

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 20, 2006

95503

WILLIE SPIRLES,

Appellant,

v

MEMORANDUM AND ORDER

STATE OF NEW YORK,

Respondent.

Calendar Date: March 31, 2006

Before: Crew III, J.P., Peters, Carpinello, Lahtinen and
Kane, JJ.

Willie Spirles, Malone, appellant pro se.

Eliot Spitzer, Attorney General, Albany (Julie M. Sheridan
of counsel), for respondent.

Lahtinen, J.

Appeal from an order of the Court of Claims (Hard, J.),
entered October 15, 2003, which granted defendant's motion to
dismiss the claim.

While incarcerated at Upstate Correctional Facility in
Franklin County, claimant filed a claim alleging medical
malpractice based on the purported failure of the prison medical
staff to have his injured hand X-rayed in a timely manner.
Attached to the claim were several duly notarized affidavits, but
there was no verification of the claim. Defendant thereafter
interposed an answer, asserting the defense of lack of
jurisdiction due to claimant's dereliction in verifying the
claim. In response thereto, claimant served on defendant a
verification which he alleged had been inadvertently omitted and

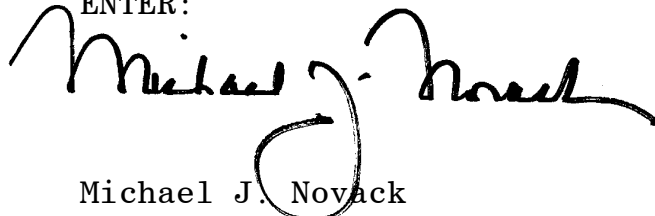
had been sworn to on the same date as the aforementioned affidavits. However, in contrast to the affidavits, which contained actual notary stamps, the verification set forth the notary public information in what appeared to be claimant's handwriting. Upon subsequent motion by defendant, the Court of Claims dismissed the claim on the ground that it lacked the required verification. In so doing, the court specifically rejected claimant's explanation for the initial absence of the verification. This appeal by claimant ensued and we now affirm the dismissal of the claim on the ground that it failed to comply with Court of Claims Act § 11 (b).

Initially, because claimant's contention that defendant waived its objection to the lack of verification was never raised in the Court of Claims, it is unpreserved for our review (see Carter v State of New York, 284 AD2d 810, 811 [2001]; Williams v State of New York, 235 AD2d 776, 777 [1997], lv denied 90 NY2d 806 [1997]). Claimant's remaining assertion that his affidavit attesting to the authenticity of various exhibits annexed to his claim constituted an appropriate verification has been reviewed and found to be without merit (see CPLR 3020 [a]; Court of Claims Act § 11 [b]).

Crew III, J.P., Peters, Carpinello and Kane, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court