

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

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_____AD3d_____

Submitted - December 14, 2009

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2009-01000

DECISION & ORDER

In the Matter of Maurice Griffin, appellant, v City of
New York, et al., respondents.

(Index No. 22143/08)

Rubert & Gross, P.C., New York, N.Y. (Soledad Rubert of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Mordecai Newman of
counsel; Yael Wilkofsky on the brief), for respondents.

In a proceeding, inter alia, pursuant to General Municipal Law § 50-e(5) to deem a
notice of claim timely served upon the City of New York, the petitioner appeals from an order of the
Supreme Court, Kings County (Miller, J.), dated November 25, 2008, which denied the petition.

ORDERED that the order is affirmed, with costs.

The petitioner sought, inter alia, to deem a notice of claim he belatedly served upon
the City of New York timely served upon the City. In determining whether to grant that branch of
the petition which was to deem the notice of claim timely served upon the City, the Supreme Court
was required to consider, among other things, whether (1) there was a reasonable excuse for the delay
in serving the notice of claim, (2) the City acquired actual knowledge of the essential facts
constituting the petitioner's claims within 90 days of the accrual of those claims or a reasonable time
thereafter, and (3) the delay in serving the notice of claim would result in substantial prejudice to the
City 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 petitioner failed to
present a reasonable excuse for failing to timely serve a notice of claim (*see Matter of Formisano v*

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Eastchester Union Free School Dist., 59 AD3d 543, 544). In addition, the petitioner failed to demonstrate that the City had actual knowledge of the essential facts constituting his claims within 90 days of the accrual of those claims or a reasonable time thereafter (*see Shapiro v Town of Clarkstown*, 238 AD2d 498, 499). Finally, the petitioner failed to establish that the delay in serving the notice of claim would not result in substantial prejudice to the City defending on the merits (*see Matter of Wright v City of New York*, 66 AD3d 1037, 1039; *Matter of Catuosco v City of New York*, 62 AD3d 995, 997; *Matter of Deegan v City of New York*, 227 AD2d 620). Under these circumstances, the Supreme Court properly denied that branch of the petition which was to deem the notice of claim timely served upon the City (*see Nuamah v City of New York*, 13 AD3d 502).

The petitioner's remaining contentions are without merit.

COVELLO, J.P., ANGIOLILLO, BALKIN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court