



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 037029077H et al. (1 Summons) DEPT OF BUILDINGS, -against- OAC ADELPHI LLC C/O OKADA Hearing Date: 12/19/2024 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
037029077H	Sustained	08/26/2024	109 W. 24th St. Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B263	AC 28-204.4	Sustained	\$1,250.00

Findings of Fact & Conclusions of Law

The hearing was conducted via Court Call on Dec. 19, 2024. Respondent appeared by its counsel Mr. Andre Autz. Petitioner appeared by Ms. Henrietta Baidoo.

Respondent was charged with violating BC 29-204.4, a class 2 violation, for failure to comply with a Commissioner's Order ("CO"). Said CO was "contained in summons #3904985K issued on 1/27/2022..." (See Resp ExhA, prior summons)

Respondent denied the charge and argued as follows: The referenced CO was not contained in the instant summons. Respondent relied on *DOB v. Rimler, Simcha*, Appeal No. 2201357 (January 26, 2023), in which the Board, relying on *DOB v.*

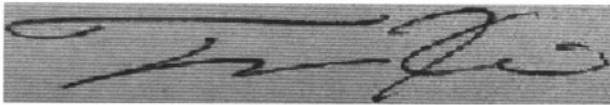
T Short, Appeal No. 2101332 (November 18, 2021), dismissed a BC 28-201.1 charge on the grounds that the specific order required by Code 28-204.2 was not included in the affixed copy of the predicate summons (See Resp ExhB)

Petitioner responded as follows: DOB v. T Short did not apply here. A DOB Commissioner's Order requires a respondent to correct the violating condition charged in the predicate summons and file an acceptable certificate of correction. When a Respondent signs a stipulation to the predicate summons, admitting to the allegations and agreeing to the compliance ordered in the predicate summons, and then presents no evidence of compliance by the date of occurrence of the instant summons, Respondent is in violation of 28-204.4. Respondent entered into a stipulation regarding the predicate summons (See Ptn ExhA). Respondent cannot now claim that the instant summons is defective because it lacked the CO. Petitioner relied on DOB v. McKenna Square Assoc., Appeal No. 2401279 (September 26, 2024) (See Ptn ExhB).

Code 28-204.2 provides that each summons "shall contain an order of the commissioner directing the respondent to correct the condition constituting the violation and to file with the department electronically or in such other manner as the department may authorize by rule a certification that the condition has been corrected."

Here, Petitioner's arguments are persuasive. Respondent entered into a stipulation regarding the predicate summons in which they admitted to the violating conditions. Under DOB v. McKenna Square Assoc., Respondent cannot now claim they did not get notice of the CO. Respondent did not refute that they have not yet corrected the underlying condition.

For these reasons, the summons is sustained and the standard penalty is imposed.



12/19/2024

12/19/2024

Taneem Kabir, Hearing Officer

Date