



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street, 1st fl Attn: Frank Tamberino, Esq Brooklyn, NY 11217	Summons# : 039121863J et al. (2 summonses) DEPT OF BUILDINGS, -against- RAYMOND, MARIE LIONETTE Hearing Date : 12/9/2025 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount : 625.00	Community Service(Hr): Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039121863J	Dismissed	08/14/2024	920 EAST 84 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B101	28-105.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039121864L	Sustained	08/14/2024	920 EAST 84 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B202	28-301.1	Sustained	625.00

Total Penalty for Summons: 625.00

Findings of Facts & Conclusions of Law

The respondent was issued two summonses. Summons no.039121863J alleges a class 1 violation of NYC Administrative Code 28-105.1 for work without a permit. Summons no.039121864L alleges a class2 violation for failure to maintain the building in a code compliant manner.

Daniel Brinkman, Esq. appeared for the petitioner, New York City Department of Buildings.

Frank Tamberino, Esq. appeared for the respondent, Marie Lionette Raymond.

The hearings had been adjourned for the testimony of the issuing officer but he did not respond when called.

Petitioner relied on the sworn statements in the summonses.

Respondent moved to dismiss both summonses proffering a pre-existing condition defense. Respondent submitted supporting documentation. Respondent stated the conditions cited for failure to maintain the building were linked to the pre-existing condition defense. Respondent stated the conditions cited were present when they purchased the property and they had not made any changes to either the cellar or the garage. Respondent contended that there was no failure to maintain the building.

Petitioner stated he had no objection, offered no rebuttal, and did not make a recommendation as to penalty.

NYC Administrative code 28-105.1 "It shall be unlawful to construct, enlarge, alter, repair, move, demolish, remove or change the use or occupancy of any building or structure in the city, to change the use or occupancy of an open lot or portion thereof, or to erect, install, alter, repair, or use or operate any sign or service equipment in or in connection therewith, or to erect, install, alter, repair, remove, convert or replace any gas, mechanical, plumbing, fire suppression or fire protection system in or in connection therewith or to cause any such work to be done unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code..."

NYC Administrative Code Section 28-301.1 provides, in pertinent part, that "All buildings and all parts thereof and all other structures shall be maintained in a safe condition."

Class 1 violations are those deemed to be immediately hazardous. Immediately hazardous violations are those specified as such by the New York City Construction Codes, or those where the violating condition poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action.

A class 2 violation is considered a Major violation. Major violations are those specified as such by the New York City Construction Codes or those where the violating condition affects life, health, safety, property, or the public interest but does not require immediate corrective action.

Affidavits from friends, neighbors and long-term residents may be relied on to establish an affirmative defense of pre-existing conditions where the affiants describe when and why they made their observations and their observations are sufficiently detailed to establish that certain conditions pre-existed a respondent's purchase. See NYC v. Shangyu Chen, Appeal No. 1100378 (September 22, 2011).

Pre-existing condition is not a defense to charges of failure to maintain. An owner is responsible for safe maintenance of its building, even if the unsafe conditions were created by another party or resulted from another party's actions or neglect. See NYC v. 82 DeGraw Street Association Inc. (ECB Appeal No. 1000675, November 18, 2010).

Although a pre-existing condition defense may be available for a Code § 28-301.1 charge when the basis for the charge is work without a permit. Here, that is not the case as the work without a permit charge was for plumbing work and partition walls in the cellar whereas the failure to maintain charge concerned the garage.

I credit the factual allegations in the summonses which support a violation of the cited code sections. I find that the respondent established a defense to the summons ending in 63J but failed to establish a defense to the summons ending in 64L. Accordingly, the summons ending in 63J is dismissed and the summons ending 64L is sustained with the imposition of the mandatory standard penalty.

Ilene Sussman

12/09/2025

12/09/2025

Ilene Sussman, Judicial Hearing Officer

Date



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Ilene Sussman

12/09/2025

12/09/2025

Ilene Sussman, Judicial Hearing Officer

Date