



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Frank Tamberino, Esq. - Nacmias Law Firm
592 Pacific Street, 1st Floor
Brooklyn, NY 11217

Summons# : 035453501H et al. (12 summonses)

DEPT OF BUILDINGS,

-against-

ENRIQUE MONTENUINO

Hearing Date : 10/23/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount :

0.00

Community Service(Hr):

Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453500X	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B144	1RCNY 104-20	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453501H	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B182	28- 105.12.2	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453502J	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453503L	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B146	BC 3314.6.3	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453504N	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453505P	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453506R	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B149	27-104 5 BC3314 BC3314.4	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453507Z	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453508K	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY

1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00
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Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453509M	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453511L	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035453512N	Dismissed	11/20/2019	111 WADSWORTH AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B142	BC 3316.2 BC3319.1	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

The Department of Buildings (DOB) issued these Summonses to Enrique Montenuino charging violations on the date and at the location indicated above:

Deanna Burbridge, Esq., represented DOB at the remote hearing, and Frank Tamberino, Esq., represented Mr. Montenuino.

The hearing on these matters had been adjourned twice for the testimony of the inspector who issued and served the Summonses. Ms. Burbridge said that he was still unavailable because he was on family medical leave until Nov. 8 and requested a further adjournment. That adjournment was denied because the previous adjournment order had been marked final and additionally because OATH Hearing rules preclude a third adjournment solely for the inspector, no matter the nature of the circumstances (see 48 RCNY 6-15(c)). Therefore the hearing proceeded without him.

These matters were litigated both on service and the merits, and all of the arguments are hopefully preserved on the hearing recording; a summary Mr. Tamberino provided of his arguments (now converted into a PDF) is also provided as an exhibit. That said, I simply note that if I were to decide on the merits, I would sustain all of the violations except for (1) 035453502J, where I agree with Mr. Tamberino that the general contractor and not Mr. Montenuino, the licensed rigger, would be the proper party and that the violation was charged under the wrong section of law, and (2) 035453508K where I agree with Mr. Tamberino that the details are too imprecise and confusing to provide clear and concise notice adequate to state a case (see 48 RCNY 6-02(c)(3)). Otherwise, and noting that Mr. Tamberino produced no documentation or testimony to support any of his arguments about reductions in class designations or amendments to the charges, I agree with the arguments Ms. Burbridge made and would therefore sustain the violations under the provisions of law charged and at the Class 1 level, given the perilous nature of work on a suspended scaffold on a 32-story building, the factual background for these various violations concerning the scaffold.

That, however, leaves the matter of service. The affirmation of service for each of these Summonses is identical, reflecting alternative affix-and-mail service under City Charter 1049-a(d)(2) after the inspector "was advised by the project manager on site that he was not authorized to accept the Summons and that no officer or authorized person from Respondent was available at the job site."

Mr. Tamberino argued that this inquiry was inadequate and rendered service defective because it did include the questions appropriate for service on an individual or any attempt to ascertain if Mr. Montenuino were present and available or if anyone else were available to accept service.

Ms. Burbridge replied that questioning the project manager was an adequate inquiry and proper search and questioning could be inferred. However, she cited no legal authority.

In contrast, Mr. Tamberino argued that no one else present was willing to accept service or, citing DOB v. Alfred Popaj (Appeal No. 2401823, 1/30/25), that, as in that decision, DOB had failed to establish that the Mr. Montenuino was not actually present or any inquiry concerning his present had been made.

Popaj involved service on a project manager, for whom Board held, the job site was not his ordinary place of business, and therefore no inquiry about alternative acceptance was required; I did not understand Ms. Burbridge to address that limitation, but I need not decide whether this question was required because Popaj specifically holds: "the Board finds that the record is silent as to whether Respondent was present, and the Board finds no basis in the record on which to draw an inference, as Petitioner argues it should, that Respondent was not present. Nothing in the IO's notes suggest that he conducted a search for Respondent, inquired whether Respondent was at the premises, or that he had been informed otherwise. Accordingly, there is nothing in the IO's affirmation of service to persuade the Board that the IO's attempt at personal service was reasonable" (p. 3).

That statement absolutely and conclusively applies to the situation here. Accordingly, I find that service of these Summonses was improper, and they are dismissed.

Sara Piovio

10/23/2025

10/23/2025

Sara Piovio, Judicial 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

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
Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
Queens: (718) 393-6044 CSqueens@oath.nyc.gov
Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
Staten Island: (718) 876-2314 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. 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
or call 1-844-OATH-NYC

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