

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

D25923
H/cb

_____AD3d_____

Submitted - November 23, 2009

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2009-02031

DECISION & ORDER

In the Matter of Tiffany Harper, appellant, v City of
New York, respondent.

(Index No. 9797/08)

Jacoby & Meyers, Newburgh, N.Y. (Finkelstein & Partners [Andrew L. Spitz], of
counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and
Alan G. Krams 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 so much of an order of the Supreme Court, Queens
County (Kerrigan, J.), dated January 26, 2009, as, upon reargument, adhered to the original
determination in an order dated August 12, 2008, denying her petition for leave to serve a late notice
of claim.

ORDERED that the order dated January 26, 2009, is affirmed insofar as appealed
from, with costs.

A petition for leave to serve a late notice of claim is addressed to the sound discretion
of the court (*see Matter of Alexander v Board of Educ. for Vil. of Mamaroneck*, 18 AD3d 654;
Matter of Flores v County of Nassau, 8 AD3d 377; *Moise v County of Nassau*, 234 AD2d 275), and
requires that the court consider, inter alia, whether the petitioner has demonstrated a reasonable
excuse for the delay, whether the municipal entity acquired actual knowledge of the facts constituting

January 26, 2010

Page 1.

MATTER OF HARPER v CITY OF NEW YORK

the claim within 90 days after the accident or a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in defending on the merits (*see* General Municipal Law § 50-e[5]; *Williams v Nassau County Med. Ctr.*, 6 NY3d 531; *Troy v Town of Hyde Park*, 63 AD3d 913; *Matter of Korman v Bellmore Pub. Schools*, 62 AD3d 882; *Matter of Acosta v City of New York*, 39 AD3d 629).

Contrary to the petitioner's contention, the Supreme Court did not, upon reargument, improvidently exercise its discretion in adhering to the original determination denying the petition for leave to serve a late notice of claim. While the Supreme Court found a reasonable excuse for the petitioner's delay in seeking to serve a notice of claim, neither the police accident report nor the New York City Department of Transportation repair work order record upon which the petitioner relies mentioned any personal injury to the petitioner, or any evidence of negligence on the part of the respondent. Accordingly, those documents were clearly inadequate to provide the respondent with actual knowledge of the facts constituting the claim (*see Matter of National Grange Mut. Ins. Co. v Town of Eastchester*, 48 AD3d 467, 468; *Santana v Western Regional Off-Track Betting Corp.*, 2 AD3d 1304, 1305; *Lemma v Off Track Betting Corp.*, 272 AD2d 669, 671; *Matter of Wertenberger v Village of Briarcliff Manor*, 175 AD2d 922, 923).

Furthermore, the petitioner's contention that the respondent would not be prejudiced by the delay is unsupported by the facts in the record.

MASTRO, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court