OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

DECISION

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn,NY 11217	**Summons No:** 035690737N et al. (1 Summons) DEPT OF BUILDINGS, -against- 199 MALCOLM X, AMS LLC **Hearing Date:** 10/16/2026 **Hearing Location:** Remote **Type of Hearing:** By Telephone

Total Penalty Amount:**$0.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035690737N	Dismissed	07/29/2025	199 MALCOLM X BOULEVARD Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted via telephone conference call on October 16, 2026.

Phoebe Dossett, attorney for the Respondent 199 Malcolm X, AMS LLC, appeared at the hearing. Jennifer Clouden appeared for the Petitioner, Department of Buildings. The issuing officer, A. Nakhla (Badge No. 3375) also testified.

Summons No. 035690737N alleges Class 1 violation of Building Code (BC) 1029.5.1 for a fire escape obstructed by an air conditioner unit blocking the emergency exit on the third floor.

The Petitioner generally rested on the summons. The IO testified as follows: I issued a violation because the fire escape was obstructed by an air conditioner. The photos show that the fire escape is blocked by an air conditioning unit in the window leading to the emergency exit and therefore the summons was issued. (See Petitioner's Evidence). This is an immediate hazard and dangerous.

Respondent's representative asked the inspector if there are any other emergency exits from the floor. The IO said there is only one staircase inside or the fire escape. The IO was asked if the unit was permanently affixed. He was not sure, but he knows that it is blocking an emergency exit.

Respondent's representative made a motion to dismiss the charge because she stated that Building Code (BC) 1029.5.1 is the wrong provision of law. The cited provision has to do with interior balconies and galleries as a means of egress having a seating capacity of 75 or more. The cited premises is a residential unit in a residential building and not an interior balcony. This is an incorrect provision of the law. Further, the Respondent's representative made a class challenge and disagreed that the cited condition was immediately hazardous. She stated that the air conditioning unit was not a permanent unit and could be removed by lifting the window and removing the item. The window is still operable and can be opened.

The IO stated that the window is being blocked and is blocking the second means of egress, the fire escape. Further, the cited provision of the law could cover a place of assembly, residential or mixed-use premises. Further, the Class 1 designation is appropriate because if someone needs to exit or come in through, like the FDNY, access is blocked. The IO did not realize that the cited provision related to an "assembly". Section 1109.3 & 1009.4 are relevant to the cited charge.

Respondent's representative reiterated that the cited provision of the law is incorrect and therefore the summons does not establish a prima facie claim. The fire escape is not an interior balcony or gallery as referenced in the cited provision of the law.

Section 1029.5 Interior balcony and gallery means of egress provides:

For balconies, galleries or press boxes having a seating capacity of 75 or more located in a building, room or space used for assembly purposes, not less than two means of egress shall be provided, with one from each side of every balcony, gallery or press box.

1029.5.1 Accessible means of egress provides:

At least one accessible means of egress is required from a balcony, gallery or press box level containing accessible seating locations in accordance with Section 1009.3 or 1009.4.

I credit the Respondent's arguments and legal defense to the charge. I do not credit the IO's affirmed statements on the summons or testimony that the cited provision can and does apply to the cited premises. I find that the cited provision is relevant to places of assembly, not fire escapes in a residential building. I find that the summons is defective for citing to the wrong section of the law and does not make out a prima facie case. Accordingly, the summons is dismissed.



10/26/2026

10/26/2026

Nadia Pervez, Judicial Hearing Officer

Date