



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: 039527174Y et al. (1 Summons) DEPT OF BUILDINGS, -against- A+ CHOICE CONSTRUCTION IN Hearing Date: 12/02/2024 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$5,000.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039527174Y	Sustained	04/05/2024	3100 OCEAN PARKWAY Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B209	BC 3301.2 & 27-1009(a)	Sustained	\$5,000.00

Findings of Fact & Conclusions of Law

I sustain the summons and impose the \$5,000.00 statutory penalty.

Mathew Whitening (Representative) appeared at the teleconference hearing for respondent EMPIRE PROP PARTNERS LLC (Respondent) and waived his rights to translation services and the presence of the issuing officer. Cassie Renee appeared telephonically for petitioner New York City Department of Buildings (DOB).

Respondent was cited for a Class 2 violation of Section 3301.2 of the New York City Building Code (BC), found in Title 28 of the Code, for failure to

institute or maintain safety measures during construction operations.

BC Section 3301.2 provides as follows:

Contractors, construction managers, and subcontractors engaged in construction or demolition operation shall institute and maintain all safety measures required by this chapter and provide all equipment or temporary construction necessary to safeguard the public and property affected by such contractor's operations.

"Per BC Section 3301.2, a general contractor is responsible for the overall safety of the site by instituting and maintaining all safety measures required by BC Chapter 33, and providing all equipment and temporary construction necessary to safeguard the public and property affected by its operations. Therefore, a general contractor may be charged for a violation of any Chapter 33 provision, even where the unsafe condition was created by its subcontractor or where such Chapter 33 provision confers responsibility to another party. However, a general contractor is not strictly liable for unsafe site conditions and may establish an affirmative defense to a violation of any BC Chapter 33 provision by showing that: (1) the violation resulted solely from an act or omission of a subcontractor; and (2) the general contractor took adequate measures to ensure that its subcontractor instituted and maintained all safety measures required by BC Chapter 33, and provided all equipment and temporary construction necessary to safeguard the public and property affected by such subcontractor's operations." *DOB v. DMD Contracting NY, LLC, Appeal No. 2101802 (February 24, 2022).*

In addition to the summons, Petitioner submitted 17 photos of the conditions observed by the I/O. Representative denied the summons and testified that there was no work going on at the site and Respondent was also in the process of taking the scaffold down. Representative submitted two photos of the purported scaffold removal. Representative also challenged Class. I find that Representative's testimony and photographic evidence is not credible and fails to rebut the summons or establish a meritorious defense to the alleged violation. did not dispute the factual allegations in the summons but challenged Class arguing that it was not an immediately hazardous condition. I also find Representative's Class challenge is meritless. I credit the summons and Petitioner's photographic evidence and find that Petitioner has established a Class 2 violation of BC Section 3307.2.1. Accordingly, I sustain the summons and impose the \$5,000.00 statutory penalty.



12/06/2024

12/06/2024

Thomas Finn, Hearing Officer

Date