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RESOLUTION NO. 1320

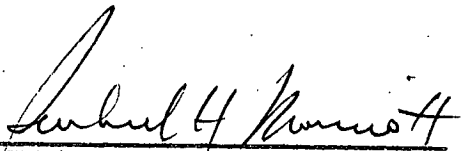
ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

APRIL 10, 1975


BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO:

Section 1. The Application to Present Claim Under Section 911.4 of the Government Code by a Person Acting on Claimant's Behalf is granted and will be acted upon in accordance with Government Code Section 912.4 and 912.6.

Section 2. The Claim of MARUELA GOMEZ, for personal injuries sustained, in the amount TEN THOUSAND DOLLARS (\$10,000) is hereby rejected and referred to the Authority's Insurance Carrier.

  
CHAIRMAN

ATTEST:

  
ASSISTANT SECRETARY

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# SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

April 4, 1975

Application for Leave to Present  
Late Claim and Claim - Maruela Gomez

## LEGAL OPINION

An application to file a late claim has been submitted to the Housing Authority in compliance with the applicable provisions of the California Tort Claims Act. Under Government Code Section 911.6(b)(1), such an application must be granted where "(t)he failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced by the failure to present the claim within (100 days after it accrued)..."

The attorneys for the applicant state that the reason they did not file a timely claim with the Authority was because they filed it with the City of Sacramento in the mistaken belief that the City was the appropriate governmental entity to make a claim against where the cause of action was for alleged damage due to a sidewalk fall at the New Helvetia housing project. The City did not inform applicant's attorneys that the sidewalk location in question was not under the jurisdiction and control of the City until after the 100 days had run for filing a claim against the Authority.


The court has held, in *Dingwall v. Vangus, Inc.*, 32 Cal.Rptr.351, at page 353, that "The courts...are somewhat loath to penalize a litigant on account of some omission on the part of his attorney, particularly where the litigant...has acted promptly and has relied...upon the attorney to protect his rights." It is my opinion that applicant's failure to file a claim with the Authority within 100 days of the alleged injury because of the mistake of his attorneys could be excused as being the action of a reasonably prudent person.

The purpose of the statute requiring presentation of claims against a governmental entity (Gov. Code Sec. 911.2) is to give the entity notice and an opportunity to investigate and settle meritorious claims without litigation. The claim erroneously filed against the City did give constructive notice to the City Council and that same body is the governing body of the Authority. Thus, the Authority, since it had constructive notice, is not prejudiced by the delay.

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CONCLUSION

The application to present the claim, pursuant to Government Code Section 911.6, should be granted since the failure to present the timely claim was because of an excusable mistake and the Authority was not prejudiced thereby. If the application is so granted, the claim shall be deemed to have been presented at that time.

  
GEORGE B. BEATTIE  
Attorney