

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

D25560
Y/nl

_____AD3d_____

Submitted - December 2, 2009

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-01399

DECISION & ORDER

In the Matter of Wayne Liebman, appellant,
v New York City Department of Education, et al.,
respondents.

(Index No. 17497/08)

Lipsig Shapey Manus & Moverman, P.C. (Pollack, Pollack, Isaac & DeCicco, New York, N.Y. [Brian J. Isaac], of counsel), for appellant.

Cozen O'Connor, New York, N.Y. (John J. McDonough, Edward Hayum, and Scott M. Shapiro of counsel), for respondents.

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 (Flug, J.), dated December 15, 2008, which denied the petition.

ORDERED that the order is affirmed, with costs.

The Supreme Court did not improvidently exercise its discretion in denying the petition. First, the petitioner failed to offer a reasonable excuse for his failure to serve a timely notice of claim (*see Matter of Felice v Eastport/South Manor Cent. School Dist.*, 50 AD3d 138, 150; *Matter of Doyle v Elwood Union Free School Dist.*, 39 AD3d 544, 545; *Matter of Narcisse v Incorporated Vil. of Cent. Islip*, 36 AD3d 920). Additionally, the petitioner failed to establish that any of the respondents had actual knowledge of the essential facts constituting the claim within 90 days after

the claim arose or a reasonable time thereafter (*see* General Municipal Law § 50-e[5]). While the petitioner alleged that an accident investigation report was provided to him at the job site where he was injured several days after the accident, there was no evidence that this report was served upon any one of the respondents. Furthermore, the petitioner failed to establish that the 3½-month delay after the expiration of the 90-day period would not substantially prejudice the respondents in maintaining their defenses on the merits (*see Matter of Felice v Eastport/South Manor Cent. School Dist.*, 50 AD3d at 152-153; *Matter of Lorseille v New York City Hous. Auth.*, 295 AD2d 612; *Matter of Sica v Board of Educ. of City of N.Y.*, 226 AD2d 542).

FISHER, J.P., SANTUCCI, DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court