

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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MICHAEL BEBEE, Index No.:1987/10
 Petitioner(s), Motion Date:02/23/10

- against - Motion Cal. No.: 4

Motion Seq. No: 1

THE NEW YORK CITY HEALTH AND HOSPITALS CORP.,
 Respondent(s).

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The following papers numbered 1 - 6 read on this motion by the petitioner for an order granting leave to file a late Notice of Claim.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Service.....	5 - 6

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This is an action for personal injuries allegedly sustained by the plaintiff between August 9, 2009 and August 14, 2009 while he was a patient at Elmhurst Hospital Center located at 79-01 Broadway, Elmhurst, New York. It is alleged that Elmhurst Hospital Center is owned by the defendant The New York City Health and Hospitals Corp. ("HHC").

The determination to grant leave to serve a late notice of claim lies within the sound discretion of the court (see, General Municipal Law § 50-e[5]; *Lodati v. City of New York*, 303 A.D.2d 406 [2d Dept. 2003]; *Matter of Valestil v. City of New York*, 295 A.D.2d 619 [2d Dept. 2002]). In determining whether to grant leave to serve a late notice of claim, the court must consider certain factors, including, *inter alia*, whether the claim involves an infant, whether the claimant has demonstrated a reasonable excuse for failing to timely serve a notice of claim, whether the municipality acquired actual knowledge of the facts constituting the claim within 90 days from its accrual or a reasonable time

thereafter, and whether the municipality is substantially prejudiced by the delay (see, *Nairne v. N.Y. City Health & Hosps. Corp.*, 303 A.D.2d 409 [2d Dept. 2003]; *Brown v. County of Westchester*, 293 A.D.2d 748 [2d Dept. 2002]; *Perre v. Town of Poughkeepsie*, 300 A.D.2d 379 [2d Dept. 2002]; *Matter of Valestil v. City of New York*, supra; see, General Municipal Law § 50-e[5]; *Hasmath v. Cameb*, 2004 N.Y. App. Div. LEXIS 2446 [2d Dept. 2004]; *Matter of Konstantinides v. City of New York*, 278 A.D.2d 235 [2d Dept. 2000]; *Matter of Kittredge v. New York City Hous. Auth.*, 275 A.D.2d 746 [2d Dept. 1000]).

With this motion, the petitioner has demonstrated a reasonable excuse for his failure to serve a timely Notice of Claim, has demonstrated that HHC acquired actual knowledge of the facts constituting the claim within 90 days from its accrual and has stated that HHC is not substantially prejudiced by the delay. Petitioner asserts that a Notice of Claim was filed, on or about September 28, 2009, on the City of New York instead of on HHC due to law office failure. It is well-settled that this court has discretion to accept law-office failure as a reasonable excuse (see, CPLR section 2005; *Goldstein v. Lopresti*, 284 A.D.2d 497 [2d Dept. 2001]). Further, it is undisputed that, on August 14, 2009, petitioner made a complaint to Elmhurst Hospital administrators about the incident. Thus, it is clear that HHC acquired actual knowledge of the facts constituting the claim within 90 days from its accrual. Finally, it is noted that the respondent has not asserted that it would be prejudiced by the delay in filing of a late Notice of Claim. Accordingly, the petitioner's motion is granted, and the petitioner's Notice of Claim dated May 13, 2004 is deemed served, *nunc pro tunc*.

Dated: April 21, 2010

JANICE A. TAYLOR, J.S.C.