

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

D34636
H/nl

_____AD3d_____

Submitted - March 28, 2012

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2011-04961

DECISION & ORDER

Tuvia Feldman, appellant, et al., plaintiff, v Veronica
B. Delaney, etc., et al., respondents, et al., defendant.

(Index No. 07-02619)

Tuvia Feldman, Monroe, N.Y., appellant pro se.

Bartlett, McDonough & Monaghan, LLP, White Plains, N.Y. (Edward Guardaro and
Adonaid C. Medina of counsel), for respondents.

In an action to recover damages for medical malpractice, etc., the plaintiff Tuvia Feldman appeals from an order of the Supreme Court, Westchester County (Colabella, J.), entered April 15, 2011, which denied his motion (1) to vacate an order of the same court dated December 21, 2009, granting the application of the defendants Veronica B. Delaney, Nephrology Associates of Westchester, and Praveen Chander pursuant to 22 NYCRR 202.27 to dismiss the complaint insofar as asserted against those defendants upon his failure to proceed with the trial, and (2) to restore the action to the trial calendar.

ORDERED that the order entered April 15, 2011, is affirmed, with costs.

The appellant's motion, inter alia, to vacate an order dated December 21, 2009, granting the application of the defendants Veronica B. Delaney, Nephrology Associates of Westchester, and Praveen Chander pursuant to 22 NYCRR 202.27 to dismiss the complaint insofar as asserted against them, was properly denied, as it was not made within one year after service of a copy of the order with notice of entry (*see* CPLR 5015[a][1]; *Wold v City of New York*, 85 AD3d 776, 777; *Valentin v City of New York*, 73 AD3d 755, 756; *Cazeau v Paul*, 2 AD3d 477, 478; *Lopez v Imperial Delivery Serv.*, 282 AD2d 190, 197). Furthermore, the one-year time period should not

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be extended in the exercise of discretion, since the appellant failed to demonstrate a reasonable excuse for his lengthy delay in moving, among other things, to vacate the order dated December 21, 2009 (see *Valentin v City of New York*, 73 AD3d at 756; *Leinas v Long Is. Jewish Med. Ctr.*, 72 AD3d 905, 906; *Carter v City of New York*, 231 AD2d 485, 486). In any event, the appellant failed to demonstrate a reasonable excuse for his failure to proceed with the trial and a potentially meritorious cause of action (see CPLR 5015[a][1]; *Schmitt v Jeyalingam*, 71 AD3d 757; *Nowell v NYU Med. Ctr.*, 55 AD3d 573, 574; *Santiago v Santana*, 54 AD3d 929, 930; *Bollino v Hitzig*, 34 AD3d 711).

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court