



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Chia-Han Lin - Nacmias Law Firm, PLLC 592 Pacific Street New York, NY 11217	Summons No: 0216392285 et al. (1 Summons) MISC, -against- 305 UNION ST STATION INC DBA KITTELY Hearing Date: 11/12/2024 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$50.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0216392285	Sustained	10/09/2022	305 SMITH STREET Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AN95	24-244 (B)	Sustained	\$50.00

Findings of Fact & Conclusions of Law

Respondent appeared by its authorized representative Chia-Han Lin to respond to the charge of playing sound from a speaker outside of a business for commercial/business purposes. The Summons was issued on October 9, 2022.

Citizen Complainant Eric Eisenberg rested on the summons and stated that he is not submitting any evidence. Mr. Eisenberg also stated that he made an evidentiary request prior to the hearing and requested proof that Mr. Lin was authorized to appear on behalf of Respondent.

In response Mr. Lin stated that (i) he was authorized to appear for Respondent and submitted a copy of the OATH

Authorization For Registered Representative to Appear form dated November 6, 20024 and (ii) Respondent has no evidence to submit in response to the summons and the charge therein.

Mr. Lin also stated that Respondent denies the charge with no rebuttal but that the penalty amount should be limited to \$50.00.

Mr. Eisenberg disagreed and stated that the \$50.00 penalty was no longer in effect and was only applicable during a 24 day period and that therefore the penalty amount imposed should be in the amount \$440.00. In support of this argument Mr. Eisenberg submitted copies of (i) a verified answer that was filed by the respondents in the case entitled Dietmar Detering et. al. v. New York City Environmental Control Board, Office of Administrative Trials and Hearings, The New York City Council et. al., Index No 159847/23 (New York County).

Mr. Lin disagreed and pointed to New York City Local Law 16/2024 and reiterated that the penalty amount is \$50.00.

I credit Respondent's position. Thus in the Court's decision issued in Detering supra (2024 NY Slip Op 32030(U) (Sup. Ct. N.Y. June 13, 2024), the court found that the Board resolution regarding the imposition of a zero penalty was impermissible as it constituted rulemaking, and that the resolution may not be relied upon when issuing determinations. However the foregoing does not affect Local Law 1194-A, which capped the maximum penalty for §24-244(b) violations issued **prior to January 6, 2024**, to a maximum of \$50.

Section 2 of the New York City Local Law 16/2024, provides:

Notwithstanding the amount of the civil penalties described in table 1 of paragraph 5 of subdivision (b) of section 24-257 of the administrative code of the city of New York, the maximum amount of a civil penalty authorized to be imposed for a violation of subdivision (b) of section 24-244, in any proceeding commenced prior to the effective date of this local law pursuant to section 24-261 of such code for which a final decision and order has not been rendered prior to such date, shall be \$50.00.

As the summons was issued on October 9, 2022 and prior to January 6, 2024 the penalty imposed is \$50.00.

Accordingly the summons is **sustained with a penalty imposed of \$50.00.**

<i>Melanie Finkel</i>	
11/18/2024	11/18/2024
Melanie Finkel, Hearing Officer	Date