

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

D27571

H/hu

_____AD3d_____

Argued - May 11, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
LEONARD B. AUSTIN, JJ.

2008-04991

DECISION & ORDER

In the Matter of Town of North Hempstead
Community Development Agency, appellant, v
Geraldine Savage, respondent.

(Index No. 3558/05)

Mark A. Cuthbertson, Huntington, N.Y. (Jessica P. Driscoll of counsel), for appellant.

Janice L. Jessup, Freeport, N.Y., for respondent.

In a condemnation proceeding, the condemnor appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (McCabe, J.), entered April 11, 2008, as granted that branch of the condemnee's motion which was, in effect, to extend her time to file a claim for damages pursuant to EDPL 503.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, without costs or disbursements, and that branch of the condemnee's motion which was, in effect, to extend her time to file a claim for damages pursuant to EDPL 503 is denied.

EDPL 503(B) provides that "[i]n a claim for damages arising from the acquisition of real property under [EDPL 501(B)], a condemnee shall, within the time specified by the court, file a written claim, or notice of appearance." The Supreme Court has the discretion to "extend the time fixed by its own prior order 'upon such terms as may be just and upon good cause shown'" (*Grandinetti v Metropolitan Transp. Auth.*, 74 NY2d 785, 787, quoting CPLR 2004). Here, the Supreme Court improvidently exercised its discretion in granting that branch of the motion of the

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condemnee, Geraldine Savage, which was, in effect, to extend her time to file a claim for damages pursuant to EDPL 503. The condemnee "furnished neither an affidavit of merit[] nor a reasonable excuse" for her failure to file such a claim within the time specified by the Supreme Court in a prior order (*Grandinetti v Metropolitan Transp. Auth.*, 74 NY2d at 787; see *Matter of City Tunnel No. 3*, 267 AD2d 382, 383; *Tennessee Gas Pipeline Co. v Bontrager Realty*, 191 AD2d 1002, 1003; *Metropolitan Transp. Auth. v Pizzuti*, 156 AD2d 546).

The parties' remaining contentions are without merit.

RIVERA, J.P., FLORIO, ANGIOLILLO and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

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