JJ.

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2008-02295

DECISION & ORDER

In the Matter of Gustava Garcia, etc., appellant,  
v New York City Housing Authority, respondent.

(Index No. 27009/07)

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Aliazzo, McCloskey & Gonzalez, LLP, Ozone Park, N.Y. (Thomas P. McCloskey of counsel), for appellant.

Herzfeld & Rubin, P.C., New York, N.Y. (Neil R. Finkston of counsel), for respondent.

In a proceeding pursuant to General Municipal Law § 50-e(5) for leave to serve a late notice of claim, the petitioner appeals from an order of the Supreme Court, Queens County (Kerrigan, J.), dated January 31, 2008, which denied the petition and dismissed the proceeding.

ORDERED that the order is affirmed, with costs.

Although the petitioner demonstrated that the respondent acquired knowledge of the incident and her injuries within 90 days of the occurrence, she failed to establish either that the respondent had acquired knowledge of the essential facts underlying the claim within that time, or that the respondent was not substantially prejudiced by reason of her delay in serving a notice of claim. Accordingly, the Supreme Court properly denied the petition for leave to serve a late notice of claim (*see State Farm Mut. Auto Ins. Co. v New York City Tr. Auth.*, 35 AD3d 718).

MASTRO, J.P., FISHER, FLORIO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

February 24, 2009

MATTER OF GARCIA v NEW YORK CITY HOUSING AUTHORITY