

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

1214

CA 16-00538

PRESENT: SMITH, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

JEFFREY MALKAN, CLAIMANT-APPELLANT,

V

MEMORANDUM AND ORDER

STATE OF NEW YORK, DEFENDANT-RESPONDENT.

RICHARD E. CASAGRANDE, LATHAM (ANTHONY J. BROCK OF COUNSEL), FOR
CLAIMANT-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (JULIE M. SHERIDAN OF
COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Court of Claims (Michael E. Hudson, J.), entered June 19, 2015. The order denied the motion of claimant for leave to file and serve a late claim.

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

Memorandum: We reject claimant's contention that the Court of Claims erred in denying his motion seeking permission to file a late claim against defendant based upon its alleged breach of contract. " 'A determination by the Court of Claims to grant or deny a motion for permission to file a late . . . claim lies within the broad discretion of that court and should not be disturbed absent a clear abuse of that discretion' " (*Ledet v State of New York*, 207 AD2d 965, 965-966). Here, the court considered the requisite statutory factors and concluded that three of them favored claimant, i.e., notice, opportunity to investigate, and lack of substantial prejudice to defendant (*see* Court of Claims Act § 10 [6]; *see also* *Ledet*, 207 AD2d at 966). We nonetheless decline to disturb the court's exercise of discretion inasmuch as we agree with the court's conclusions that claimant failed to demonstrate an adequate excuse for the delay, that the proposed claim lacks merit, and that claimant had and/or has alternative remedies (*see* *Lange v State of New York*, 133 AD3d 1250, 1250; *Matter of Magee v State of New York*, 54 AD3d 1117, 1118; *Olsen v State of New York*, 45 AD3d 824, 824-825).

Entered: December 23, 2016

Frances E. Cafarell
Clerk of the Court