



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Frank Tamborino, Esq. 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039542706L et al. (1 Summons) DEPT OF BUILDINGS, -against- B SOSA ENTERPRISES CORP Hearing Date: 04/14/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$10,000.00**

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

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039542706L	Sustained	07/23/2025	42-38 27 STREET Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B131	BC 3307.3.1 (2008 code), 27-1021(a) & BC 3307.6.2 (2014 code)	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

For the reasons stated below, the summons is sustained.

Frank Tamborino, Esq. appears for the Respondent, and Rafeena Khairullah, Esq. appears for the Petitioner Department of Buildings (DOB), along with Issuing Officer (IO) Nysha Gambrell, Badge # 3083.

The sworn summons alleges violations of Building Code Sections 3307.3.1 (2008) and 3307.6.2 (2014), plus Administrative Code 27-1021(a), which address the failure to provide a sidewalk shed where required at an active job site. No sidewalk shed in place to protect pedestrians, workers, and property if material were to fall during delivery.

The IO credibly states that she responded to a 311 complaint, and she observed material being hoisted in the air without a sidewalk shed in place. The material was being hoisted by a crane. No safety netting or shed was in place, and she noticed a partial stop work order at the site. There was no sidewalk shed at exposures 1 and 4. She points to her evidence package, which includes the overview complaint and dozens of photographs. Specifically, photographs 8-10 show the crane, with a sidewalk shed to the left of such forklift, but nowhere near the location of the lifted material. She states that such material was a combination of plywood and metal, and there was no shed or netting to protect people from the potential of falling material.

On cross-examination, Respondent's attorney asks the IO for a specific provision where such a shed requirement is located, and she responds with BC 3307.4.7. He questions why she did not charge this provision. Respondent's attorney does not submit a substantive defense, but argues that the summons should be dismissed because the wrong rule of law is charged, claiming it should have been BC 3307.4.7, which states that In an area where a material hoist, personnel hoist, hoistway, chute, or hoisting zone is located, a solid opaque fence or barrier shall be provided. Such fence or barrier shall be securely attached to the sidewalk shed or equivalent overhead structure, and shall extend from the level of the ground to the deck of the sidewalk shed or equivalent overhead protection.

In rebuttal, Petitioner's attorney states that the correct rule of law is alleged, and the situation here where material is being hoisted over a fence encompasses the safety protection of sidewalk sheds for new construction, and the building in question is eight stories and 40 feet, so the rules alleged are applicable. She further adds that there is no dispute that the sidewalk shed is not in place. She also points to page 14 in the evidence package where a shed is part of the safety plan, in addition to page 25 where such a shed was drawn up in the building plans but was never built. The IO adds that once a storage work zone area is in place, it is incumbent upon Respondent to ensure that a sidewalk shed is there for protection from moving materials from the street and site. Page 45 also references where the sidewalk shed should have been.

In response, Respondent's attorney reiterates that a sidewalk shed is not required over a forklift, and if anything, it should have been brought under BC3307.4.7..

Building Code 3307.3.1 states that Sidewalk sheds shall be provided as required by Section 3307.6, and 3307.6.2 dictates where such a shed is required, in relevant part, shall be installed and maintained to protect all sidewalks, walkways, and pathways within the property line of a site, and all public sidewalks that abut the property, as follows:

1. When such sidewalk, walkway, or pathway is to be located immediately below a scaffold, mast climber, or chute. The sidewalk shed shall be installed prior to the installation of such equipment and shall not be removed until such equipment has been dismantled and/or removed from the area being protected;

2. When a structure higher than 40 feet (12 192 mm) or greater is to be constructed, and the sidewalk, walkway, or pathway is within a perpendicular distance from the new structure that is equal to or less than half the height of the new structure. The sidewalk shed shall be installed when the structure reaches the planned height of the shed. Such shed shall not be removed until the structure is enclosed, all exterior work has been completed...

Further, Administrative Code 27-1021(a) also addresses the 40 feet requirement.

I find the sworn summons, along with the Issuing Officer's testimony and documentary evidence to be clear, credible and consistent. Petitioner DOB has set forth a prima facie case for this violation in that the photographs clearly show that there is no sidewalk shed in this potentially dangerous area, and such a shed shall be constructed to protect all sidewalks, walkways, and pathways, which all need protection in the face of this forklift. In contrast, Respondent's attorney takes a very narrow approach and claims that a sidewalk shed is not required over a forklift. What he disregards is the fact that a forklift is moving and it plays a key role in the construction site carrying heavy debris that is capable of falling out of the forklift and onto the ground where pedestrians and workers are walking and present, in addition to property damage of neighboring buildings. The above provisions envision the safety of the entire site to protect the public from the potential of falling material. It is clear from the photos that a shed is not present, plus it is curious that such a shed was included in the original drawings, and never came to fruition. As such, the summons is sustained.

Janine Azriliant

04/14/2026

04/14/2026

Janine Azriliant, Judicial Hearing Officer

Date