



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

GARY CHEN - NACMIAS LAW FIRM PLLC
592 Pacific Street - 1st Floor
Brooklyn, NY 11217

Summons# : 048199322N et al. (2 summonses)

THE NEW YORK CITY DEPARTMENT OF SANITATION,

-against-

LI'S GARDEN

Hearing Date : 10/30/2024

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 100.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
048199322N	Sustained	12/26/2023	42-87 MAIN STREET, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	ASAO	16-120 (C)	Sustained	50.00

Total Penalty for Summons: 50.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE	
048260753P	Sustained	02/06/2024	42-87 MAIN STREET, Queens	

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	ASPQ	16-120 (A)	Sustained	50.00

Total Penalty for Summons: 50.00

Findings of Facts & Conclusions of Law

CHARGES

Summons #048199322N charges Respondent with violating NYC Administrative Code §16-120(c), alleging that on December 26, 2023, at 05:46pm, in front of 42-87 Main Street, Manhattan, NY: "Storage of Receptacles (Com) placed out prior to 8pm w/ a recp."

Gary Chen appeared before a remote hearing on October 30, 2024 as an authorized representative of the Respondent. Petitioner did not appear.

RELEVANT LAW

NYC Administrative Code §16-120(c) states in pertinent part that:

"Incinerator, residue, ashes, refuse and liquid waste shall be stored in the building or dwelling or at the rear of the building or dwelling as may be required by the department of health or the department of housing preservation and development until time for removal and kept in tightly covered metal receptacles or containers made of other materials of a type and grade acceptable to the department of sanitation, department of health, and the department of housing preservation and development..."

TESTIMONY

Mr. Chen moved to dismiss on the grounds that the wrong section of law was charged and a failure to make out a prima facie case. Mr. Chen argued that the cited section of law does not say that refuse needs to be placed in receptacles when placed out for collection. Mr. Chen stated that he was offering no evidence on the merits.

DECISION

The summons is sustained.

As a threshold matter, the motion to dismiss is denied. The statute specifically states that refuse must be stored "in tightly covered metal receptacles..." prior to removal. The summons alleges that the cited cans were not in receptacles. Therefore, I find that the summons has made out a prima facie case.

On the merits, I credit the sworn allegations of the issuing officer as set forth in the summons and find Respondent's Representative has presented no evidence or arguments to rebut or to establish a valid defense.

Therefore, I find Respondent in violation of NYC Administrative Code §16-120(c), the penalty for which on a first violation is \$50.

Accordingly, the summons is sustained.

CHARGES

Summons #048260753P charges Respondent with violating NYC Administrative Code §16-120(a), alleging that on February 6, 2024, at 05:21pm, in front of 42-87 Main Street, Manhattan, NY: "Improper Receptacles (Food Related Business)...."

Gary Chen appeared before a remote hearing on October 30, 2024 as an authorized representative of the Respondent. Petitioner did not appear.

RELEVANT LAW

NYC Administrative Code §16-120(a) states in pertinent part that:

"1. The owner, lessee, agent, occupant or other person who manages or controls a building or dwelling shall provide and

maintain in accordance with this section separate receptacles for the deposit of incinerator residue and ashes; refuse, and liquid waste. The receptacles shall be provided for the exclusive use of each building or dwelling and shall be of sufficient size and number to contain the wastes accumulated in such building or dwelling during a period of 72 hours. The receptacles shall be made of metal or other material of a grade and type acceptable to the department, the department of health and mental hygiene and the department of housing preservation and development. Receptacles used for liquid waste shall be constructed so as to hold their contents without leakage. Metal containers shall be provided with tight fitting metal covers..”

TESTIMONY

Mr. Chen moved to dismiss on the grounds that the wrong section of law was charged and a failure to make out a prima facie case. Mr. Chen argued that the cited section of law does not say that refuse needs to be placed in containers. Mr. Chen stated that he was offering no evidence on the merits.

DECISION

The summons is sustained.

As a threshold matter, the motion to dismiss is denied. The statute specifically states that refuse must be stored receptacle made of metal or “other material of a grade and type acceptable to the department.” The summons alleges that the cited cans were in bags, not containers or receptacles. Therefore, I find that the summons has made out a prima facie case.

On the merits, I credit the sworn allegations of the issuing officer as set forth in the summons and find Respondent’s Representative has presented r.o evidence or arguments to rebut or to establish a valid defense.

Therefore, I find Respondent in violation of NYC Administrative Code §16-120(a), the penalty for which on a first violation is \$50.

Accordingly, the summons is sustained.



11/08/2024

11/08/2024

Sharah Thomas, Hearing Officer

Date

