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 No:** 039541906L et al. (1 Summons) DEPT OF BUILDINGS, -against- L2 CONSTRUCTION INC **Hearing Date:** 10/16/2026 **Hearing Location:** Remote **Type of Hearing:** By Telephone

Total Penalty Amount:**$0.00**

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

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039541906L	Dismissed	07/01/2025	45-11 193 STREET Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B120	BC 3301.2 & 27-1009(a)	Dismissed	$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted via telephone conference call on October 16, 2026.

Phoebe Dossett, attorney for Respondent L2 Construction Inc., appeared at the hearing. Jennifer Clouden appeared for the Petitioner, Department of Buildings. The Issuing Officer, (IO) S. Whyte (Badge No. 3730) also testified.

Summons No. 039541906L alleges Class 1 violation of Building Code (BC) § 3301.2 & 27-1009(a) found in Title 28 of the Code for failing to safeguard the public and property from construction operations. The summons details state: "Failure to institute/maintain safety equipment measures or temporary construction – No handrails. At the time of inspection, I observed

an active construction site with a stairway leading to the basement level that was not equipped with handrails. The absence of handrails creates a hazardous and unsafe condition for workers and personnel accessing this area. Provide handrails."

The Petitioner generally rested on the summons. The IO submitted an evidence package that included photographs and testified as follows: Upon inspection, handrails were missing on the stairs. If someone were to fall, it would be a high fall and there are tripping hazards. (See Petitioner's Evidence).

Respondent's representative made a motion to dismiss and stated as follows: there is an interior handrail on the stairs and there is no requirement to have a handrail for interior staircases. In support, she submitted appeals decisions (See Appeal No. 2600805 DOB v..Twin Group Associates Inc. & Justin Wechsler (June 24, 2021) which dismissed the same charge, under similar circumstances. (See Respondent's Exhibit).

"BC § 3301.2 requires contractors engaged in construction or demolition operations to (1) institute and maintain safety measures required by BC Chapter 33 and (2) provide all equipment or temporary construction necessary to safeguard the public and property affected by such contractor's operations. While the first provision may apply to site conditions that affect workers, the second provision limits its application to safeguards for "the public and property," which does not include safeguards for workers. *See NYC v. Gemstar Contracting Corp.*, Appeal No. 1700381 (July 20, 2017)." See, DOB v. LJ Works Inc., Appeal No. 2200410 (May, 26 2022).

In DOB v. Twin Group Associates Inc. & Justin Wechsler, the Board found that Petitioner failed to prove the BC § 3301.2 charge under similar facts, "on the IO's allegation that guardrails were required in front of the staircase leading from the ground floor to the cellar to prevent people from falling into the staircase. The IO described the staircase in the summons as an unenclosed perimeter." BC § 3302.1 defines "unenclosed perimeter" as "[a]ny exterior portion of a building that is not solidly enclosed with the permanent facade, including the windows; or any exterior edge of a roof that is not enclosed with its permanent parapet or guardrail." The Appeals Board further stated "the staircase was internal, and therefore not an unenclosed perimeter. Consequently, the requirement under BC § 3308.7 to install a guardrail system to protect unenclosed perimeters is inapplicable. *See DOB v. ECD NY INC*, Appeal No. 2000555 (July 16, 2020). Petitioner did not identify any BC Chapter 33 provision requiring that stairs in a building under construction be closed off. Nor could the Board find any such provision. Consequently, a violation of BC § 3301.2 was not established under the first prong of the statute. While Petitioner asserted that guardrails were needed to prevent first responders and inspectors from falling into the staircase, the Board finds this too remote a likelihood to be a failure to safeguard the public. Therefore, a violation of BC § 3301.2 was not established under the second prong of the statute."

Accordingly, I find that the Respondent has successfully refuted the charge by showing that the cited section of the law and the summons details did not establish a violation by a preponderance of the evidence. The summons is dismissed.



10/26/2026

10/26/2026

Nadia Pervez, Judicial Hearing Officer

Date