



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039135909N et al. (1 Summons) DEPT OF BUILDINGS, -against- RIBELLINO RICHARD Hearing Date: 09/08/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$1,250.00**

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

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039135909N	Sustained	01/18/2025	411 3 AVENUE Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B208	28-118.3	Sustained	\$1,250.00

Findings of Fact & Conclusions of Law

Summons # 039135909R was issued to respondent Ribellino Richard for a violation of section 28-118.3; Altered/changed building occupancy without a valid certificate of occupancy as per 28-118.3.1, 28-118.3.2 Griffin Editions occupy the commercial space confirmed by advertisement.

The respondent moved to dismiss the summons stating that there was no reasonable attempt to effectuate personal service.

The I/O's affirmation of service states, "Roll down gate closed", a copy of the violation was posted on the "vinyl windowguard door". "Property closed as per website and no other way to contact occupant(s)/owner's rep."

The respondent stated that the "roll down gate" was written on the affidavit. The I/O did not indicate that he knocked on the door or gate, that he called out, or that he walked the perimeter of the work site. The website says, "closed site", but the I/O still needs to confirm that the site was closed by a reasonable attempt to effectuate service.

The respondent submitted case law, *DOB v. Daniel Odigie*, Appeal No. 1801667 (February 7, 2019). In *Odigie*, according to the I/O's affirmation of service, the jobsite was closed, and no one was present to accept service; the affirmation of service states, "job site closed". The I/O posted the summons and made the required mailings. The Board found that the I/O established the required reasonable attempt at service prior to posting and that service was proper.

The respondent also submitted appeals case, *DOB v. Daj EMR LLC*, Appeal No. 2401385 (October 31, 2024). The I/O indicated in the affirmation of service, "Observed project gates padlocked. Searched perimeter of site, attempted knocking, unable to find respondent or authorized person". After writing the summons, the I/O returned to the site as it was still closed. Service was deemed proper.

The respondent stated that in *Daj*, the I/O made an effort to make sure no one was there to accept service, but in the instant case, there was no reasonable attempt at service. There is a legal obligation to make a reasonable attempt at service by knocking on a door, calling out, walking around the perimeter, and/or returning to see if anyone is there to accept service.

The respondent stated that there is a difference between a closed site and a deserted job site. A site may be closed for work and not for accepting service. It is the job of the I/O to make a reasonable attempt at personal service. In *Daj*, when the I/O arrived at the site, it was closed and padlocked. He knocked and no one responded. He returned to the site. The I/O made a reasonable effort to effectuate service, beyond merely noting that the site was closed. The I/O made an effort to make sure no one was there; it is the I/O's duty.

The Petitioner stated that if the site is closed, the I/O may make a reasonable inference that no one is there to accept service. Case law has held that if the affirmation of service indicates the site is closed and the gate is locked, there is a reasonable inference that no one is there to accept service.

The Petitioner submitted appeals case *DOB v. Triple C Builders LLC*, Appeal No. 1800418, where the Board found that when the affirmation of service states, "site closed-fence locked" and "site closed-gated locked", a reasonable attempt at personal service was made before the I/O resorted to affix-and-mail service.

The Petitioner submitted appeals case *DOB v. Snyder Lodge LLC*, Appeal No. 210162 (October 21, 2021). The I/O's affirmation stated, "When I attempted to serve, site was closed and locked. I knocked on the site door for several minutes with no response". A copy of the violation was affixed to the construction wall. The Board found that the I/O made a reasonable attempt to personally serve the respondent before resorting to affix-and-mail service.

The Petitioner also submitted *DOB v. Creative Builders & Devel.*, Appeal No. 210615 (January 27, 2022). The I/O's affirmation of service stated, "I physically searched the site perimeter since the construction site was locked/padlocked and I did not find anyone connected to the site or the named respondent". A copy of the summons was posted. The Board credited the I/O's statement in the affirmation of service, that he saw nobody present at the site. Having determined there was no one present at the closed construction site, upon whom personal delivery of the summons could be made, the I/O was permitted under the Charter to affix the summons on the project board at the construction fence.

The summons and evidence submitted by the Petitioner are credited

The respondent did not rebut the charge or provide a legally valid or meritorious defense.

I find that service was proper pursuant to the case law.

The instant case, I/O indicated on the affirmation of service, "Roll down gate closed", a copy of the violation was posted on the "vinyl windowguard door". "Property closed as per website and no other way to contact occupant(s)/owner's rep."

Case law submitted by the Petitioner indicates that when the site is closed or a fence or gate is locked, the I/O can make a reasonable inference that no one is there to accept service. In *Triple C Builders LLC*, the Board found that where the affirmation of service states, "site closed-fence locked" and "site closed-gated locked", a reasonable attempt at service was made. In *Snyder Lodge LLC*, where the I/O's affirmation of service stated that the site was closed and locked and he knocked on the site door for several minutes with no response, and a copy of the violation was affixed to the construction wall, the Board found that the I/O made a reasonable attempt to personally serve the respondent before resorting to affix-and-mail

service. In Creative Builders & Devel., the Board credited the I/O's statement in the affirmation of service, that he saw no one present at the site and having determined there was no one present at the closed construction site, upon whom personal delivery of the summons could be made, the I/O was permitted under the Charter to affix the summons on the project board at the construction fence.

There is no requirement that after finding the site closed or the gate locked that the I/O search the perimeter of the site, knock on a door or gate, call out for someone, and/or return to the site again to find a respondent or authorized person to serve.

In Daj, the I/O decided to search the perimeter of the site, knock on the door, and return to the site to find a respondent or authorized person to serve; it appears the I/O decided to do this on this own. There is nothing stated in the case law requiring that all of these steps be taken before resorting to affix-and-mail service.

The respondent stated that there is a difference between a closed site and a deserted job site. A site may be closed for work and not for accepting service.

Pursuant to case law, when the site is closed or a fence or gate is locked, the I/O can make a reasonable inference that no one is there to accept service.

If the respondent believes that the job site may have been closed for work and not for accepting service, then he could have provided evidence that although the site was closed for work, someone was at the site to accept service at the time of incident.

Accordingly, the summons is sustained and a standard penalty in the amount of \$1,250.00 is imposed.

	
09/10/2025	09/10/2025
Michelle Mason, Hearing Officer	Date