



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 No: 039528224H et al. (1 Summons) DEPT OF BUILDINGS, -against- SHARON ZHARFATI Hearing Date: 07/15/2025 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
039528224H	Sustained	05/02/2024	238 DEGRAW STREET Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B2G5	BC 3301.13.7 through BC 3301.13.13	Sustained	\$5,000.00

Findings of Fact & Conclusions of Law

The summons alleges that that respondent violated BC 3301.13.7 through BC 3301.13.13, by failing to perform construction superintendent duties per code, a Class 2 violation, at 238 Degraw Street Brooklyn, on May 2, 2024. Phoebe Dossett, Esq., Nacmias Law Firm PLLC, appeared for the respondent Sharon Zharfati. 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.

The respondent argued that the issuing officer did not make a reasonable attempt to effectuate service on him personally. The issuing officer never asked whether the respondent himself was present at the site.

The petitioner said that the issuing officer's inquiry was reasonable considering the respondent was being issued this summons for not being at the site or having a competent person in his place there. Service is proper at the person's place of business in this manner.

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 he did not receive the summons as indicated. Accordingly, the respondent's motion to dismiss for improper service is denied.

Regarding the merits, the petitioner relied on the issuing officer's sworn statement in the summons. The issuing officer stated that at the time of inspection, observed no construction superintendent and or competent person on site as required creating an unsafe condition on site, no logs, plans for underpinning orientation and site safety plans were not inspected due to non-compliance of construction superintendent or competent person. Petitioner provided 2 photos of the site (Pet. Exh). The issuing officer testified that the competent person returned shortly after he posted the summonses; he said that he had been at the Home Depot.

The respondent's representative said that the competent person was on site at the time. The respondent provided a copy of respondent's log showing this (Resp. Exh).

I credit the issuing officer's sworn statement in the summons. I credit the issuing officer's sworn testimony. I find that neither a construction superintendent nor a designated competent person was available at the time of inspection as described. I do not credit the respondent's documentary evidence. The respondent failed to provide a statement from the respondent or someone else with actual knowledge of events to refute the petitioner's claim. Accordingly, I find the petitioner proved its Class 2 violation by a preponderance of the evidence. I find the respondent is in violation. I impose the standard penalty.



07/23/2025

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Anthony Feldmesser, Hearing Officer

Date