



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 039112581R et al. (1 Summons) DEPT OF BUILDINGS, -against- PROSPECT HEIGHTS 637-641 REALT Hearing Date: 01/27/2025 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
039112581R	Sustained	04/24/2024	637 ST MARKS AVENUE Brooklyn

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

Findings of Fact & Conclusions of Law

The summons alleges a class 1 violation of NYC Administrative Code 28- 301.1 in that respondent failed to maintain the building in a code compliant manner.

Malka Amar, Esq. appeared for the petitioner, New York City Department of Buildings. Inspector Sahansra, Badge #3607, testified for the petitioner.

Andre Autz, Esq. appeared for the respondent, Prospect Heights 637-641 Realt.

Petitioner submitted photographs taken by the inspector. The inspector he was act the premises to inspect due to a complaint. The inspector described his observations which mirrored the sworn statement on the summons. The inspector stated his reasons for issuing the violation as a class 1 and testified as to service of the summons. The inspector stated that he spoke to a tenant at the premises who stated the super was not on site. The inspector stated that he walked around and did not see anyone so he posted the summons. The inspector stated that he asked the tenant the follow up questions.

Respondent challenged the service of the summons contending the inspector did not clarify if he asked the required questions as individuals other than super can accept service. challenged the class of the violation contending that the seriousness of the conditions did not rise to an immediate hazard.

Petitioner contended that the officer made a reasonable attempt at service before posting in that the tenant said he did not have anything to do with management and the inspector asked for the super who would. Petitioner maintained the class of the violation for the reasons cited by the inspector. Petitioner recommended the standard penalty.

NYC Administrative Code Section 28-301.1 provides, in pertinent part, that "All buildings and all parts thereof and all other structures shall be maintained in a safe condition."

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 Charter merely requires that a reasonable attempt be made to deliver the summons to a person *in the premises* upon whom service may be made prior to resorting to "affix and mail" service. See *NYC v. 157 Realty Corp.*, Appeal No. 1300236 (July 25, 2013) (finding that where tenants informed the IO that no one was present in the premises authorized to accept service, the IO was not required to make any further attempt at personal service prior to affixation of the summons, irrespective of respondent's status as a corporation).

I credit the factual allegations in the summons, the petitioner's evidence and the inspector's testimony which support a violation of the cited code section. I find service was proper in this instance. Further, I find a class 1 designation was proper in this instance as loose bricks from a height pose an immediate danger to pedestrians. I find respondent failed to established a defense to the violation. Accordingly, the summons is sustained and the mandatory penalty is imposed.

Ilene Sussman

02/05/2025

02/05/2025

Ilene Sussman, Hearing Officer

Date