



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: 039137389H et al. (1 Summons)

DEPT OF BUILDINGS,

-against-

BRUKLYN BUILDERS INC

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
039137389H	Dismissed	02/04/2025	303 EAST 44 STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B2P7	Misc. BC-Chapter 33	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Summons 039137389H alleges a Class 2 violation of miscellaneous section(s) of Chapter 33 of the New York City Building Code. In the summons, the Issuing Officer (IO) affirmed that, at the time and place of occurrence, he observed sidewalk shed (SWS) (belonging to 307 E. 44th St) altered not according to plan in order to commence construction operation (drilling rig) at 303 E. 44th Street. This site is now working below adjacent property (307 E. 44th Street). Façade work. BC 3301.2.

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 contractor and/or other authorized person on site to accept." Thereafter, he posted a true copy of the summons to the "information panel" of the building.

Petitioner, the Department of Buildings (DOB), appeared by Anuj Vaidya, who relied on the Issuing Officer's statements on the summons, and submitted photographs taken at the time of inspection. 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, Brooklyn Builders Inc., appeared by FRANK TAMBERINO, Esq.

Respondent's representative moved to dismiss the summons for improper service, contending the IO's statements on his affirmation were conclusory and failed to describe how he made his determination no authorized person was present prior to affixation. Citing *DOB v. Sunshine Constr USA Inc.*, Appeal No. 2400013 (March 28, 2024), he also moved to dismiss the summons for charging an incorrect provision of law, contending that the violation details failed to establish a violation of BC § 3301.2 under either prong of the statute.

Petitioner replied that service of the summons was proper, and that the IO's statements on his affirmation of service established the required reasonable attempt at personal service prior to posting. On the merits, he argued as follows: Chapter 33 of the BC requires maintenance of sidewalk sheds. If a sidewalk shed is not built according to plan, it is a violation under the first prong of BC § 3301.2; and, if a sidewalk shed is on public property, it is a violation under the second prong of BC § 3301.2.

Charter § 1049-a(d)(2) permits service of a summons by affixing it in a conspicuous place to the cited premises after making a reasonable attempt to deliver it to a person authorized to accept service on behalf of a respondent at the premises. Here, Petitioner's case on service relies solely on the IO's statements in his affirmation of service indicating that "no contractor and/or other authorized person on site to accept." 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 contractor and/or other authorized person on site to accept." The IO's statements are conclusory because he did not describe how he ultimately concluded that there were "no other authorized persons on site to accept" the summons on behalf of Respondent. Consequently, Petitioner failed to establish that the IO effectuated proper service pursuant to Charter § 1049-a(d)(2).

I credit the IO's statements on the summons.

Accordingly, the violation is dismissed for improper service.

K. Lawner

04/21/2026

04/21/2026

Kevin Lawner, Judicial Hearing Officer

Date