



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# : 039135725Z et al. (3 summonses)

DEPT OF BUILDINGS,

-against-

2331 GLEASON AVENUE LLC

Hearing Date : 6/4/2026

Hearing Location : Remote

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
039135725Z	Sustained	01/16/2025	2331 GLEASON AVENUE, Bronx

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B101	28-105.1	Sustained	2,500.00

Total Penalty for Summons: 2,500.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039135729X	Sustained	01/16/2025	2331 GLEASON AVENUE, Bronx

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B201	28-105.1	Sustained	1,250.00

Total Penalty for Summons: 1,250.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039135731P	Sustained	01/16/2025	2331 GLEASON AVENUE, Bronx

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B102	28-301.1	Sustained	1,250.00

Total Penalty for Summons: 1,250.00

Findings of Facts & Conclusions of Law

The respondent 2331 Gleason Avenue LLC was issued three summonses.

Summons # 039135725Z was issued for a violation of section 28-105.1; work without a permit. Noted: Full height partition walls erected to create a bedroom & to sub-divide front room from apt., HRP issued 2/24/23, badge # 2924.

Summons # 039135729X was issued for a violation of section 28-105.1; Work without a permit. Noted: Horizontal Extensions observed at rear & front of premises. At front-brick extension with swing door approx. 5' x 5' x 8'. At rear 1st floor level-CMU & brick extension approx. 14' x 20' x 9' erected for additional bedroom, porch & cellar entry. HRP issued 4/24/23, badge # 2924.

Summons # 039135731P was issued for a violation of section 28-301.1; Failure to maintain building in code compliant manner. Noted: At time of inspection loose & hanging electrical lines observed throughout cellar. Also, fire stopping material was removed creating a fire & health hazard condition. HRP issued 4/24/23, badge # 2924.

Attorney Pheobe Dossett appeared for the respondent.

Henry Pita appeared for the Petitioner, DOB.

With respect to summons # 25Z:

The Petitioner submitted photographs. See Petitioner's Exhibit 1. The photographs for summons # 25Z show equipment on the floor, loose wires and switches dangling from the wall.

The Petitioner did state that it looks like a work in progress. There are wires hanging out of the walls.

The respondent stated that the summons was not issued for wiring.

The Petitioner stated that we can infer from the change in electrical work that the party was putting in new partitions.

The respondent raised a pre-existing condition defense. She submitted two affidavits; one from a friend of the respondent and another from a former tenant, the daughter of the former owner. Also submitted was a deed. See Respondent's Exhibit A.

The summonses and evidence submitted by the Petitioner are credited.

The respondent did not rebut the charge or provide a legally valid or meritorious defense.

I find that the photographs show a work in progress, the partition walls do not look complete as there is equipment on the floor, loose wires and switches dangling from the walls. The affidavit from Iris Arriaga, the daughter of the prior owner and Angel Collado, friend of the respondent, both state that they "did not observe any additional bedroom or subdivision creating a new bedroom anywhere through the premises." The affidavits only state they did not see any additional subdivisions.

The photographs of the walls have dangling loose wires and switches. I do not believe that the partition walls pre-existed the current owner's possession. In addition, I do not find that the affidavits are detailed enough to rebut the charge. The affidavits only state they did not see any additional subdivision. The statements are too vague. It does not describe in detail the partition walls. The affidavits are not credited.

In NYC v. 76 Forsyth Street Realty, Appeal No. 1200682 (October 25, 2012), the respondent was issued a summons for work without a permit, "concrete masonry wall approximately 60 feet long by 8 feet high at the rear of the premises, restricting egress and erected without a permit." The respondent submitted a deed and notarized statements from 2 employees. The employees stated that they "observed a wall existing in the backyard that was fully furnished." The ALJ found that the respondent's evidence was insufficient to establish a pre-existing condition defense because the statements were too vague; respondent failed to provide a statement of when the wall was built. The Board agreed with the ALJ and found that the witness statements were insufficient. Each statement referred to a "wall existing in the backyard that was fully furnished", but the witnesses did not state the dimensions of the wall that would show that it was not enlarged or otherwise altered since the respondent's ownership.

In the instant matter, I find that the affidavits are too vague.

Accordingly, the summons is sustained and a standard penalty in the amount of \$2,500.00 is imposed.

With respect to summons # 29Z:

The Petitioner submitted photographs for the front and back parts of the house. Also submitted was a violation report, RCA/AOS complaint, and Overview for Complaint. See Petitioner's Exhibit 1.

The respondent raised a pre-existing condition defense. She submitted two affidavits; one from a friend of the respondent and another from a former tenant, the daughter of the former owner. Also submitted was a deed. See Respondent's Exhibit A.

The affidavit from Angel Collado, a friend the respondent states, that "The summons mentions the installation of an extension with a swing door. Upon information and belief, this is referencing the front porch at the premises. This front porch has existed at the property unchanged from my visits before it was sold to Mr. Fernandez. The summons also mentions a CMU and brick extension at the rear of the premises to create a new bedroom, porch, and a cellar entry. Again the rear of the house has existed at the premises when I was showing the house. The bedroom at the rear of the premises, the rear porch, and the cellar entry all existed at the premises when I showed the house and before Mr. Fernandez purchased the property in 2023. I observed no changes to the premises between the last time I was there in 2023 to how it exists now."

The affidavit from Iris Arriaga, the daughter of the former owner states the same information as the affidavit from Mr. Collado with a slight change. Her affidavit states, "The bedroom at the rear of the premises, the rear porch, and the cellar entry all existed at the premise when I lived there and before Mr. Fernandez purchased the property in 2023. I observed no changed to the premise between the last time I was there in 2023 when my parents still owned the premises to how it exists today."

The Petitioner stated that the affidavits were not specific enough in detail and they both have the same language. They are not of sufficient detail to rebut the charge. He submitted an appeals case, *DOB v. Bilak*, Appeal No. 2600302 (April 30, 2026) that held that the notarized statements were not sufficiently detailed to establish that the cited work in the summons was the same as that which pre-existed respondent's purchase of the premises. The statements lacked descriptive detail.

With respect to summons # 29X, the Petitioner stated that the extension looks old.

The Petitioner stated that both affidavits lack detail. The affiants did not state where they observed the swing door; whether it was in the rear or front of the house.

The respondent stated that the affidavits were prepared in contemplation of litigation and that is why they are similar.

The respondent submitted an appeals case, *DOB v. Cesar Ortiz*, Appeal No. 2600246 (April 30, 2026), where the Board found that the affidavits were sufficient in that they mentioned all the working bathrooms and kitchen fixtures and appliances that would not function without electricity and plumbing.

The summonses and evidence submitted by the Petitioner are credited.

The respondent did not rebut the charge or provide a legally valid or meritorious defense.

As in *NYC v. 76 Forsyth Street Realty*, Appeal No. 1200682 (October 25, 2012), the statements in the affidavit were too vague and insufficient. No dimensions were stated to show that the areas cited in the summons were enlarged or changed since the current owner purchased the premises. The affiants did not state the dimensions of the brick extensions and whether they were enlarged or changed since the respondent purchased the premises.

I find that the affidavits are not sufficient in detail to rebut the charge; no details were included in the affidavits.

The affidavits just repeat what was observed in the summons by the I/O. The affiants did not state where they observed the swing door; whether it was in the rear or front of the house. The witnesses did not state whether the extensions were

changed since the respondent purchased the premises. The affidavits are not credited.

Accordingly, the summons is sustained and a standard penalty in the amount of \$1,250.00 is imposed.

With respect to summons # 31P:

The Petitioner submitted photographs of the violative conditions, RCA issued 4/24/2023, and DOB Violation Report. See Petitioner's Exhibit 1. The Petitioner stated that the photographs show loose wiring. On page 2, there was no fire stopping below the joists. Page 3, the wires are falling and there is a gap in the fire stopping. Page 1 shows a lack of fire stopping on the first floor and pages 7 and 8 show a lack of fire stopping in the cellar. Also submitted was a violation report, RCA/AOS complaint, and Overview for Complaint. See Petitioner's Exhibit 1.

The respondent raised an impossibility defense.

She stated that the tenant refused to leave the premises. There was an Order dated 4/17/2024 directing the tenant to vacate the premises. The tenant refused and there was an order to show cause dated 1/30/25 forcing her to leave. The respondent submitted a Holdover Petitioner, Notice of Entry, Order to Show Cause Decision, prior OATH decision dismissing a summons where the respondent raised an impossibility defense, and Violation History. See Respondent's Exhibit A.

The respondent argued physical impossibility because the tenant did not allow access and argued a legal impossibility because the respondent could not enter due to on-going litigation.

The respondent does not know if there was any emergency order to gain access. She believes that an emergency order to gain access is not required under the law. For an impossibility defense, you must only show legal and physical impossibility.

The Petitioner stated that an eviction proceeding does not establish a legally impossibility prong of the defense. A legal impossibility defense is a high standard to reach. An eviction proceeding is not sufficient to establish a defense of legal impossibility. There has to be a court order in favor of the tenant to exclude the owner from gaining access to establish a legal impossibility defense; the standard is higher. The Petitioner submitted a case, NYC v. Parkash, Appeal No. 1701012, November 30, 2017. "The Board has recognized a defense of impossibility based upon a tenant's denial of access only where owners show that they are legally and physically barred from taking appropriate steps to correct a violation. Here, Respondent's evidence and testimony do not show any legal or physical impediment to gaining access to the premises prior to the date of the IOs' inspections. The Board has held that a pending eviction proceeding, in and of itself, is insufficient to establish a defense of impossibility where respondents fail to show they were barred from gaining access means other than an eviction."

The evidence submitted by the Petitioner is credited.

The respondent did not rebut the charge or provide a legally valid or meritorious defense.

The respondent did not challenge the merits of the case.

The respondent should have applied for an order of access, even if a tenant is there. There is no evidence of physical impossibility to enter the premises. In NYC v. Arch Investor Corp., Appeal No. 1700801 (September 21, 2017), the respondent was issued a summons for a violation of section 28-301.1, for failure to maintain the premises in a code-compliant manner. The tenant occupying the apartment where the door to the terrace and fire escape was located was the subject of an eviction proceeding. The respondent stated that the tenant refused to give him access and prevented the respondent from opening and repairing the door to the terrace and fire escape. The respondent raised an impossibility defense. The Board held that the respondent failed to show that he was physically or legally barred from entering the premises to properly repair the door. The respondent stated he was refused access by the tenant to correct the violative condition, but he failed to indicate if he applied to court for access to effectuate the repair. Also, the respondent failed to establish that access to the interior of the apartment was necessary to restore the door to a code-compliant condition. The Board held that the respondent failed to show it was impossible to maintain the door as required.

Appeals Board cases have consistently held that commencement of an eviction proceeding does not establish an impossibility defense.

In *DOB v. St. George Realty II LLC*, Appeal No. 2501070 (December 18, 2025), the respondent was issued a summons for a violation of section 28-301.1, for failure to maintain a building in a code-compliant manner. An exit door was locked and obstructed by a structure blocking the locked door. The tenant denied the respondent access to remove the violative condition. The respondent raised an impossibility defense. Prior to being issued the summons, the respondent filed a petition for nonpayment of rent seeking eviction of the tenant. The Board held that, "Commencement of an eviction for non-payment of rent does not by itself establish an impossibility defense."

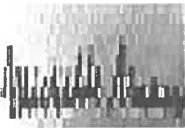
In *DOB v. Rita Walters*, Appeal No. 2400074 (March 28, 2024), the respondent was charged with a violation of section 28-301.1, for failure to maintain a building in a code-complaint manner. The respondent testified that she commenced eviction proceedings prior to the issuance of the summons because the tenant ceased paying rent. The respondent raised an impossibility defense, claiming it was both physically and legally impossible to correct the violating conditions because the tenant refused to vacate the property. For the first time on appeal, the respondent asserted that she asked the housing court to grant her possession of the premises to correct the violation. The respondent argued that the pending eviction proceedings prevented her from correcting the violative conditions. The respondent presented no evidence that she was denied access by the tenant or that she sought a court order to gain entry to correct the violating conditions while the matter was pending in court. "To establish an affirmative defense of impossibility, a respondent must show it did all it could to correct the cited condition, but that it was both physically and legally impossible to do so because of an inability to gain access prior to the issuance of the summons." "The Board has repeatedly found that a pending eviction proceeding for nonpayment of rent in and of itself is insufficient to establish an impossibility defense where respondent failed to show it was barred from gaining access through other legal means."

In *DOB v. Tracy Lourdes Paz*, Appeal No. 2300519 (July 27, 2023), the respondent was issued a summons for a violation of section 28-105.1, for work without a permit and section 28-301.1, for failing to maintain the building in a code-compliant manner. The apartment living room was transformed into a separate bedroom. In February 2020 the respondent commenced proceedings to evict the tenant after he ceased paying rent in December. The respondent stated that she attempted to gain access to the premises, but the tenant denied her access. She stated she could not correct the violating condition. The respondent claimed an impossibility defense on the basis that she had commenced eviction proceedings but had been denied access before the summons was issued. The court found that the respondent failed to establish an impossibility defense as Respondent's eviction proceedings were only based on nonpayment of rent.

In the instant matter, the respondent did not provide any evidence that they were denied access to the premises; the respondent only stated they were denied access by the tenant. There was no evidence that the respondent was both physically and legally barred from entering the premises prior to the issuance of the summons. The respondent did not seek a court order to gain entry to correct the violating condition; she did not apply to court for an order of access. The respondent was issued an RCA and had notice of a violative condition. The respondent could have sought an order of access.

Prior decisions have no bearing on the instant case.

Accordingly, the summons is sustained and a penalty in the amount of \$ 1,250.00 is imposed.

 06/06/2026	06/06/2026
Michelle Mason, Hearing Officer	Date