

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

D24828  
O/kmg

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Submitted - October 5, 2009

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
THOMAS A. DICKERSON  
PLUMMER E. LOTT, JJ.

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2008-10301

DECISION & ORDER

In the Matter of Liz Avalos, etc., et al., appellants,  
v City of New York Board of Education, respondent.

(Index No. 10157/08)

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Sacco & Fillas, LLP, Whitestone, N.Y. (Bret L. Myerson of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Elizabeth I. Freedman 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 petitioners appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Kerrigan, J.), dated August 14, 2008, as denied the petition.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In determining whether to grant leave to serve a late notice of claim, the court must consider, among other things, whether (1) there is a reasonable excuse for the delay, (2) the public corporation acquired actual knowledge of the essential facts constituting the claim within 90 days of the claim's accrual or a reasonable time thereafter, and (3) the delay in serving the notice of claim would result in substantial prejudice to the public corporation defending on the merits (*see* General Municipal Law § 50-e[5]; *Matter of Felice v Eastport/South Manor Cent. School Dist.*, 50 AD3d 138, 147-153). Here, the petitioners failed to present a reasonable excuse for failing to serve a timely notice of claim (*see Matter of Tineo v City of New York*, 273 AD2d 397; *Matter of Jackson v City of New Rochelle*, 227 AD2d 483). In addition, the petitioners failed to demonstrate that the respondent had actual notice of the essential facts constituting their claim within 90 days of their claim's accrual or a reasonable time thereafter (*see Matter of Denlea v Mahopac Cent. School Dist.*,

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232 AD2d 558, 559-560). Finally, the petitioners failed to establish that the delay in serving the notice of claim would not result in substantial prejudice to the respondent defending on the merits (*id.* at 559-560). Accordingly, the Supreme Court did not improvidently exercise its discretion in denying the petition for leave to serve a late notice of claim.

FISHER, J.P., COVELLO, DICKERSON and LOTT, 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