



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: 039109639N et al. (1 Summons) DEPT OF BUILDINGS, -against- 5 Spring Property Owner LLC Hearing Date: 01/23/2025 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
039109639N	Dismissed	03/22/2024	5 SPRING STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B201	28-105.1	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone via Court Call on January 23, 2025. Daniel Brickman represented Petitioner. Respondent appeared through authorized representative Matthew Whitening.

The summons charges a Class 2 violation of Administrative Code (Code) § 28-105.1. The issuing officer affirmed observing: "Structural steel columns erected in cellar providing support to underside of 1st floor framing with surrounding ceiling covered in recently installed flat stock tin, both steel columns and tin ceiling installed are not period correct and no permit on file for structural work"

Petitioner relied on the summons. Respondent argued a pre-existing condition defense. In support, Respondent submitted a deed showing that Respondent did not purchase the property until July 26, 2023. See RX 1. In addition, Respondent submitted affidavits dated January 21, 2025 from three employees of the building's property manager. See RX 2. Each employee affirmed based on personal knowledge that the conditions described in the summons existed prior to Respondent's purchase of the property and that the columns and ceilings have not changed since that time and are the same to date as they were prior. In response, Petitioner stated no objection to the pre-existing defense as presented by Respondent.

I credit the affirmed statements in the summons, which were not contested, and which establish Petitioner's prima facie case. I further credit Respondent's evidence, which was not contested, and find that it establishes a pre-existing condition defense, in that the work done without a permit pre-existing Respondent's purchase of the property without subsequent change. See NYC v. Overcoming Love Ministries, Appeal No. 1700773 (September 8, 2017).

The summons is dismissed.

Michael Gallagher

01/23/2025

01/23/2025

Michael Gallagher, Hearing Officer

Date