



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Sargo, Esq. 592 Pacific Street 1st Floor BROOKLYN, NY 11217	Summons No: 0802950830 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- 154-140 GROUP LLC Hearing Date: 02/06/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$0.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0802950830	Dismissed	02/01/2024	244 TROUTMAN STREET Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AH3N	NYCHC 151.02(A)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone on Court Call on February 6, 2025. Petitioner did not appear. Michael Sargo, Esq. appeared as counsel for Respondent.

The summons charged a third violation of Section 151.02(a) of the Health Code of the City of New York (HC). Specifically, the summons states that on February 1, 2024 at 12:40 p.m., the issuing officer (IO) observed "[a]ctive rat signs...in that one active rat burrow was observed in pavement near the property fence line, front right of the premises" and "one active run way was observed in pavement at the top of the cellar trap door providing rodents with unobstructed egress and ingress front right of the premises."

Mr. Sargo testified that his client is aware of the problem and has been trying to exterminate vermin from the premises. Mr. Sargo testified that Respondent employs a monthly extermination service and submitted into evidence three invoices from OnGuard Pest Control detailing extermination services provided on 11/1/23, 12/4/23, and 1/5/24 (Exhibit A).

Pursuant to HC § 151.02(a), all premises capable of attracting or supporting rodents shall be kept free from rodents, and from any conditions conducive to pests. HC § 151.02(a) requires the person in control of such premises to take such measures as may be necessary to prevent and control the harborage and free movement of rodents, insects, or other pests. A respondent may establish a defense to an active rat signs violation by showing that before the date of the offense, it was already taking adequate measures to prevent and control pests, including setting bait traps and receiving regular monthly inspections by a professional exterminator, even though violating conditions were still observed. See *DOHMH v. 427 W. 154th Street Condominium*, Appeal No. 2000223 (March 19, 2020); *DOHMH v. 19 Seaman LLC*, Appeal No. 1801125 (November 8, 2018); *NYC v. Sherwood Salvan*, Appeal No. 1600853 (September 22, 2016).

As a preliminary matter, the summons charges a third violation of HC § 151.02(a) but no recidivism is alleged, so the charge is amended to a first violation.

Mr. Sargo did not dispute the IO's observations of active rat signs on the premises. However, Mr. Sargo provided evidence that a professional exterminator has provided services to the exterior of the building for at least three months prior to the violation. I credit Respondent's testimony and evidence and find that Respondent has established a defense to the charge. See, e.g., *DOHMH v. 170 Knickerbocker LLC c/o Isaac Singer*, Appeal No. 2200679 (August 25, 2022) (finding defense established where letter from exterminator demonstrated three months of service prior to violation). The summons is dismissed.



02/13/2025

02/13/2025

Melissa Koven, Hearing Officer

Date