



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039089012Y et al. (1 Summons) DEPT OF BUILDINGS, -against- 388 W INC. Hearing Date: 02/07/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$1,250.00**

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

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039089012Y	Sustained	06/23/2023	1180 67 STREET Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B102	AC 28-301.1	Sustained	\$1,250.00

Findings of Fact & Conclusions of Law

Petitioner, Department of Buildings ("DOB") was represented by Jennifer Clouden, Esq. Respondent, 388 W INC., was represented by Phoebe Dossett, Esq. at telephone hearing on February 7, 2025.

Respondent was charged with a class 1 violation of AC § 28-301.1, for failure to maintain building in code-compliant manner. The summons states, "At time of inspection observed fire escape exit passageway from back of the building to street 12 Avenue obstructed by padlocked gate. Also household items stored on fire escape at rear on the building." The first hearing date was schedule on 09/06/2023.

Petitioner relied on the sworn statement by the issuing officer. In support of the violation, Petitioner submitted DOB Property Profile Overview, OATH/ECB Violation Details, Overview of Complaint #: 3915738, and six photographs (Marked as Petitioner's Exhibits 1-4). Petitioner also submitted evidence compliance that Respondent submitted to DOB.

Respondent's counsel challenged class and stated the appropriate designation for this summons should be class 2. Respondent's counsel argued the gate is not an exit passageway, as this is not an interior corridor of the building. There was nothing obstructing the fire escape and the tenants still had access the fire escape to the rear yard. Respondent's counsel also challenged service, and argued the affidavit of service is conclusory. It does not state if the issuing officer tried to call the super of the building. There was no reasonable attempt made to serve the main respondent.

In rebuttal, Petitioner stated gate is an egress for the building. In case of an emergency, the tenants of the building would not be able to leave the rear yard if the gate is locked. Petitioner stated service was proper. Petitioner submitted Appeals No. 2401109, 2400766, and 1300835. Petitioner stated a reasonable attempt was made by the issuing officer to serve the summons, when the bell was rung and there was no response of authorized persons on site.

In response, Respondent's counsel stated the issuing officer is not here to supplement the affidavit of service.

I find that service was proper, and Issuing Officer Aghayev made a reasonable attempt at personal delivery of the summonses before resorting to "affix and mail" service. Charter §1049-a(d)(2) permits service of a summons by affixing it to a conspicuous place in the cited premises after making a reasonable attempt to deliver it to a person in the premises upon whom service may be made as provided in Article 3 of the CPLR or BCL Article 3. It has been previously held that a reasonable attempt at service can be established where the issuing officer describes what attempts were made to ascertain whether anyone authorized to accept service was present at the cited premises, see 648 Myrtle Ave LLC, 2000853, which Petitioner can establish through an issuing officer's credible testimony about his or her usual practices. See DOB v. Duane 131 LLC, Appeal No. 1800655 (August 23, 2018) (finding reasonable attempt established by IO's credible testimony about his usual practices at effectuating service). Here, Petitioner relied on the affirmation of service, where Inspector Aghayev described his efforts which consisted of ringing the bell, when no building owner and/or other authorized person was present at site to accept service, before posting the summons on the front door. I find that a reasonable attempt was made by the Inspector Aghayev and that service was proper.

Class is an element of the charge, which Petitioner has the burden to prove when challenged at the hearing. See NYC v. Beit Ohr, Appeal No. 0900009 (July 14, 2009). I find that Petitioner met its burden. The allegations in the summons were supported by the issuing officer's photographs. Inspector Aghayev's observations established a risk of severe harm that warranted immediate correction action and designation as Class 1, immediately hazardous.

The affirmations of the inspector in the summons are credited and establish the violation in the summons. Respondent failed to deny the allegations or establish a valid legal defense. The summons is sustained, and the standard penalty is imposed.

 02/11/2025	02/11/2025
Kiara Ampuero, Hearing Officer	Date