

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

D30933
H/prt

_____AD3d_____

Submitted - April 4, 2011

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
L. PRISCILLA HALL, JJ.

2010-04274

DECISION & ORDER

In the Matter of James Cappellino, et al., appellants, v
Town of Somers, et al., respondents.

(Index No. 25271/09)

Bartlett, McDonough, Bastone & Monaghan, LLP, White Plains, N.Y. (Sean Dooley of counsel), for appellants.

Bond, Schoeneck & King, PLLC, Garden City, N.Y. (Howard M. Wexler of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the Town of Somers and the Town of Somers Police Department denying the petitioners' request for reimbursement of certain health care costs and, in effect, in the nature of mandamus, to compel the Town of Somers and the Town of Somers Police Department to reimburse the petitioners for those costs, the petitioners appeal from a judgment of the Supreme Court, Westchester County (Capeci, J.), entered March 11, 2010, which, in effect, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The Supreme Court properly, in effect, denied the petition and dismissed the proceeding as time-barred. The petition stated that the petitioners received correspondence on June 18, 2009, denying their request for reimbursement of the cost of their Medicare Part B benefits. Contrary to the petitioners' contentions, said correspondence was a final and binding determination within the meaning of CPLR 217(1), as it unequivocally denied the petitioners' request for reimbursement, and it therefore commenced the running of the statute of limitations (*see Matter of*

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Drake v Reuter, 27 AD3d 736). The petitioners did not commence this proceeding, however, until October 22, 2009, which was beyond the applicable four-month statute of limitations of CPLR 217(1). The petitioners' alleged communications with the respondents' counsel after June 18, 2009, including any alleged requests for further administrative review, did not extend or toll the statute of limitations (see *Gertler v Goodgold*, 66 NY2d 946, 948; *Matter of Lubin v Board of Educ. of City of NY*, 60 NY2d 974, 976, cert denied 469 US 823; *Matter of Surton Constr. Contr. Corp. v New York City School Constr. Auth.*, 81 AD3d 654; *Matter of Drake v Reuter*, 27 AD3d at 737).

The petitioners' remaining contentions are either improperly raised for the first time on appeal or without merit.

COVELLO, J.P., ANGIOLILLO, DICKERSON and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court