# OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

*Hearings Division*

## DECISION

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| Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC<br>592 Pacific Street 1st Floor<br>Brooklyn,NY 11217 | **Summons No:** 035690738P et al. (1 Summons)<br><br>**DEPT OF BUILDINGS,**<br><br>**-against-**<br><br>**199 MALCOLM X, AMS LLC**<br><br>**Hearing Date:** 10/16/2026<br><br>**Hearing Location:** Remote<br><br>**Type of Hearing:** By Telephone |

Total Penalty Amount: **$5,000.00**

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

| SUMMONS # | SUMMARY DISPOSITION | DATE OF OCCURRENCE | PLACE OF OCCURRENCE |
|---|---|---|---|
| 035690738P | Sustained | 07/29/2025 | 199 MALCOLM X BOULEVARD<br>Brooklyn |

| LINE ITEM | OATH CODE | CODE SECTION/RULE | RESULT | PENALTY |
|---|---|---|---|---|
| 1 | B104 | 28-302 .1 | Sustained | $5,000.00 |

## 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. 035690738P alleges Class 1 violation of § 28-302.1 of the Administrative Code of the City of New York (Code), for failure to maintain building walls and appurtenances in a safe condition.

The Petitioner's representative generally rested on the summons. The IO said that the Respondent installed three air conditioning units over a pedestrian public sidewalk without providing proper support creating a fall hazard. The photos show that there are only brackets on the first floor and that is a hazard.

Respondent's representative stated that Code § 28-302.1 requires, in pertinent part, that the exterior walls and appurtenances of buildings be maintained in a safe condition and that buildings exceeding six stories in height comply with the maintenance requirement of Article 302. The first challenge she articulated is that the wrong section of the law was charged. The summons details describe a violation of § 28-301.1 of the Administrative Code of the City of New York (Code) for failure to maintain. The second challenge is a class challenge in that the windowsills are deep and the units are on top of the sills. They are set back and are not hovering over pedestrian walkways. The installation of the units does not pose a hazard.

The I) stated that either violation could be applicable. However, code § 28-302.1 is specific to the outside façade and since the AC brackets are appurtenances, the applicable charged code on the summons is correct. This is a façade problem and creates a hazard to the pedestrian's right of way.

Respondent's representative stated that a non-permanent air conditioner is not a fixture to the façade of the building exterior, so the wrong statute is cited. Further, the Class challenge is appropriate.

Petitioner's representative reiterated that the air conditioning unit is sitting on top of the windowsill and can fall on a public way, causing an imminent danger. Proper protection is needed. The IO said the unit is not affixed, it is removable and not on a bracket which creates a hazard. The air conditioning unit inside of the window is a part of the wall and façade because it is part of the window. Therefore, the correct statue has been cited.

Code § 28-302.1, in pertinent part, provides that "[a] building's exterior walls and appurtenances thereof shall be maintained in a safe condition."

Section 102-01(b)(1) of Title 1 of the Rules of the City of New York (RCNY), in pertinent part, provides as follows: "Immediately hazardous violations are those . . . where the violating condition poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action .... Immediately hazardous violations shall be denominated as Class 1 violations." On this record, the Board finds that Petitioner established the Class 1 designation of the violation.

The classification of a DOB violation is an element of the charge, which Petitioner has the burden of proving when challenged at the hearing. See DOB v. 4410 14 Cayuga Ave Owners Corp, Appeal No. 2200087 (April 28, 2022). Here, through the IO's affirmed statements in the summons and testimony, the IO established that a Class 1 designation was proper.

As to the question of whether an air conditioning unit is a part of the building's exterior walls or an appurtenance, I find that it is. See, DOB v. Bruce M Barasky, Appeal No. 2200300 (June 30, 2022) which sustained a similar violation of Code § 28-302 for missing proper window bracket support of air conditioner window units.

I credit the affirmed statements in the summons and IO's testimony and evidence. I do not credit the arguments made by the Respondent. Accordingly, the summons is sustained and tne standard penalty of $5000 is imposed.



10/26/2026

10/26/2026

Nadia Pervez, Judicial Hearing Officer

Date