



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

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

Summons No: 039133438R et al. (1 Summons)

DEPT OF BUILDINGS,

-against-

SU, CHENG CHANG

Hearing Date: 04/16/2026

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
039133438R		Dismissed	12/20/2024	88-05 ROOSEVELT AVENUE Queens

LINE ITEM	OAT CODE	SECTION/RULE	RESULT	PENALTY
1	B263	28-204.4	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Summons 039133438R alleges a Class 2 violation of § 28-204.4 of the Administrative Code of the City of New York (Code), for failure to comply with a commissioner's order.

According to the IO's affirmation of service, he served the summons using the alternative "affix and mail" method of service under § 1049-a(d)(2) of the New York City Charter (Charter). The pre-printed language reads, "I made the following reasonable but unsuccessful attempt to effectuate service upon respondent or upon any other person whom service may be made as follows." The IO then wrote, "No building owner and/or other authorized person on site to accept service. Individual at seafood restaurant stated he was not authorized." Thereafter, he posted a true copy of the summons to the "window glass of

restaurant to right of entrance door" of the building.

Respondent, Su Cheng Chang, appeared by FRANK TAMBERINO, Esq.

Petitioner, the Department of Buildings (DOB), appeared by Anuj Vaidya, who relied on the Issuing Officer's statements on the summons. The IO did not appear, despite a prior adjournment for his testimony regarding service of the summons. Petitioner's attorney requested an additional adjournment for the IO. Respondent's representative objected. Petitioner's request for adjournment is denied. See § 6-14 of 48 RCNY.

Respondent's representative did not dispute the IO's observations but moved to dismiss the summons for improper service, contending the IO's statements were conclusory and failed to indicate whether he asked the person present whether they or anyone else present was authorized to accept the summons.

On this record, I find that service was improper. Charter § 1049-a(d)(2) allows for "affix and mail" service after a reasonable attempt to deliver the summons to a person at the cited premises upon whom service may be made as provided by Article 3 of the New York State Civil Practice Law and Rules or Article 3 of the New York State Business Corporation Law, followed by specified mailings. In the affirmation of service, the IO checked pre-printed language stating: I made the following reasonable but unsuccessful attempt to effectuate service upon respondent or upon any other person whom service may be made as follows." The IO then wrote, "No building owner and/or other authorized person on site to accept service. Individual at seafood restaurant stated he was not authorized." The Board has held that a reasonable attempt at service is established where the IO describes what attempts were made to ascertain whether anyone authorized to accept service was present at the place of occurrence. An IO's conclusory statement without more is insufficient. See *DOB v. 1439 Realty, LLC*, Appeal No. 1900216 (May 2, 2019). Here, the IO wrote "no building owner and/or other authorized person on site." The IO's statements are conclusory because he did not describe how he ultimately concluded that there was "no building owner and/or other authorized persons on site to accept" the summons on behalf of Respondent. Furthermore, once the IO encountered the individual at the seafood restaurant, the IO was required at a minimum to inquire if such person was authorized to accept service on Respondent's behalf, and if not, to further inquire if anyone else at the premises was authorized to accept service. Because the affirmation of service does not indicate that such an inquiry was made, it fails to establish that the IO made a reasonable attempt to personally serve the summons before affixing it to the premises. See *NYC v. Owners of 92 Penn Street*, Appeal No. 1601005 (November 16, 2016).

Accordingly, the violation is dismissed for improper service.

K. Lawner

04/21/2026

04/21/2026

Kevin Lawner, Judicial Hearing Officer

Date