



# OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

## Decision

Caroline Kane, Esq. - Nacmias Law Firm, PLLC  
592 Pacific Street, 1st Floor  
Brooklyn, NY 11217

Summons# : 039112806Z et al. (2 summonses)

DEPT OF BUILDINGS,

-against-

KASHI PROPERTIES LLC

Hearing Date : 5/6/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 3,750.00

Community Service(Hr): Not Applicable

| SUMMONS #  | SUMMARY DISPOSITION | DATE OF OCCURRENCE | PLACE OF OCCURRENCE      |
|------------|---------------------|--------------------|--------------------------|
| 039112806Z | Sustained           | 04/25/2024         | 54-10 102 STREET, Queens |

| LINE ITEM | OATH CODE | CODE SECTION / RULE | RESULT    | PENALTY  |
|-----------|-----------|---------------------|-----------|----------|
| 1         | B201      | 28-105.1            | Sustained | 1,250.00 |

Total Penalty for Summons: 1,250.00

| SUMMONS #  | SUMMARY<br>DISPOSITION | DATE OF OCCURRENCE | PLACE OF OCCURRENCE      |
|------------|------------------------|--------------------|--------------------------|
| 039112807K | Sustained              | 04/25/2024         | 54-10 102 STREET, Queens |

| LINE ITEM | OATH CODE | CODE SECTION / RULE | RESULT    | PENALTY  |
|-----------|-----------|---------------------|-----------|----------|
| 1         | B2K6      | 28-210.1            | Sustained | 2,500.00 |

**Total Penalty for Summons: 2,500.00**

**Findings of Facts & Conclusions of Law**

Respondent **KASHI PROPERTIES LLC** appeared at a remote telephonic hearing on 5/6/2025 by Caroline Kane, Esq.

Petitioner NYC Dept. of Buildings appeared by Malka Amar, Esq. and the issuing officer Insp. A. Duke, Badge #: 3172.

**Respondent is charged in Summons #: 39112806Z with a Class 2 violation of NYC Adm. Code 28-105.1** for installing at the cellar level full height partitions with doors to create 3 rooms and water and waste lines to residential sink and 3- piece bathroom (sink, shower & toilet).

**Respondent is charged in Summons #: 39112807K with a Class 2 violation of NYC Adm. Code 28-210.1** for "residence altered contrary to C of O # 402537215F indicates 3 family dwelling. Residence altered. At cellar level Class A apt created with residential sink and electric stove, 3 pc bathroom, and 2 bedrooms".

Ms. Amar submitted 23 photos into evidence taken by Insp. Duke at the time of his inspection. (Petitioner's Exhibits 1-23) She also submitted the cited Certificate of Occupancy to show that the premises is a legal 3-family house, with one Class 'A' apartment on the first, second, and third floors. The Cellar is for "Open cellar, Boiler".

First, Ms. Kane moved to dismiss the Summons arguing that service of the Summons was defective as no reasonable attempt was made to personally serve Respondent before resorting to NYC Charter Service }1049-a(d)(2).

The Summons was served by Alternate Method NYC Charter }1049-a(d)(2). After the pre-printed writing, Insp. Duke wrote: "I spoke to male who refused service stating he is not the owner. No one else available." The Summons was affixed to the front entry door.

Ms. Kane argued that the issuing officer did not ask the person he spoke to if anyone else was available to accept the Summons on behalf of Respondent.

Insp. Duke testified he recalls the investigation; that he was there pursuant to a warrant to inspect the entire premises; that he spoke to female occupants on the 1st floor who said they were not the owner; that they could not accept service; and that no one else was available to accept service. He testified that he had no access to the cellar so he could not serve anyone in the cellar.

When it was pointed out that the Affidavit stated he spoke to a "male" he said his memory was fuzzy; that he does not remember if the person he spoke to was male or female; and that no one else was available to speak to.

In *DOB v. 2020 Davidson LLC*, Appeal No. 2300410 (June 29, 2023) the Board held that the IO's affirmation of service did not establish a reasonable attempt at personal service prior to resorting to Charter affix and mail service. Charter § 1049-a(d)(2) permits alternative service on an LLC only after making a reasonable attempt to deliver the summons to a person at the premises authorized by CPLR § 311-a, which includes any member, manager, agent, or other person authorized by the LLC to receive process. Where the IO encounters someone at the premises, a reasonable attempt at personal service on an LLC requires that IO ask such person whether he or she is authorized, and if not, whether anyone else at the premises is authorized to accept service on behalf of the respondent...Here, it can be reasonably inferred from the IO's statement on his affirmation that he spoke with unnamed individuals at the time of his service attempt. However, nothing in the IO's affirmation indicated whether he asked at least one of the people he encountered whether they were authorized to accept the summons or whether anyone else authorized to accept service was present at the premises. See *DOB v. 5576 Realty LLC*, Appeal No. 1900064 (April 4, 2019) (at a minimum, the person delivering the summons must ask if anyone at the premises is authorized to accept service on behalf of the respondent). As Petitioner failed to establish that the summons was properly served on Respondent as required by the Charter, it should have been dismissed by the hearing officer."

Ms. Amar cited the Board's decision in *DOB v. Imperial Sanford Owners Inc*, Appeal No. 2401176 (September 26, 2024) In that case "the IO affirmed on the AoS and testified consistent with his affirmations that the porter at the premises told him that he was not authorized to accept the summons, the superintendent was not present, and no one else at the site was authorized when the IO asked about other people who are authorized. Therefore, the JHO's finding that the IO had failed to ask both questions is contrary to the preponderance of evidence in the record. If the porter's response to the IO's first question also included information that no one else at the premises was authorized, the IO would not need to ask that to have made a reasonable attempt at personal service." [Emphasis supplied]

Respondent's motion to dismiss for defective service is denied. In the instant case, although Insp. Duke did not recall if he spoke to a male or female, I credit that the person he spoke to could not accept service on behalf of Respondent, and that he told the inspector that no one else was available who could accept service on behalf of Respondent.

Ms. Kane also argued that the violations should have been charged as Class 3 violations as there was no gas in the cellar.

Ms. Amar argued that the violations were properly charged as Class 2 as they were major violations that affected life, health, safety, and the public interest; that the cellar was supposed to be open with only a boiler; and that people were living there in violation of Housing Maintenance Code. Insp. Duke testified that there were children living there and that there were toys in the boiler room.

I credit that both violations were properly charged as Class 2 for the reason stated by Ms. Amar.

Ms. Kane also moved to dismiss one of the Summonses as duplicative of the other.

Ms. Amar stated that they are not duplicative as they cite different sections of law and require different remedies.

I find that the Summonses are not duplicative for the reasons stated by Ms. Amar.

Respondent's motion to dismiss one of the Summonses as duplicative is denied.

I credit the allegations in both Summonses and find Respondent in violation.

Accordingly, both Summonses are sustained, and the approved penalties are imposed.



05/12/2025

05/12/2025

Jerilyn F. Rubin, Hearing Officer

Date

**IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.**

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to [www.nyc.gov/citypay/oath](http://www.nyc.gov/citypay/oath)

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

**CAN I DO COMMUNITY SERVICE?**

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

**COMPLETION OF COMMUNITY SERVICE**

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/*Pro Se* Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

**How to Contact the Help Center to Schedule Community Service:**

**Manhattan:** (212) 436-0845    [CSmanhattan@oath.nyc.gov](mailto:CSmanhattan@oath.nyc.gov)  
**Brooklyn:** (718) 923-6216    [CSbrooklyn@oath.nyc.gov](mailto:CSbrooklyn@oath.nyc.gov)  
**Queens:** (718) 393-6044    [CSqueens@oath.nyc.gov](mailto:CSqueens@oath.nyc.gov)  
**Bronx:** (718) 503-5565    [CSbronx@oath.nyc.gov](mailto:CSbronx@oath.nyc.gov)  
**Staten Island:** (718) 876-2314    [CSstatenisland@oath.nyc.gov](mailto:CSstatenisland@oath.nyc.gov)

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

**If you do not complete your Community Service by the deadline, you will have to pay the penalty.**

**NON-DISCLOSURE FOR SUMMONSES ELIGIBLE FOR COMMUNITY SERVICE**

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

**IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT**

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at [www.nyc.gov/oath/appeal](http://www.nyc.gov/oath/appeal). Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **may need** to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

**APPEAL BY ENFORCEMENT AGENCY**

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,  
visit OATH's website [www.nyc.gov/oath](http://www.nyc.gov/oath)  
or call 1-844-OATH-NYC

112018