



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 035670805H et al. (1 Summons) DEPT OF BUILDINGS, -against- E.N.Y. PLAZA LLC Hearing Date: 01/27/2025 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
035670805H	Sustained	03/07/2023	1040 East New York Avenue Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B1E4	28-302 .5	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

The summons alleges a class 1 violation of NYC Administrative Code 28-302.5 in that respondent failed to institute and provide safety measures.

Malkar Amare, Esq appeared for the petitioner, NYC Department of Buildings. Inspector Khan, Badge #3452, appeared on behalf of the petitioner.

Andre Autz Esq. appeared for the respondent, E.N.Y. Plaza LLC, and denied the violation.

Petitioner relied on the sworn statement of the issuing officer and submitted supporting documentation.

Respondent acknowledged he was not disputing the factual allegations but challenged the class of the violation and contended that immediate repairs were not necessary and that the violation did not rise to a class 1. Respondent contended that additional safeguards were not required as the conditions did not warrant it. Alternatively, respondent requested a change to the provision of law. Respondent submitted supporting documentation.

Petitioner stated this was a per se class 1 violation and maintained the violation.

NYC Administrative Code 28-302.5 provides, in pertinent part, "Upon the notification to the department of an unsafe condition, the owner, the owner's agent or the person in charge shall immediately commence such repairs, reinforcements or other measures as may be required to secure public safety and to make the building's exterior walls or appurtenances thereof conform to the provisions of this code.

1. All unsafe conditions shall be corrected within 90 days of filing the critical examination report.
2. The registered design professional shall reinspect the premises and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the building have been corrected."

Class 1 violations are those deemed to be immediately hazardous. Immediately hazardous violations are those specified as such by the New York City Construction Codes, or those where the violating condition poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action.

The violation issued here is not subject to mitigation so correction, even if timely, does not alter the penalty.

"When challenged at the hearing, Petitioner generally bears the burden to prove the classification of a violation as it is an element of the charge. See NYC v. Beit Ohr, Appeal No. 0900009 (July 14, 2009). Nonetheless, Petitioner is not required to prove classification where the Code expressly designates only one classification for a charge... This violation was properly designated a Class 1 violation per the Code and neither the Board nor the JHO has the authority to find that this matter did not warrant that designation. See DOB v. Martucci Development Inc., Appeal No. 2301782 (January 25, 2024)." See DOB v. Lynsey Associates LLC, Appeal No. 2401452(December 19, 2024)

The Board has no authority to rule on DOB's issuance, enforcement, or certification policies or procedures. DOB v. Fresh Meadows Childrens Farm L, Appeal No. 2200483(June 30, 2022)

I credit the petitioner's evidence and the factual allegations in the summons which support a violation of the cited code section. I find that the respondent failed to establish a defense to the violation. Accordingly, the summons is sustained, and the mandatory penalty is imposed.

Ilene Sussman

02/03/2025

02/03/2025

Ilene Sussman, Hearing Officer

Date