

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

D26411  
O/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 11, 2010

STEVEN W. FISHER, J.P.  
FRED T. SANTUCCI  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

---

2009-05882

DECISION & ORDER

In the Matter of Shirnet Harmond, appellant, v New York State Office of Children and Family Services, respondent.

(Index No. 23841/08)

---

Vivia L. Joseph, Cambria Heights, N.Y., for appellant.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael Belohlavek and Marion R. Buchbinder of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of John Franklin Udochi, as designee of the Commissioner of the New York State Office of Children and Family Services, dated December 28, 2007, which, after a hearing, affirmed the denial of the petitioner's application to renew her license to operate a group family day care center, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Kings County (Kramer, J.), dated April 22, 2009, which denied her motion, in effect, to extend her time to file the petition, and dismissed the proceeding as time-barred.

ORDERED that the order and judgment is affirmed, with costs.

On December 28, 2007, the designee of the Commissioner of the New York State Office of Children and Family Services rendered a final and binding determination affirming the denial of the petitioner's application to renew her group family day care center license (*see* 18 NYCRR 413.5[m][2], [4]; *Matter of Best Payphones, Inc. v Department of Info. Tech. & Telecom. of City*

March 9, 2010

Page 1.

MATTER OF HARMOND v NEW YORK STATE OFFICE  
OF CHILDREN AND FAMILY SERVICES

*of N.Y.*, 5 NY3d 30, 34; *Matter of McCrory v Village of Scarsdale*, 67 AD3d 684, 684-685). The petitioner did not commence this proceeding to review that determination until more than eight months later, beyond the applicable four-month statute of limitations provided by CPLR 217(1). Contrary to the petitioner's contention, the limitations period may not be extended on the ground of alleged misconduct or negligence on the part of her attorney in failing to timely file the petition (*see* CPLR 201; *cf.* CPLR 2005; *Campbell-Jarvis v Alves*, 68 AD3d 701). Accordingly, the Supreme Court properly denied the petitioner's motion and dismissed the proceeding as time-barred.

FISHER, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court