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# : 039170365H et al. (2 summonses) DEPT OF BUILDINGS, -against- CHOW, JAMES Hearing Date : 9/10/2026 Hearing Location : Remote Type of Hearing : By Telephone

Total Penalty Amount : 10,000.00	**Community Service(Hr):** Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039170365H	Dismissed	12/12/2025	314 WEST 138 STREET, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B112	28-207.2.2	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039170439L	Sustained	12/12/2025	314 WEST 138 STREET, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1N2	28-120.1	Sustained	10,000.00

Total Penalty for Summons: **10,000.00**

Findings of Facts & Conclusions of Law

Respondent **JAMES CHOW** appeared at a remote telephonic hearing on 9/10/2026 by Phoebe Dossett, Esq. of the Nacmias Law Firm.

Petitioner NYC Dept. of Buildings appeared by Deanna Lamberti, Esq. Also appearing and testifying was the issuing officer Insp. R. Burton, Badge #: 2759.

Respondent is charged in Summons #: 39170439L with a Class 1 violation of NYC Adm. Code 28-120.1 for failing to have a Tenant Protection Plan with active construction.

Respondent is charged in Summons #: 39170365H with a Class 1 violation of NYC Adm. Code 28-207.2.2 for allegedly working against SWO installing sub- floor and covering bathroom walls On 1st floor apartment, with no TPP posted or GC permits in a multi dwelling while on active PSWO issued on 11/25/2025 BY BADGE t/ 3709 under complaint *1711027".

Ms. Lamberti submitted (17) photos taken by the issuing officer. (Petitioner's Exhibits 1-17)

Ms. Dossett moved to dismiss both Summonses for defective service on the Respondent JAMES CHOW.

The Affirmation of Service reads as follows:

"C. ALTERNATE METHOD/CHARTER SERVICE (posting at place of occurrence) Alternate method of service pursuant to New York City Charter}1049-a(d)(2) (Affix and Mail Service).

I made the following reasonable but unsuccessful attempt to effectuate service upon respondent or upon any other person whom service may be made as follows:

"AT TIME OF SERVICE RANG ALL DOOR BELLS AT INTERCOM ENTRY DOOR AND NO PERSON(S) ANSWER EXCEPT FOR AN OCCUPANT AT 3RD FLOOR WHO REFUSED SERVICE ANO STATE HE IS NOT THE RESPONDENT. WAITED SEVERAL MINUTES NO SAW ENTERING OR EXITING BUILDING."

The Summons was then posted on the "FRONT ENTRY DOOR"

Ms. Dossett stated that she is not disputing the address but argues that the Affirmation does not articulate the requirements of serving an individual Respondent. She stated that the IO must attempt to locate a natural person.

Petitioner submitted a copy of the Affidavit of Service with Insp. Burton's signature. (Petitioner's Exhibit 18) Insp. Burton testified that he had an independent recollection of this inspection and service; that he got access to the premises; that he left to write the Summonses; that when he came back to serve them, he knocked and rang bells on the two entry doors; that he saw a tenant who occupied the 3rd floor and asked for "persons on the Summons". He testified that the tenant refused service; that the tenant told him the owner did not live there; and that he waited several minutes. Before leaving.

Ms. Dossett argued that Insp. Burton never ascertained if Respondent was available to accept service. She said asking the tenant whether Respondent lived there is not enough.

Ms. Lamberti cited the following appeals in opposition to Respondent's motion to dismiss:

DOB v. Siu Yat Chau, Appeal No. 2600104 (March 26, 2026) which held: "Charter § 1049-a(d)(2) permits service of a summons by affixing it in a conspicuous place to the cited 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 (NYS) Civil Practice Law and Rules (CPLR) or Article 3 of the NYS Business Corporation Law, followed by specified mailings. CPLR § 308 provides, in pertinent part, that service on a natural person may be made by delivering the summons within the state to: (1) the person to be served; or (2) a person of suitable age and discretion at the actual place of business, dwelling place, or usual place of abode of the person to be served."...The Board finds that Petitioner made a reasonable attempt to personally serve Respondent before resorting to affix-and-mail service...CPLR § 308 provides, in pertinent part, that service on a natural person may be made by delivering the summons within the state to: (1) the person to be served; or (2) a person of suitable age and discretion at the actual place of business, dwelling place, or usual place of abode of the person to be served . Here, the JHO credited the IO's affirmed statement that 'no responsible person or owners present at site,' and the Board finds no

reason to disturb that determination...Moreover, Respondent's mailing address listed on the summonses is not the place of occurrence, and there is no assertion that the place of occurrence was Respondent's actual place of business, dwelling place, or usual place of abode. Therefore, a reasonable inference may be drawn that the premises, a multiple dwelling, was not Respondent's dwelling place, usual place of abode, or actual place of business, and substituted service could not be effectuated... Consequently, the Board concludes that the IO made a reasonable attempt to personally serve the summonses before affixing them to the front door of the cited premises."

The Board held in DOB v. Mahamad Hashim, Appeal No. 2101348 (December 19, 2024) that "[T]he male tenant was the only cellar occupant present at the time of inspection; the tenant stated that the other cellar tenants were at work. He told the tenant that it was an illegal apartment and that he would not be able to stay. When he was ready to serve the summonses, he saw the tenant outside of the building. He asked the tenant if the owner was there, and the tenant said that Respondent "was not around." He then knocked on the front door, and when no one responded, he posted the summonses to the door. He did not ask the tenant if he was willing or authorized to accept service on behalf of the owner because "it was an illegal cellar apartment and [the tenant] said that the owner was not there...Respondent's attorney challenged service, arguing that the IO failed to make a reasonable attempt to personally serve the summonses by substituted service before resorting to Charter 'affix and mail' service...On this record, the Board finds that the IO made a reasonable attempt to personally serve the summonses. The IO determined that Respondent was not present at the premises at the time of service by asking the tenant who told him that Respondent 'was not around,' and by knocking on the door and receiving no response. The IO testified that he did not inquire of the tenant if he was willing to accept service on behalf of Respondent. However, Respondent's mailing address listed on the summonses is different from the place of occurrence. A reasonable inference may be drawn that the premises, legally approved as a two-family house, was not Respondent's dwelling place, usual place of abode, or actual place of business, and substituted service could not be effectuated. Consequently, the IO satisfied the reasonable attempt requirement to personally serve the summonses."

In the instant cases Respondent's motion to dismiss both Summonses for defective service is denied. The Affirmation of Service states that Insp. Burton took the following steps to make a reasonable attempt to serve the Summonses: He rang all the doorbells at the intercom entry door; that no person responded except a third-floor occupant who refused service and stated he is not Respondent. Insp. Burton testified at the hearing that he asked the 3rd floor tenant if Respondent lived there and he said "no".

The facts in the instant cases are similar to those in Siu Yat Chau, supra. and Mahamad Hashim, supra. In those cases, as well as in the instant case, the issuing officers were found to have effectuated service in a reasonable manner after determining that Respondents were not present; by asking the tenants if Respondent lived there; and by knocking, ringing, and/or waiting several minutes.

As stated above, Respondent's motion to dismiss both Summonses for defective service is denied.

As for the Merits of Summons #: 39170439L: Ms. Dossett denied the violation but presented no facts to rebut the allegations in the Summons and presented no valid legal defense to the charge.

Accordingly, Summons #: 39170439L is sustained, and the approved Class 1 penalty is imposed.

Respondent is charged in Summons #: 39170365H with a Class 1 violation of NYC Adm. Code 28-207.2.2 for working against a SWO. Insp Burton stated in the Violation Details in the Summons that he "at time of inspection observed workers working against SWO insta ling sub- floor and covering bathroom walls On 1st floor apartment, with no TPP posted or GC permits in a multi dwelling while on active PSWO issued on 11/25/2025 BY BADGE t/ 3709 under complaint *1711027."

As to the Merits of Summons #: 39170365H Ms. Lamberti submitted into evidence (22) photos; partial Stop Work Order issued 11/24/2025 permitting Respondent to make the site safe only; Summons upon which PSWO was issued on 11/25/2025; SWO issued 12/12/2025 – the day the instant Summonses were issued; Complaint Overview for the instant Summonses. (Petitioner's Exhibits 23-26)

Ms. Dossett submitted into evidence the Overview of Complaint, the Stop Work Order dated 11/25/2025; and the Summons upon which the SWO was issued. The SWO issued on 11/24/25 only permitted work to make the premises safe. (Respondent's Exhibits A & B)

Insp. Burton testified that he was called to the location due to a complaint of work against a Stop Work Order; that Respondent also added additional work requiring notification before it moved forward; and that on page 13 men can be seen working in the bathroom.

Ms. Dossett moved to dismiss the Summons. She argued that Respondent was not working outside the scope of the PSWO and that Respondent was only trying to make the bathroom safe. She said no plumbing work was taking place.

Ms. Lamberti then asked Insp. Burton

what he observed and he said two workers were in the bathroom covering walls and tools were on the ground.

Petitioner's photos begin on p. 10 of its 26-page evidence packet. I note that on p. 11 there are two men – one kneeling down with tools nearby, but neither are actually doing any work; on page 12 a worker is sweeping up which was permitted under the PSWO issued 11/25/2025; page 13 shows only the feet of a worker with tools nearby; page 14 shows a room with boxes, cleaning buckets, mops – no workers; page 15 shows a room with tools on the table – no workers; page 15 shows a room with buckets and a ladder against the wall – no workers; page 16 shows the PTWO dated 11/25/2025; page 17 shows steps and to the right of the steps appears to be something covered in plastic – no workers; page 18 shows only a corner of a table with boxes – no workers; page 19 shows bathroom pipes – no workers; page 20 and 21 show a worker in a totally empty room; page 22 is not readable; page 23-26 appears to show the outside of the premises.

Respondent's motion to dismiss Summons #: 39170365H is granted. I find neither Petitioner's evidence nor Insp. Burton's testimony support a violation of the cited section of law as no one is shown doing any work. I find Petitioner has not established the violation by a preponderance of the evidence.

Accordingly, Summons #: 39170365H is dismissed.

09/18/2026 **09/18/2026**

Jerilyn F. Rubin, Hearing Officer **Date**