



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: 0216648493 et al. (1 Summons) NEW YORK CITY POLICE DEPT, -against- SANDY B KERN Hearing Date: 03/20/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0216648493	Dismissed	12/23/2024	Ave J and E 16 St Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AD6L	AC 19-190(B)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

This matter was heard remotely, via telephonic conference, on March 20, 2025. Respondent appeared via Michael Nacmias, identified as the attorney the named respondent. Petitioner did not appear.

The summons alleges a violation of NYC AC 19-190(b). The date of occurrence was November 1, 2024, at 7:03am.

Respondent requested the affidavit of service; I agreed to circulate it. Respondent moved to dismiss, as the affidavit was not filled out, and OATH thereby lacks jurisdiction over the matter; respondent submits NYPD v. Barrett Cherelle, Appeal No. 2000420 (June 18, 2020), in support of that contention. Respondent further asserts that the summons does not allege that the

pedestrian did not suffer a physical injury, as defined by 10.00(9) of the New York State Penal Law, which requires "substantial injury or serious impairment." [I note that this was respondent's testimony, whereas the actual wording in 10.00(9) describes "impairment of physical condition or substantial pain."] Respondent testifies that the summons only describes "minor injury," which does not meet this standard.

I credit respondent's testimony, and find that, as a matter of law, this summons must be dismissed, as respondent correctly notes the affidavit of service, attached to the summons, is completely blank, and not filled in at all. I do not reach respondent's argument as to "physical injury," as OATH rules require that a petitioner submit both a valid summons, and proof of service; otherwise, OATH cannot assert jurisdiction over the matter.

As such, the summons is hereby dismissed.

	
03/21/2025	03/21/2025
Craig Messing, Hearing Officer	Date