



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons# : 039528213M et al. (1 summonses) DEPT OF BUILDINGS, -against- BBB CONSTRUCTION INC Hearing Date : 7/15/2025 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount :	0.00	Community Service(Hr):	Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039528213M	Dismissed	05/02/2024	238 DEGRAW STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1P7	Misc. BC—Chapter 33	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

The summons alleges that that respondent violated Misc. BC Chapter 33, BC 3301.7, by failing to produce construction documents, a Class 1 violation, at 238 Degraw Street Brooklyn, on May 2, 2024. Phoebe Dossett, Esq., Nacmias Law Firm, PLLC, appeared for the respondent BBB Construction. Jennifer Clouden, Esq., appeared for the petitioner DOB. Inspector L. James, #2797, the issuing officer, appeared for the petitioner DOB.

The respondent first moved to dismiss the summons for improper service.

The Affidavit/Affirmation of Service states that the issuing officer, using an alternate method of service pursuant to NYC Charter 1049-a(d)(2) (affix and mail), spoke to the foreman on site who advised him to post. He then posted the summons on the job site fence at the exposure 1 entrance gate.

The issuing officer testified that he had an independent recollection of serving this summons along with two others. The issuing officer said that he spoke to the foreman at the job site. He asked the foreman if he could accept service on behalf of the General Contractor. The foreman told him to post the summonses. The issuing officer said that he then asked the foreman if there was someone else within the vicinity of the site who could come and accept service. He said that he would wait 10-15 minutes to give someone a chance to show up. He waited 15 minutes and asked again. He was told that no one would be coming. He then posted the summons along with the two others. The issuing officer said that he did not recall the name of the person with whom he spoke, and did not put it in his notes. The person he talked to said he was the foreman and in charge of supervision.

I credit the issuing officer's sworn statement on the Affirmation of Service submitted with the summons. I credit the issuing officer's sworn testimony. I find that the issuing officer made a reasonable attempt to serve the summons as required. The respondent made no claim that it did not receive the summons as indicated. Accordingly, the respondent's motion to dismiss for improper service is denied.

Regarding the merits, the petitioner first relied on the issuing officer's sworn statement in the summons, that at the time of inspection observed active job site with 5 workers with underpinning operations. Upon request for the construction documents for the construction operations: access agreement, site safety plans, monitoring plans, orientation logs, superintendent daily logs. None were provided creating a hazardous (sic). The petitioner provided 2 photos of the site taken by the issuing officer at the time of inspection (Pet. Exh).

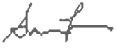
The respondent's representative provided a copy of respondent's log showing the competent person was on site at the time (Resp. Exh). As for the other construction documents they were on-site at the time of inspection. They were presented to petitioner 5 days later. Based on them, the partial stop work order that had been placed on the site by the issuing officer was lifted.

The respondent then challenged the Class 1 designation for this summons. The respondent argued that the mere absence of documents did not make this job site immediately hazardous. There is no allegation in the summons that the work occurring was unsafe. The other summonses issued along with this summons, which allege that no construction supervisor or competent person was present were designated as Class 2 violations. The respondent argued that if proven, the failure to have a supervisor on-site could be more hazardous than failing to have or produce documents.

The issuing officer testified that the construction job was a vertical and horizontal enlargement of an existing structure. There were only 5 workers on the site. The issuing officer was asked how this violation was immediately hazardous, considering his Class 2 designation in a companion summons for the alleged failure to have a competent person on site at the time. The issuing officer explained that documents including the designated paperwork are relevant to the job. The issuing officer said that the respondent needed to have documentation. If the paperwork is not right, then the job is not right. The job is hazardous if there is no paperwork, You cannot tell whether the respondent complies with work requirements.

I credit the issuing officer's sworn statement and testimony to the extent that he shows the respondent failed to maintain or provide construction documents at the time of inspection. I do not credit the issuing officer's statements that this constituted a Class 1 violation. I find the summons does not provide any guidance how the failure to produce documents was immediately hazardous and in need of immediate correction in this instance. The issuing officer was asked repeatedly why the failure to produce documentation was immediately hazardous, but the failure to have supervision on the site was not, as indicated in a companion summons. The issuing officer did not respond directly. I note that some work was permitted to

continue on-site, after the inspection. Accordingly, as Class designation is an element of the charge, I find the petitioner failed to prove this Class 1 violation by a preponderance of the evidence. The summons is dismissed.

	
07/23/2025	07/23/2025
Anthony Feldmesser, Hearing Officer	Date