



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: 035674553Z et al. (1 Summons) DEPT OF BUILDINGS, -against- AC. 48 WEST 37TH ASSOCIATES LL Hearing Date: 01/22/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$10,000.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035674553Z	Sustained	08/15/2023	48 WEST 37 STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B1E4	28-302 .5	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

Phoebe Dossett, Esq., appeared on behalf of the Respondent AC. 48 West 37th Associates LLC. Tom Kleinberger appeared as a witness on behalf of the Respondent.

Kim Manas, Esq., appeared on behalf of the Petitioner, the DOB.

The summons alleges a Class 1, Aggravated 1, violation of NYC Administrative Code 28-302.5, failure to provide safety measures such as (sidewalk shed, nettings, etc.) where required to protect and secure public safety from documented unsafe façade as per 1 RCNY 103-04. Façade technical report filed unsafe by PE/RA on 2/20/2023 and to this day, 8/15/2023, no

safety measures are in place. At time of inspection there was spalling terracotta defective masonry on exposure #1 north elevation 37th Street elevation crack in bulkhead masonry. Remedy: Provide adequate safety measures where required to protect the public from unsafe façade as per 1 RCNY 103-04.

Ms Manas moved to amend the summons by dropping the Aggravated 1 charge as the underlying violation had been administratively resolved prior to the hearing.

Without objection, the summons was so amended.

Ms Manas presented 19 photos showing the building in context, the conditions cited in the summons, and the absence of protective measures. Ms Manas also provided the unsafe technical report and an order from the Petitioner to the Respondent to construct a sidewalk shed issued on 8/15/2023.

Ms Dossett did not challenge the facts asserted in the summons but argued that providing the necessary safety measures was impossible.

In support, Ms Dossett called Mr. Kleinberger who testified as follows: He is the general counsel of Adams & Company, the managing agent for the Respondent. In order to deal with the unsafe conditions, of which the Respondent was aware, the Respondent pulled a permit for a sidewalk shed on 2/9/2023 (presented in evidence, along with associated plans and roof work permit) prior to the issuance of the instant summons and prior to the filing of the unsafe technical report on 2/20/2023 (presented in evidence). In order to provide the required protection, the shed would have had to extend to some degree onto the properties to the east and west of the Respondent.

Mr. Kleinberger detailed his efforts to get agreements with the owners of the adjacent properties to allow the construction of the permitted sidewalk shed on portions of their properties. Mr. Kleinberger stated that the negotiations with neighbors on both sides were fraught, with moving goalposts, extortionate demands, and an unwillingness to accommodate the sidewalk shed.

Mr. Kleinberger stated that the recalcitrance of the neighbors forced the Respondent to confront several unpalatable options: build the shed without extending it onto the neighboring property and deviating from the filed plans, a violation of the law, build the sidewalk shed without getting the permission of the neighbors, which would be trespassing, or not building the shed at all, also a violation of the law. Mr. Kleinberger stated that the amendment to Section 881 of the New York Real Property Actions and Proceedings Law in December 2025 was a reaction to exactly this sort of impossible bind facing the Respondent.

Ms Manas argued that the Respondent could have constructed the shed on its property alone, leaving off the parts of the permitted and planned shed extending onto the neighboring property. Ms Manas argued that only at that point would the impossibility to a violation apply.

In response, Mr. Kleinberger stated that this meant that the Petitioner would force the Respondent to choose between violating the law in one way or violating it in another way, placing an undue burden on the Respondent.

Ms Manas noted that while the focus of the hearing had been on the sidewalk shed, there were other safety measures that the Respondent could have taken but were not, such as netting.

I find the Respondent's testimony and evidence to be credible and that Respondent had begun attempts to address the safety issues posed by the façade defects well before the issuance of the instant summons.

However, while I might find the Respondent's arguments regarding the impossibility of erecting a sidewalk shed persuasive, the summons was not issued for failing to erect a sidewalk shed. The instant summons was issued for failing to "provide safety measures such as (sidewalk shed, netting, etc)..." While it is possible the Respondent would have faced the same challenges in installing other safety measures in lieu of a sidewalk shed, an impossibility defense cannot be raised where, as here, the Respondent has not exhausted all potential avenues of action.

I find that the Respondent has not presented a valid defense or credible rebuttal to the valid prima facie case stated in the summons.

The summons is sustained.

Sean Gralton

01/22/2026

01/22/2026

Sean Gralton, Judicial Hearing Officer

Date