



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: 039162742Y et al. (1 Summons) DEPT OF BUILDINGS, -against- ALI, MUHAMMAD Hearing Date: 07/10/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039162742Y	Dismissed	10/06/2025	8019 6 AVENUE Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B101	28-105.1	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

This is a hearing by phone held July 10, 2026. Respondent, Muhammad Ali, appeared by its attorney Frank Tamberino. Petitioner, Department of Buildings, appeared by Anuj Vaidya. Issuing Officer Harben (Badge No. 3687) also testified.

Summons 039162742Y alleges a Class 1 violation of NYC Administrative Code 28-105.1. Arguments made in connection with Summons 039162730R were incorporated by reference in addition to new arguments on the merit.

Petitioner's witness, IO M. Harben, testified as follows: There was a complaint made which prompted a visit. There was a new masonry building that looked like new construction. When went to look at the department records, it showed two buildings, a

garage and the main building. This building had no BIN. In support, Petitioner submitted photographs of the building and cited condition. See Petitioner's evidence. Further, the new building constructed had left side walls with deflection and the structural stability was in question.

Respondent's representative stated he was challenging service. He asked the IO questions about service. The IO testified as follows: Service was attempted on the tenant. I knocked on the door and asked for the owner by name. A woman answered the door and identified herself as the tenant. The tenant stated that she was not the owner. I looked around the property and could not find anyone else to serve and therefore posted the summons. I did not ask the tenant if she could accept service on behalf of the owner and based on my experience, a tenant is not authorized to accept service.

Further, the summons notes the follows: "Knocked on door. Tenant Caould not accept. Looked around found no other persons."

Respondent's representative submitted ad appeal in support of his argument that service was not proper (See, Respondent's Exhibit, Appeal No. 2201255 – DOB v. Michael T. III O'Toole). He stated that the proper inquiry is not to ask if an individual is authorized to accept service, but if they are a person of suitable age and discretion. Accordingly, Respondent moved to dismiss for improper service.

In DOB v. Michael T. O'Toole, the Board held "that service was improper because the IO failed to make a reasonable attempt to personally deliver the summonses prior to resorting to "affix and mail" service. From the IO's narrative on his affirmations of service, he did not deliver the summonses to the occupants because they informed him that they were not authorized to accept the summonses. However, Respondent is a natural person, and the proper inquiry for substituted service is not whether a person at the premises is authorized to accept service, but whether such person is of suitable age and discretion. As it is apparent from his affirmations of service that the IO did not make the appropriate inquiry, the Board finds that he failed to make a reasonable attempt to personally serve the summons before resorting to "affix and mail" service. See *DOB v. Marsha Lindsay*, Appeal No. 2001225 (December 10, 2020)."

Petitioner's representative questioned the IO on the merits. The IO testified as follows: There was a concern that one of the walls on the new masonry structure was not straight. There was no permit on file, and no one on site to take responsibility for the structure. As a result, a full vacate order was issued for the building.

Respondent's representative made a motion to dismiss because he stated that the DOB cannot issue two violations for the work without a permit relating to the same work. In support, he submitted another summons ending in 30N and an Appeals decision (See Respondent's Evidence).

The IO stated the instant summons ending in 42Y is related to the stability of the structure. This is different from the other summons, which is not about structural stability, just that a structure was built in the back. This, he argued, is different work.

Respondent's representative said they are both about the same structure. Even if the instant summons is about the quality of the structure itself, the two summons still relate to the same structure. Respondent's representative requested an adjournment towards the conclusion of the hearing to request further evidence. The request was denied because the DOB did not have any additional evidence to provide and the request for an adjournment could have been made at the onset of the hearing.

I credit the IO's testimony regarding service and agree with Petitioner that service was not proper. The IO did not make a reasonable attempt to serve the notice of violation before resorting to alternate service.

Charter § 1049-a(d)(2) permits service of a summons by affixing it in a conspicuous place at the premises after making a reasonable attempt to deliver it to a person at the premises upon whom service may be made as provided by Article 3 of the New York State Civil Practice Law and Rules, followed by specified mailings. It is well settled by the Board that, when possible, the IO has to make the relevant inquiries to ascertain if any authorized person of the Respondent is available to accept the summons before resorting to the nail and mail method. See *DOB v. 209 M Corp*, Appeal No. 2000018 (Feb 6, 2019) (holding that service was defective because IO failed to make the relevant inquires of the super); See also *DOB v. 1704 Morris Avenue LLC*, Appeal No. 1901636 (December 19, 2019) (reversing the H.O.s decision on the same grounds, supra). Here, I find that the IO did not make a relevant inquiry to ascertain if any authorized person was available to accept service.

Accordingly, the summons is dismissed for improper service.

Nadia H. Pervez

07/19/2026

07/19/2026

Nadia Pervez, Judicial Hearing Officer

Date