

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

1129

CA 09-00578

PRESENT: HURLBUTT, J.P., FAHEY, PERADOTTO, GREEN, AND PINE, JJ.

IN THE MATTER OF DAVID HALL,
CLAIMANT-RESPONDENT,

V

MEMORANDUM AND ORDER

MADISON-ONEIDA COUNTY BOARD OF COOPERATIVE
EDUCATIONAL SERVICES, ALSO KNOWN AS
MADISON-ONEIDA COUNTY BOCES,
RESPONDENT-APPELLANT.
(APPEAL NO. 1.)

SUGARMAN LAW FIRM, LLP, SYRACUSE (REBECCA A. CRANCE OF COUNSEL), FOR
RESPONDENT-APPELLANT.

R. ROBERT SOSSEN, JR., UTICA, FOR CLAIMANT-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (Samuel D. Hester, J.), entered June 16, 2008. The order granted claimant's application 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 for leave to serve a late notice of claim pursuant to General Municipal Law § 50-e (5). "The court is vested with broad discretion to grant or deny [such an] application" (*Wetzel Servs. Corp. v Town of Amherst*, 207 AD2d 965) and, although claimant failed to offer a reasonable excuse for his failure to serve the notice of claim within the statutory 90-day period (see § 50-e [1] [a]), that failure " 'is not fatal where . . . actual notice was had and there is no compelling showing of prejudice to [respondent]' " (*Hale v Webster Cent. School Dist.*, 12 AD3d 1052, 1053; see *Matter of LaMay v County of Oswego*, 49 AD3d 1351, 1352, lv denied 10 NY3d 715). Here, claimant "made a persuasive showing that [respondent] . . . 'acquired actual knowledge of the essential facts constituting the claim' . . . [and respondent has] made no particularized or persuasive showing that the delay caused [it] substantial prejudice" (*Wetzel Servs. Corp.*, 207 AD2d 965).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court