



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

MATTHEW WHITENING 592 PACIFIC STREET BROOKLYN ,NY 11217	Summons No: 037029819H et al. (1 Summons) DEPT OF BUILDINGS, -against- 1185 RIVER AVENUE LLC Hearing Date: 01/03/2025 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
037029819H	Dismissed	10/01/2024	1185 RIVER AVENUE Bronx

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B179	AC 1RCNY-MISC,RS-MISC	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Petitioner, the DOB, appeared by Daniel Brickman Esq. Respondent appeared by its attorney, Matthew Whintening, Esq. Both parties appeared by telephone.

Respondent was charged with a Class 1 Misc. violation on October 1, 2024 pursuant to 1 RCNY 103-16 for failing to submit an initial observation report.

Mr. Brickman stated that the Petitioner was resting on the Summons.

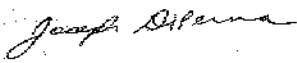
Mr. Whitening argued that the cited statute applies to parking structures and that the cited property is a parking lot only with no building structure upon it. Mr. Whitening submitted four photos of the parking lot (Resp. Ex. A). The photos depict a parking lot with cars and no buildings at the location.

Mr. Brickman did not object to Respondent's evidence nor did he offer a rebuttal to the defense.

1 RCNY 103-16 states (Relvant parts in bold)

(a) **Prior to the first required condition assessment of a parking structure** required by Article 323 of Chapter 3 of Title 28 of the Administrative Code and 1 RCNY § 103-13, **the owner of the building in which a parking structure is located** and whose condition assessment report is due as set forth in item (B) or (C) of subparagraph (v) of paragraph (4) of subdivision (c) of 1 RCNY § 103-13, **must have a one-time initial observation of the parking structure** performed by or under the direct supervision of a qualified parking structure inspector ("QPSI"), as defined in 1 RCNY § 101-07. The results of such initial observation must be filed with the Department by August 1, 2024 on a form provided by the Department.

I credit Respondent's evidence. I find that a valid defense was raised. The cited law attends to parking structures. There are no building structures on the site. Therefore, the Respondent had no legal dute to submit an initial observation report. Accordingly, the Summons is dismissed.

	
01/09/2025	01/09/2025
Joseph Diperna, Hearing Officer	Date