



**OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**  
*Hearings Division*

**DECISION**

|                                                                                                                    |                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Frank Tamberino, Esq., Nacmias Law Firm</b><br><b>592 Pacific Street 1st Floor</b><br><b>Brooklyn, NY 11217</b> | <b>Summons No: 0627000734 et al. (1 Summons)</b><br><br><b>DEPT OF ENVIRONMENTAL PROTECTION,</b><br><br><b>-against-</b><br><br><b>TRYAX REALTY MANAGEMENT INC</b><br><br><b>Hearing Date: 07/28/2026</b><br><br><b>Hearing Location: Remote</b><br><br><b>Type of Hearing: By Telephone</b> |
|--------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                              |
|----------------------------------------------|
| <b>Total Penalty Amount: \$2,500.00</b>      |
| <b>Community Service(Hr): Not Applicable</b> |

| <b>SUMMONS #</b> | <b>SUMMARY DISPOSITION</b> | <b>DATE OF OCCURRENCE</b> | <b>PLACE OF OCCURRENCE</b> |
|------------------|----------------------------|---------------------------|----------------------------|
| 0627000734       | Sustained                  | 04/30/2026                | 390 East 153 Street Bronx  |

| <b>LINE ITEM</b> | <b>OATH CODE</b> | <b>CODE SECTION/RULE</b> | <b>RESULT</b> | <b>PENALTY</b> |
|------------------|------------------|--------------------------|---------------|----------------|
| 1                | AHZ2             | A.C. 24-610C             | Sustained     | \$2,500.00     |

**Findings of Fact & Conclusions of Law**

This hearing was held via Court Call on July 28, 2026.

Respondent Tryax Realty Mgt. Inc. was represented by Frank Tamberino, Esq. Also appearing was Mr. Manuel Aiciano super for the building in question. Also added mid hearing was Ms. Mariella Brito, property Dire of Op.

Petitioner NYC DEP was represented by Russell Pecunies, Esq. Also appearing was Inspector Victor Lee, the issuing officer.

Respondent is charged with an alleged violation of NYC AC 24-610 (c): failure to comply with a Comm. Order.

Summons #0627000734 was issued for an occurrence on 4/30/26 at 11:10 AM for 390 E. 153rd St., Bronx, NY. The Details of the Violation stated: Willfully violated or failed or refused to comply with Commissioner's Order.

Mr. Pecunies asked Inspector Lee if he issued the above noted summons, to which he replied "yes". Insp. Lee testified that he responded to an incident at 390 E. 153rd St. on April 4, 2026 and prepared a report regarding same. He was sent to the building after being informed by the FDNY that there was a fire involving lithium batteries. When he got there, he got a phone number for Tryax from the super who was tending to the apartment where the fire occurred. Insp. Lee called and spoke with Mariella Brito from the management's office-he explained the situation regarding DEP's role and told her the building was responsible for the batteries and would be given an Order. The inspector further testified that she told him the FDNY was coming to pick up the drums where the batteries were placed, but he told her that was not correct and the building needed to get rid of the drums themselves. She asked him to give the paperwork to a Tryax worker.

Insp. Lee continued and testified that he wrote up the paperwork and gave it to an employee of Tryax and mailed a copy to Ms. Brito-it was an Order of the DEP commissioner directing Respondent the following: 1) dispose of the drums 2) get a contractor for that 3) remove by a deadline date and 4) provide documentation of how it was disposed of.

When asked by Mr. Pecunies, Insp. Lee testified that he saw the drums in front of the building, but they were not secured. There was an FDNY tag on them with an incident #-there were two 16 gallon drums and one 55 gallon drum. After serving the order on the employee, he left the property-this was on April 4. On April 6, Monday, Ms. Brito contacted the inspector by phone stating they would comply and use their own battery contractors to recycle. However, he added that she called him again later that afternoon and told him that there were no drums in front of the building. The next day, Ms. Brito called the inspector again and said they had video surveillance that showed a man taking the drums. The video was sent to the Inspector, who forwarded it to his Director. When asked about the video, Insp. Lee stated that it appeared that a homeless person was taking the drums from the front of the building.

Mr. Pecunies submitted Petitioner's evidence-Technical Report signed by Insp. Lee, the Commissioner's Order and the Affidavit of Service. He asked the inspector that if the drums were stolen, Respondent could not fully comply with the Order, to which Insp. Lee replied "yes" and indicated that they could not secure and remove the drums. When asked why he issued the summons, Insp. Lee testified that it was to assure that the responsible party would get rid of the batteries as per the Order.

As related to the 4 boxes checked on the Order that Respondent was to comply with (Scope of Work page 2), Insp. Lee continued and stated that Respondent did not secure the site and they were busy working on the apartment that had the fire. Regarding the order to return the hazardous materials by 4/8, he stated they were about to do it on 4/6 but could not as the drums were missing. He added that Respondent was not able to transport the drums by 4/8 and comply as they did not have the drums and filed a police report regarding same. Also, the inspector stated Respondent could not provide copies of documentation regarding the disposal since they did not dispose of the drums. Based on this, a summons was issued to Respondent since they could not comply with the Order, as informed by Inspector Lee's director.

When asked why the summons was delayed and not issued until 4/30, Insp. Lee testified that the DEP emergency response unit decided what to do, but it related to the police report being filed, the video and back and forth contacts with the parties. Mr. Pecunies concluded at this time and clarified that the order was issued for a failure to comply, and not for willful violation or refusing to comply.

Mr. Tamberino asked Insp. Lee if Respondent told them the FDNY would take the drums, to which he replied "yes", but added that the responsible party is usually the one that removes them. The inspector confirmed that Respondent could not comply with the Order because the items were stolen, but it appeared that Respondent wanted to comply before that happened.

At this time, Respondent brought in another witness to the hearing, Ms. Mariella Brito-Director of Operations for the property.

Mr. Tamberino asked Mr. Hiciano if he remembered the fire, to which he replied "yes", but added that he did not speak with Insp. Lee at that time-no one from the City came and spoke with him about the fire on 4/4 when the drums were present.

Mr. Tamberino asked Ms. Brito if she recalled the 4/4 fire and the drums being on site. She testified yes and stated she spoke with Insp. Lee on that date. She spoke with him in the hallway as he was looking to see the issues with the apartment that had the fire-he told her where the fire started. Ms. Brito further testified that the FDNY had left by that time and the super, Manny Hiciano went downstairs. The Inspector also told her that people in certain units had to be evacuated-she talked to the staff about getting plywood and other items. The Inspector told her he was going to post a notice outside.

When asked where the drums were at that time, Ms. Brito testified that she did not know about them then and they were not there when the FDNY was present-the super told her the FDNY was to pick up the barrels, which were now outside. She

added that the Inspector did not mention the barrels then. She did not recall if the inspector said anything about the FDNY, but the super told her the batteries were placed in barrels for the FDNY to pick up.

When asked what Respondent did to make the barrels safe, Ms. Brito stated that the FDNY told them they could not stay inside of the buildings, so they were brought outside-they thought they were going to be picked up by the FDNY the next day. It was about 1 AM, so they could only keep them in front of the building at such time.

Regarding the work order posted, Ms. Brito stated that it did not say anything about securing the items, but Respondent followed everything that was checked off -the 4 items-there was nothing specifically said about securing the barrels and thought the FDNY did that. That night, as per the video, someone lifted the barrels onto a plank and took them away-this was about 1:30-2 AM. However, she intended on complying with the Order and called Insp. Lee Monday morning and said their environmental contractor would pick them up as she did not know they were missing at that time. After that, she called the super about their contractor picking up the barrels, but he thought the FDNY took them. Ms. Brito filed a report with the NYPD, spoke with Insp. Lee and said they were trying to find the person who took the barrels.

At this time, Mr. Pecunies asked Ms. Brito if she was called by Insp. Lee on 4/4. She testified "No" and stated it was on that Monday-she believes she called him and he told her about a company picking up the barrels. She told the inspector that she thought the FDNY would pick them up, but the inspector told her that Respondent had to take care of it. She got the Commissioner's Order from the property manager-she reviewed it and said they immediately went to secure the site. When asked if they got security or anyone else to prevent the public from taking the barrels, Ms. Brito testified that they secured the site and no one got into the building, but nothing was written on the Order about securing the barrels. Wherever the FDNY placed the barrels, they were outside in front of the building and Ms. Brito stated they were never told to do anything different and followed the FDNY's instructions.

Mr. Pecunies rested at this time on the summons and the evidence.

Mr. Tamberino submitted evidence which included 1) a notice dated 3/5/25 to Respondent advising tenants to remove e-bikes and batteries from the building 2) an e-mail chain starting 4/8/26 between Respondent and Petitioner and showing Respondent's efforts to comply with the Order and 3) a copy of code section 24-610. Mr. Tamberino denied the charge and made a motion to dismiss, arguing that the work order was ambiguous and did not mention securing the hazardous material-the first item was to secure the site and does not mention the materials. Even though Petitioner stated it was about hazardous materials, it was not clear on the order. Mr. Tamberino continued and stated that Respondent thought the site was the building and were told not to return the barrels to the building. Also, Insp. Lee did not advise Ms. Brito what to do with the barrels and that FDNY tends to take them. Since Respondent could not comply with the order as it was not clear what needed to be done, the other 3 items could not be done.

Mr. Pecunies argued that this happens constantly with the batteries catching fire-the FDNY leaves the barrels outside of a building and call DEP. DEP then gives an Order to the building owner to dispose of the drums containing the batteries. Here, the barrels were stolen and Respondent could not comply with disposing of the batteries, so only #1 on the order could be completed-securing the barrels. The order pertains to the burned batteries and the directive to secure pertains to the batteries outside of the building and not in the building since there were no hazardous materials in the building-the batteries were stolen since Respondent did not secure them.

*NYC Adm. Code § 24-610 Orders to responsible persons; civil and criminal penalties and imprisonment., states, in part that: a. (1) An order of the commissioner issued pursuant to subdivision a of section 24-608 shall specify the work to be performed and shall fix a reasonable time for compliance from the date of service of such order. Such order shall contain a statement that upon failure of the responsible person to comply with the commissioner's order within the stated time, the department may perform the work specified in the order or apply for a court order directing the responsible person to comply with the commissioner's order.....c. Any responsible person who without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the commissioner issued pursuant to section 24-608 may be liable: (1) for a civil penalty.....*

*NYC Adm. Code § 24-608 Emergency response, states, in part that: a. When the commissioner has reason to believe that there has been a release or there exists a substantial threat of a release into the environment of a hazardous substance which may present an immediate and substantial danger to the public health or welfare or the environment, the commissioner may, in his or her discretion, order any or all responsible persons to implement any response measures, or to cooperate with and assist the commissioner in implementing any response measures, deemed by the commissioner to be necessary to protect the public health or welfare or the environment..... The commissioner shall, where appropriate, consult with the commissioner of health, the police commissioner and the fire commissioner concerning the need for and implementation of such response measures and orders. The commissioner may also order the production of documents relevant for determining*

*the nature and extent of the release or threat of release. b. Nothing in this subchapter shall be construed to preclude the implementation of response measures by any other city agency, either prior or subsequent to any response measure implemented pursuant to subdivision a of this section.*

Following review, I find that Petitioner has presented a prima facie case and Respondent has not provided sufficient defenses to refute the charge. Although the theft of the barrels may have been an unforeseen circumstance to Respondent, the Respondent did not take proper measures to secure the barrels outside of their building immediately after their placement. Even if at that initial time they may have believed the FDNY would handle the removal, without any security by the outside of the building (other than a security camera), any item left outside had a potential, unfortunately, to be removed/stolen by anyone passing by. Also, though the Order with the page entitled Scope of Work stated "Must immediately secure the site to prevent unauthorized entry upon service of the order" did not specifically state that the outside of the building needed to be secured when the drums with hazardous materials were left outside by someone from Respondent, whether management knew they were placed outside, is not defense. The order was clear that it related to the hazardous materials causing the fire at the building (requiring the lithium batteries to be placed in a drum and placed outside) and there is no confusion as to what needed to be secured, especially since there was no reference to any of the hazardous materials being left inside of the building.

Respondent failed to comply with the order to secure the hazardous materials immediately and in violation of the cited code section. However, reporting the theft to the NYPD, contacting DEP about extensions and Respondent's initial intentions to comply with disposing of the batteries are considered with regard to the penalty amount.

The penalty baseline for a first offense is \$3,000. See 15 RCNY § 59-02. Here, I consider Respondent established one mitigating factor in that it complied with the Scope of Work in identifying the hazardous materials. This reduces the penalty by \$500.

I credit Petitioner.

The Summons is sustained and the penalty is assigned as noted above.

*Caryn S. Gartenberg*

08/11/2026

08/11/2026

Caryn Gartenberg, Judicial Hearing Officer

Date