

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

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Submitted - June 21, 2018

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
JEFFREY A. COHEN  
ANGELA G. IANNACCI, JJ.

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2017-12646

DECISION & ORDER

Ilyas Chaudry, appellant, v State of New York,  
respondent.

(Claim No. 123932)

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Gary Weinberg, P.C., Brooklyn, NY, for appellant.

Galvano & Xanthakis, P.C., Staten Island, NY (Anthony Xanthakis of counsel), for  
respondent.

In a claim to recover damages for personal injuries, the claimant appeals from an order of the Court of Claims (Stephen J. Mignano, J.), dated September 1, 2017. The order granted the defendant's motion for summary judgment dismissing the claim and denied the claimant's cross motion for leave to serve a late claim upon the Attorney General.

ORDERED that the order is affirmed, with costs.

There is no dispute that the claimant failed to timely serve his claim upon the Attorney General as required by Court of Claims Act § 10(3) and that his cross motion for leave to serve a late claim upon the Attorney General was not made within the three-year statute of limitations as required by Court of Claims Act § 10(6).

The timeliness of the service and filing requirements of Court of Claims Act § 10 are to be strictly construed and are jurisdictional in nature, thereby divesting the Court of Claims of jurisdiction if the service and filing requirements are not met (*see Bergman v State of New York*, 281 AD2d 731, 733; *Mallory v State of New York*, 196 AD2d 925, 926; *Berger v State of New York*, 171 AD2d 713, 716; *Byrne v State of New York*, 104 AD2d 782, 783). Further, where the time within which to make an application has expired, the Court of Claims has no discretion to grant relief nunc

December 12, 2018

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pro tunc (*see Byrne v State of New York*, 104 AD2d at 783). Accordingly, we agree with the Court of Claims' determination to grant the defendant's motion for summary judgment dismissing the claim and to deny the claimant's cross motion for leave to serve a late claim upon the Attorney General.

RIVERA, J.P., DILLON, COHEN and IANNACCI, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court