



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 0219472835 et al. (1 Summons) DEPT OF TRANSPORTATION, -against- CASA DEL MAR RESTAURANT Hearing Date: 08/25/2025 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
0219472835	Dismissed	08/21/2024	1779 WEBSTER AVE Bronx

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ADS3	34RCNY 5-02(A)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone on August 25, 2025. Petitioner appeared through Keith White. Respondent Casa del Mar Restaurant appeared through attorney Caroline Kane.

Respondent was charged with violating 34 RCNY 5-02(a) after the issuing officer observed Respondent operating a sidewalk café without a license and revocable consent and without an application on file with Petitioner as of the final registration date of 8/3/24.

Petitioner submitted into evidence a copy of the summons and affidavit (certificate) of service and four photographs of the café

and the summons being posted therein. See Pet. Ex. A. Respondent submitted into evidence before and after photographs of the parking lot where the café is located and a tax lot map of the area. See Resp. Ex. A.

Respondent argued that the alleged sidewalk café is not on a public sidewalk but instead on the site of a former parking lot next to the cited premises. Attorney Kane also noted that the alleged sidewalk café/parking lot is an entirely different lot which is separately zoned.

34 RCNY 5-01 defines a "sidewalk café" as "a portion of a ground floor restaurant that is located on a public sidewalk or sidewalk widening in front of the restaurant and that is designed and operated pursuant to 34 RCNY §§ 5-02 through 5-12."

Section 5-02(a) permits the establishment and operation of such a sidewalk café "upon the sidewalk or sidewalk widening of such street in an area immediately adjacent to its premises, or a roadway cafe upon the roadway adjacent to the curb in front of such ground floor restaurant, or both..." only with a license and revocable consent by the DOT Commissioner

I credit the IO's sworn allegations that Respondent was operating a sidewalk café without license. In rebuttal, I credit Respondent's argument and evidence that the café in question is not on the public sidewalk but instead on a strip of the property that seems to previously have been used for parking, as it connects to the Webster Avenue side of the premises through the back parking lot of the premises which fronts Carter Avenue.

As Petitioner has not carried the burden of proving that the Respondent operates its café on the sidewalk or in any other manner that would require licensure by the Commissioner, I find no violation of Section 5-02(a) and dismiss the summons.



08/26/2025

08/26/2025

Charles Simpkins, Hearing Officer

Date