

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

742

CA 09-02342

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF ADA RODRIGUEZ,
CLAIMANT-RESPONDENT,

V

MEMORANDUM AND ORDER

WESTERN REGIONAL OFF-TRACK BETTING
CORPORATION, RESPONDENT-APPELLANT.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (BRIAN A. MACDONALD OF
COUNSEL), FOR RESPONDENT-APPELLANT.

SPADAFORA & VERRASTRO, LLP, BUFFALO (RICHARD E. UPDEGROVE OF COUNSEL),
FOR CLAIMANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Donna M. Siwek, J.), entered August 11, 2009. The order granted the application of claimant for leave to serve a late notice of claim.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court did not abuse its discretion in granting claimant's application seeking leave to serve a late notice of claim on respondent pursuant to General Municipal Law § 50-e (5). In support of her application, claimant established that she was unaware of the severe or permanent nature of her injuries until after the expiration of the statutory time period, and we thus conclude that she thereby established a reasonable excuse for the delay (see *Matter of Greene v Rochester Hous. Auth.*, 273 AD2d 895; *More v General Brown Cent. School Dist.*, 262 AD2d 1030; *Matter of Esposito v Carmel Cent. School Dist.*, 187 AD2d 854). Further, it is undisputed that respondent had actual notice of claimant's accident inasmuch as the record establishes that respondent was immediately notified of the accident, prepared an accident report, and took photographs of the sidewalk where claimant fell and, finally, respondent failed to demonstrate any prejudice occasioned by claimant's 29-day delay in serving the notice of claim (see *Matter of Hall v Madison-Oneida County Bd. of Coop. Educ. Servs.*, 66 AD3d 1434; *Matter of Bitetto v City of Yonkers*, 13 AD3d 367, 368; *Wetzel Servs. Corp. v Town of Amherst*, 207 AD2d 965).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court