

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

D26585
C/nl

_____AD3d_____

Submitted - February 22, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2009-02228

DECISION & ORDER

Andre Dolberry, a/k/a Andre Duberry, appellant,
v State of New York, respondent.

(Claim No. M-75662)

Andre Dolberry, a/k/a Andre Duberry, Coxsackie, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter H. Schiff and Owen Demuth of counsel), for respondent.

In a claim, inter alia, to recover damages for personal injuries, the claimant appeals from an order of the Court of Claims (Scuccimarra, J.), dated December 15, 2008, which denied his motion, in effect, for leave to file a late claim pursuant to Court of Claims Act § 10(6).

ORDERED that the order is affirmed, without costs or disbursements.

The Court of Claims has discretion to permit the filing of a late claim “at any time before an action asserting a like claim against a citizen of the state would be barred under the provisions of [CPLR] article two” (Court of Claims Act § 10[6]). Here, the claimant’s motion, in effect, for leave to file a late claim was made after all applicable limitations periods had expired and, thus, the Court of Claims properly denied the motion (*see Roberts v City Univ. of N.Y.*, 41 AD3d 825; *Crum & Foster Ins. Co. v State of New York*, 25 AD3d 643). In any event, there was no

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reasonable excuse for the delay or any proof of merit to the claim (*see Jackson v State of New York*, 60 AD3d 634, 634-635; *Olsen v State of New York*, 45 AD3d 824, 824-825).

RIVERA, J.P., FLORIO, ANGIOLILLO and BELEN, 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