

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

D33252
O/kmb

_____AD3d_____

Submitted - November 30, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2011-01609

DECISION & ORDER

In the Matter of Johanna Brandi, appellant,
v City of New York, respondent.

(Index No. 13093/10)

Bivona & Cohen, P.C., New York, N.Y. (Elio M. Di Berardino of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Mordecai Newman of counsel; Graham Morrison on the brief), 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 an order of the Supreme Court, Kings County (Velasquez, J.), dated December 6, 2010, which denied the petition.

ORDERED that the order is affirmed, with costs.

“Among the factors to be considered by a court in determining whether leave to serve a late notice of claim should be granted are whether the municipality acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or within a reasonable time thereafter; whether the delay would substantially prejudice the municipality in maintaining its defense; and whether the claimant had a reasonable excuse for the failure to serve a timely notice of claim” (*Matter of Joy v County of Suffolk*, _____AD3d_____, _____, 2011 NY Slip Op 08593, *2 [2d Dept 2011]; *see* General Business Law § 50-e[5]). While the presence or the absence of any one of the factors is not necessarily determinative (*see Matter of Chambers v Nassau County Health Care Corp.*, 50 AD3d 1134), whether the municipality had actual knowledge of the essential

December 13, 2011

Page 1.

MATTER OF BRANDI v CITY OF NEW YORK

facts constituting the claim is of great importance (*see Matter of Gonzalez v City of New York*, 60 AD3d 1058, 1059). The municipality must have notice or knowledge of the specific claim and not merely some general knowledge that a wrong has been committed (*see Matter of Devivo v Town of Carmel*, 68 AD3d 991, 992; *Arias v New York City Health & Hosps. Corp. [Kings County Hosp. Ctr.]*, 50 AD3d 830, 832).

Here, the petitioner failed to demonstrate that the City of New York had actual notice of the essential facts constituting her claim (*see Indar v City of New York*, 71 AD3d 635, 636). Moreover, she failed to put forward a reasonable excuse for her failure to file a timely notice of claim (*see Matter of Padgett v City of New York*, 78 AD3d 949, 950). Finally, the petitioner failed to meet her burden of establishing that the delay would not substantially prejudice the City in maintaining its defense on the merits (*see Matter of Padgett v City of New York*, 78 AD3d at 950; *Matter of Felice v Eastport/South Manor Cent. School Dist.*, 50 AD3d 138, 152).

Accordingly, the petition was properly denied.

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court