

**Lawrence v State of N.Y. Dept. of
Community Supervision**

2018 NY Slip Op 34469(U)

January 10, 2018

Court of Claims

Docket Number: Index No. 2010-038-505

Judge: W. Brooks DeBow

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This opinion is uncorrected and not selected for official publication.

Synopsis

Defendant's motion to dismiss for lack of jurisdiction due to improper manner of service granted. Claimant's request to refile or resubmit the claim lacks merit; appropriate procedure is a motion for late claim relief pursuant to Court of Claims Act § 10 (6).

Case information

UID: 2018-038-505
Claimant(s): DEON LAWRENCE
Claimant short name: LAWRENCE
Footnote (claimant name) :
Defendant(s): THE STATE OF NEW YORK DEPARTMENT OF COMMUNITY SUPERVISION
Footnote (defendant name) :
Third-party claimant(s):
Third-party defendant(s):
Claim number(s): 130149
Motion number(s): M-91179
Cross-motion number(s):
Judge: W. BROOKS DeBOW
Claimant's attorney: DEON LAWRENCE, Pro se
ERIC T. SCHNEIDERMAN, Attorney General
of the State of New York
Defendant's attorney: By: Elizabeth A. Gavin, Assistant Attorney General
Third-party defendant's attorney:
Signature date: January 10, 2018
City: Saratoga Springs
Comments:
Official citation:
Appellate results:
See also (multcaptioned case)

Decision

This claim, filed by an incarcerated person pro se, alleges that defendant's agents were negligent in securing claimant's personal property on or about May 30, 2017 after he was taken into custody following a parole violation. Defendant makes this pre-answer motion to dismiss the claim on the grounds that it fails to state a cause of action and that the Court lacks jurisdiction over the claim because it was improperly and untimely served. Claimant has submitted correspondence in response to the motion.

Court of Claims Act § 11 (a) (i) requires that if a claim is served upon the Attorney General by mail, it must be accomplished by certified mail, return receipt requested (CMRRR). Service of the claim by ordinary mail is insufficient to acquire personal jurisdiction over the defendant (see Govan v State of New York, 301 AD2d 757, 758 [3d Dept 2003], lv denied 99 NY2d 510 [2003]), and the failure to effect service by CMRRR is a jurisdictional defect that requires dismissal of the claim (see Turley v State of New York, 279 AD2d 819 [3d

Dept 2001], lv denied 96 NY2d 708 [2001]; Philippe v State of New York, 248 AD2d 827 [3d Dept 1998]; Estrella v State of New York, UID No. 2008-018-634 [Ct Cl, Fitzpatrick, J., Sept. 3, 2008]).

In support of its motion to dismiss, defendant has demonstrated that the claim was served upon the Attorney General not by CMRRR, but by regular first class mail (see Gavin Affirmation, ¶ 5, Exhibit 1). Claimant has not controverted this showing, and indeed, implicitly concedes the jurisdictional defect. Thus, the claim must be dismissed.

Claimant requests that he be permitted to "refile" or "resubmit" the claim, and he specifically asserts that his cause of action is still timely. The fatal jurisdictional defect does not lie in the filing of the claim, however, but in the manner by which it was served upon the Attorney General, and thus, even if the remedy requested by claimant was available, it would not revive his claim. Rather, a claim may be re-served if the applicable statutory period within which to serve the claim has not yet elapsed (see Court of Claims Act § 10), or if the time to re-serve has expired, a claimant may file a motion on notice seeking permission to file and serve a late claim pursuant to Court of Claims Act § 10 (6).

This claim must be dismissed for improper manner of service. In light of this jurisdictional defect, defendant's remaining arguments need not be addressed.

Accordingly, it is

ORDERED, that defendant's motion number M-91179 is GRANTED and claim number 130149 is DISMISSED.

January 10, 2018

Saratoga Springs, New York

W. BROOKS DeBOW

Judge of the Court of Claims

Papers considered:

- (1) Claim number 130149, filed August 21, 2017;
- (2) Notice of Motion, dated October 3, 2017;
- (3) Affirmation of Elizabeth A. Gavin, AAG, in Support of Motion to Dismiss, dated October 3, 2017, with Exhibits 1-3;
- (4) Correspondence of Deon Lawrence, dated October 15, 2017.

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