



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Sargo, Esq. 592 Pacific St, 1FL Booklyn,NY 11217	Summons No: 0219482185 et al. (1 Summons) DEPT OF TRANSPORTATION, -against- MIMIS PIZZA Hearing Date: 04/28/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$500.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0219482185	Sustained	09/06/2024	217 EAST 86TH STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ADS3	34RCNY5-02(A)	Sustained	\$500.00

Findings of Fact & Conclusions of Law

Introduction

Petitioner, the New York City Department of Transportation, charges Respondent, Mimis Pizza, with a repeat violation of Section 5-02(A) of the Rules of the City of New York ("RCNY"), for operation of a sidewalk cafe without a license or revocable consent. The summons states that this is a repeat violation, and a first offense occurred on or around August 15, 2024.

Both parties attended a telephonic hearing on Wednesday, August 14, 2024. Paul Steward appeared for Petitioner. Michael Sargo, Esq. appeared for Respondent, and waived an Issuing Officer's appearance. Both parties submitted documentary

evidence (in file).

For the following reasons, the summons is SUSTAINED.

Evidence and Arguments

Respondent moved to dismiss the summons on two grounds. First, Petitioner failed to state a *prima facie* case, as no details of the first offense violation was provided on the summons. Second, Respondent tenant should not be held liable, instead, the property owner, which is a different entity, should be held accountable for this violation.

In response, Petitioner argued that the property did not operate the pizzeria business. Respondent was identified by its DOHMH number and operating the pizzeria, therefore, the building owner will not be held accountable for operating the pizzeria. Petitioner moved to amend the violation from a second-offense violation to a first offense violation. No objection from Respondent on Petitioner's motion to amend. Petitioner's motion to amend was granted.

Discussion

34RCNY § 5-02(a) provides as follows:

"Requirement for a License and Revocable Consent. Any person owning, leasing, managing or operating a ground floor restaurant upon property which abuts upon any street may establish and operate a sidewalk cafe 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, provided that such sidewalk cafe or roadway cafe must be granted a license and a revocable consent by the Commissioner, and provided further that a sidewalk cafe located entirely on a sidewalk widening must be granted a license and consent for the use of such sidewalk widening as a sidewalk cafe by the Commissioner."

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons details, affirmed by the Officer under penalty of perjury, was sufficient to establish Petitioner's *prima facie* case.

I credit the summons details and Petitioner's evidence. Petitioner stated a *prima facie* case. I also credit Respondent's documentary evidence. Respondent established that the property's owner is a different entity and not Respondent. However, I am not convinced by Respondent's arguments. Respondent did not challenge or dispute the violation details. As such, Respondent failed to refute the allegation or establish a defense.

Conclusion

Accordingly, the summons is sustained, and a statutory penalty of \$500 is imposed upon Respondent.



05/02/2025

05/02/2025

Geoffrey Luan, Hearing Officer

Date