



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039144884K et al. (1 Summons) DEPT OF BUILDINGS, -against- 819 E. 169TH, LLC Hearing Date: 07/10/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$1,250.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039144884K	Sustained	04/15/2025	819 EAST 169 STREET Bronx

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

Findings of Fact & Conclusions of Law

This is a hearing by phone held July 10, 2026. Respondent, 819 E. 169th LLC, appeared by its attorney Frank Tamberino. Petitioner, Department of Buildings, appeared by Anuj Vaidya. Issuing Officer (IO) A. Farrer also appeared and testified.

Summons 039144884K alleges a Class 2 violation of NYC Administrative Code 28-105.1. Both parties incorporated by reference, arguments made in the companion summons 039144882R.

Petitioner's representative questioned the IO who testified as follows: There was a 311-call made that prompted the IO's visit to the cited premises. During the inspection, plumbing was observed and photographed. See Petitioner's evidence.

Respondent's representative challenged service. Upon questioning the IO, the IO stated that he spoke to two occupants at the cited premises who said they could not accept service. The details on the affidavit of service are as follows: "Spoke with 2 Male Occupants Who Each Stated That They Were Neither Owner/LLC Representative. Also, That Neither Owner/Representative of LLC Were Present at Premises. They Both Stated That They Could Not Accept Service." Upon further questioning on the issue of service, he stated that to the best of his recollection, he asked if anyone present was authorized to accept service and was told no. Based on this information, he knew that the neither the owner nor his representative was present at the premises which was written in the affidavit of service. Respondent's representative argued that the IO did not inquire whether anyone else present was authorized to accept service.

On the merits, Respondent's representative stated that the property has a legal basement, first floor and second floor apartment. He also stated that the summons should be dismissed as the basement apartment is a pre-existing condition. (See Respondent's Evidence).

Petitioner's representative stated the sub-cellar apartment was at issue and the basis of the violation. Furthermore, the pre-existing defense has not been established with any evidence.

On service, Charter §1049-a(d)(2) permits service of a summons by affixing it to a conspicuous place in the cited premises after making a reasonable attempt to deliver it to a person in the premises upon whom service may be made as provided in Article 3 of the CPLR. CPLR § 311-a allows personal service upon a corporation by serving an officer, director, agent, or cashier. A reasonable attempt at service can be established where the IO describes what attempts were made to ascertain whether anyone authorized to accept service was present at the cited premises. See *DOB v. 648 Myrtle Ave LLC*, Appeal No. 2000853 (October 8, 2020). A reasonable attempt at personal service of a corporation requires an inquiry as to whether anyone is present at the premises who is authorized to accept service on behalf of the corporation. See *DOB v. Empire Management Co.*, Appeal No. 2001092 (November 12, 2020). When an affirmation of service fails to describe a sufficient reasonable attempt to effectuate service, the IO's testimony can supplement the affirmation. See *NYC v. 1835 JRA LLC*, Appeal No. 1300835 (November 21, 2013).

Here, the IO writes on the affidavit of service that no owner or representative was present to accept service. He supplemented this testimony by stating that he asked the two occupants if they were authorized to accept service or if an owner or representative of the LLC was present and authorized to accept service. He was told that no one authorized was present.

Upon this record, I find that the IO made a reasonable attempt to deliver the summons to a person upon whom service could be made before resorting to the affix and mail method of service. The affidavit of service and supplemental testimony makes reference to the IO attempting to ascertain whether an owner or representative of the LLC could accept service. Therefore, I find that service was proper.

On the merits, I find that the Respondent's arguments do not refute the charge or provide a legal defense. While I credit that the property is a legal three-family, I find that the IO is not referring to the basement/cellar apartment but rather a sub-cellar apartment with work for which there is no permit. I do not find that the Respondent's pre-existing condition defense to be a viable one. Accordingly, the summons is sustained.

Nadia H. Pervez

07/19/2026

07/19/2026

Nadia Pervez, Judicial Hearing Officer

Date