



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 25T00822 DEPARTMENT OF CONSUMER AND WORKER PROTECTION, -against- 5TH AVENUE CANDY & GROCERY, INC Hearing Date: 01/16/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$3,000.00	Restitution: \$0.00
Suspension/Revocation/Sealing:	

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
25T00822	Sustained	03/25/2025	439 5TH AVE Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	OCCUR- RENCE	NO. OF COUNTS	RESULT	PENALTY	SUSPENSION/ REVOCATION/SEALING
1	NA	NYC Admin Code § 17-706(a)	1	1	Sustained	\$1,000.00	
3	NA	24 RCNY § 13-03(b)	2	1	Sustained	\$2,000.00	

Findings of Fact & Conclusions of Law

The summons was issued by the NYC Department of Consumer and Worker Protection for several tobacco sales violations.

Petitioner, DCWP, appeared by Inspector Rachid Aitoumghar.

Respondent appeared by Andre Autz, Esq.

Petitioner submitted into evidence; photographs, affidavit of minor and prior summons of 8/20/2020, without objection.

1) As to NYC Administrative Code Section 17-706(a) selling tobacco or tobacco products to a person under the age of 21 years;

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor.

The evidence in the record establishes the violation as written and the Petitioner has met its burden of proof.

As such, based on the record before me, the violation is sustained and the standard penalty is hereby imposed.

2) As to NY Public Health Section 1399-cc(2), sale of tobacco or tobacco products to a person under the age of 21 years.

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

Andre Autz, Esq. also argued that the charge is duplicative to NYC Administrative Code Section 17-706(a), and thus should be dismissed.

NY Public Health Section 1399-cc(2) is a different section compared to NYC Administrative Code Section 17-706(a), and thus not duplicative.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor.

The evidence in the record establishes the violation as written and the Petitioner has met its burden of proof.

As such, based on the record before me, the violation is sustained and the standard penalty is hereby imposed of \$1,500.00 and two points on the NYS Registry.

3) As to 24 RCNY Section 13--03(b), selling cigar for less than the floor price of \$8.00 plus \$1.75 for each additional cigar, as a subsequent offense dated 8/20/2020.

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

Andre Autz, Esq. also objected to the notation of a prior violation for the same condition cited dated 8/20/2020, as it is more than three years since the subject violation herein.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor, along with the corroborated evidence in the record.

As such, based on the record before me, the violation is sustained.



February 12, 2026

02/12/2026

John Ciafone, Judicial Hearing Officer

Date



Office of Administrative Trials and Hearings
Hearings Division

RECOMMENDED DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 25T00822 DEPARTMENT OF CONSUMER AND WORKER PROTECTION, -against- 5TH AVENUE CANDY & GROCERY, INC Hearing Date: 01/16/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount:	Restitution:
Suspension/Revocation/Sealing:	

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
25T00822	Recommended	03/25/2025	439 5TH AVE Brooklyn

This is a recommended decision and order. You will receive DCA's final decision on these New York State charges within the next 90 days. DCA may affirm, reverse or modify this decision or it may send the case back to OATH for an additional hearing.

YOU HAVE A RIGHT TO SUBMIT A WRITTEN ARGUMENT WHY DCA SHOULD OR SHOULD NOT FOLLOW THIS RECOMMENDED DECISION. You must submit your argument to DCA within thirty (30) days of the date of this recommended decision. You may submit your argument by email, regular mail or in person.

BY EMAIL: Send your written arguments to decisionreview@dca.nyc.gov . Make sure to include the Notice of Hearing number in the subject line of your email.

BY MAIL OR IN PERSON: Send or bring your written arguments to 42 Broadway, 8th Floor, Decision Review, New York, NY 10004. Make sure to include the Notice of Hearing number.

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LINE ITEM	OATH CODE	CODE SECTION/RULE	OCCURRENCE	NO. OF COUNTS	RESULT	PENALTY	SUSPENSION/ REVOCATION/SEALING
2	NA	NY Pub Health § 1399-cc(2)	1	1	Recommended / Sustained		

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