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

D33818
H/prt

_____AD3d_____ Submitted - January 18, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-02532 DECISION & ORDER

In the Matter of Wayne S. Stockle, et al., appellants,
v City of New York, et al., respondents.

(Index No. 30985/10)

The Perecman Firm, PLLC, New York, N.Y. (Peter D. Rigelhaupt of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow of counsel; Elana Jacob on the brief), for respondents.

In a proceeding pursuant to General Muncipal Law § 50-e(5) for leave to serve a late notice of claim, the petitioners appeal from an order of the Supreme Court, Queens County (Kerrigan, J.), dated February 23, 2011, which denied the petition.

ORDERED that the order is affirmed, with costs.

The Supreme Court did not improvidently exercise its discretion in denying the petition for leave to serve a late notice of claim. The petitioners failed to provide a reasonable excuse for their failure to serve a timely notice of claim (*see Matter of Blanco v City of New York*, 78 AD3d 1048; *Matter of Felice v Eastport/South Manor Cent. School Dist.*, 50 AD3d 138, 150), and the infancy of one of the petitioners, without any showing of a nexus between the infancy and the delay, was insufficient to constitute a reasonable excuse (*see Robertson v Somers Cent. School Dist.*, 90 AD3d 1012; *Matter of Tonissen v Huntington U.F.S.D.*, 80 AD3d 704, 705; *Matter of Padgett v City of New York*, 78 AD3d 949, 950; *Grogan v Seaford Union Free School Dist.*, 59

AD3d 596, 597). Moreover, the petitioners failed to establish that the City had actual knowledge of the essential facts constituting their claims within 90 days following their accrual or a reasonable time thereafter (*see Matter of Rivera v City of New York*, 88 AD3d 1004, 1005; *Matter of Rodrigues v Village of Port Chester*, 262 AD2d 491, 492; *Matter of Cuffee v City of New York*, 255 AD2d 440, 441). Finally, the petitioners failed to establish that the delay in serving a notice of claim would not substantially prejudice the City (*see Matter of Rivera v City of New York*, 88 AD3d at 1005; *Matter of Blanco v City of New York*, 78 AD3d at 1049).

RIVERA, J.P., ENG, CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court