

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

D36641  
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Submitted - November 14, 2012

REINALDO E. RIVERA, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

2012-00004

DECISION & ORDER

In the Matter of Juan Farfan, appellant, v City  
of New York, respondent.

(Index No. 23782/11)

McCarthy & Kelly LLP, New York, N.Y. (William P. Kelly of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Ronald E. Sternberg  
of counsel; Addar Weintraub 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, Queens County (Kerrigan, J.), entered December 7, 2011, which, in effect, denied the petition and dismissed the proceeding.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in, in effect, denying the petition for leave to serve a late notice of claim and dismissing the proceeding. General Municipal Law § 50-e(7) provides, in pertinent part, “[w]here the application is for leave to serve a late notice of claim, it shall be accompanied by a copy of the proposed notice of claim.” Here, no proposed notice of claim was submitted with the petition. This was sufficient justification by itself to deny the petition (*see* General Municipal Law § 50-e[7]; *Matter of Estate of Curreri v New York City Hous. Auth.*, 87 AD3d 1064, 1065; *Matter of Narcisse v Incorporated Vil. of Cent. Islip*, 36 AD3d 920, 922; *Matter of Scott v Huntington Union Free School Dist.*, 29 AD3d 1010, 1010). In any event, the petitioner proffered no excuse for his failure to serve a timely notice of claim (*see Matter of Estate of Curreri v New York City Hous. Auth.*, 87 AD3d at 1065; *Matter of Grant v Nassau*

December 5, 2012

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*County Indus. Dev. Agency*, 60 AD3d 946, 947; *Matter of Gillum v County of Nassau*, 284 AD2d 533). Moreover, although a police accident report was filed regarding the subject accident, the police accident report did not of itself provide actual knowledge to the City of the essential facts constituting the claim (see *Hardayal v City of New York*, 281 AD2d 593; *Matter of Dominguez v City of New York*, 272 AD2d 326, 327; *Matter of Vitali v City of New York*, 205 AD2d 636; *Matter of Dube v City of New York*, 158 AD2d 457, 458; *Caselli v City of New York*, 105 AD2d 251, 255). Finally, the petitioner failed to establish that the City will not be substantially prejudiced in maintaining its defense on the merits as a result of the more than five-month delay between the date of the petitioner's accident and the commencement of this proceeding for leave to serve a late notice of claim (see *Matter of Felice v Eastport/South Manor Cent. School Dist.*, 50 AD3d 138, 153; *Matter of Yearusskaya v New York City Tr. Auth.*, 279 AD2d 583).

RIVERA, J.P., DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court