



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Michael Sargo
592 Pacific Street 1st Floor
Brooklyn, NY 11217

Summons# : 035679538N et al. (2 summonses)

DEPT OF BUILDINGS,

-against-

137 LINDEN LLC.

Hearing Date : 4/24/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 7,300.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035679538N	Sustainer	08/09/2023	137 Linden St , Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1G1	28-207 .4.4 28-207.4.5	Sustained	2,500.00

Total Penalty for Summons: 2,500.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035679539P	Sustained	08/09/2023	137 Linden St. , Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1F9	28-201 .1	Sustained	4,800.00

Total Penalty for Summons: 4,800.00

Findings of Facts & Conclusions of Law

The consolidated hearing on summonses 035679538N and 035679539P was conducted by telephone via Court Call on April 24, 2025. Dallas Mahan represented Petitioner. Issuing officer Albir Nakhla (badge #3375) testified. Respondent appeared through attorney Michael Sargo.

Summons 035679539P charges a class 1 violation of Administrative Code (Code) §§ 28-201.1 & 28-207.4. The issuing officer (IO) affirmed observing on August 9, 2023: "Failure to obey vacate order from the Commissioner per 28.207.4: Noted at the 3rd floor Apt#3 has been reoccupied and failure to obey vacate order #B336/19 issued on 07/17/2019."

Summons 035679538N charges a class 1 violation of Administrative Code (Code) § 28.207.4.5 (2022 Code) & § 28-207.4.4 (2014 Code). The issuing officer (IO) affirmed observing on August 9, 2023: "Removed or defaced a written posted vacate order. Noted: at the time of inspection a written posted vacate order has been removed from the front door, vacate order #B336/19 issued on 07/17/2019 and it was posted and still active."

Petitioner supplemented the summons with testimony from the IO. Regarding his inspection and the two summonses that he issued, the IO testified as follows: The two summonses were issued on a re-inspection. At that re-inspection, the IO met a woman who said she resides in the third floor unit. The IO observed no vacate sticker at the main door of the building. The IO issued the summonses for the removal of the vacate sticker and for occupancy in contravention of the vacate order. The IO provided photos from his inspection (PX 1) showing the following: front entrance with no vacate order, PX 1 at 1-2; woman who IO spoke with at front door, id. at 3; door for apt 2 with no vacate sticker, id. at 4; door for apt 3 with no vacate sticker and personal belongings outside door, id. at 5-6; copy of the two summonses issued by the IO for his August 9, 2023 inspection, id. at 7-8.

The IO provided the following testimony regarding the previous re-inspection that was conducted by a different officer on June 30, 2021: NYC Building records show an original complaint received July 11, 2019. See PX 2 at 8. NYC Building records also show a re-inspection on June 30, 2021 after a complaint. See PX 3. The IO who conducted the June 30, 2021 re-inspection included photos in DOB records showing occupancy of apartment number 3 and no vacate order on the door. See PX 2 at 7, 9-12. These photos also show that the vacate order dated July 17, 2019 was re-posted by the IO at the front door and an internal apartment door. See PX 2 at 9, 10. The IO testified that DOB's internal system identifies these photos as relating to the June 30, 2021 re-inspection and provided a screenshot of that access link from DOB's system which shows the address and date as well as the name of the inspector. See PX 5 at 3. From PX 4, the IO also noted that the original violation posting of vacate order #B336/19 was July 23, 2019 with the DOB record noting "posted 24hr vacate notice on front door."

Petitioner also submitted an April 18, 2022 OATH hearings division decision regarding summonses issued to Respondent for occupancy in violation of the July 17, 2019 and removal of that vacate order with a June 30, 2021 date of occurrence. See PX 2 at 2-5. Each violation was dismissed on the grounds that the DOB failed to establish notice to Respondent of the vacate order. Id. at 4.

Petitioner argued that notice to Respondent of the vacate order has been established. The vacate order was re-posted at the time of the re-inspection June 30, 2021. As shown at PX 1 at 1, the DOB website records state in highlighted letters that "PARTIAL VACATE EXISTS ON THIS PROPERTY, " which Petitioner contends establishes notice pursuant to Code § 28-207.4.2. Respondent received a prior summons regarding the vacate order and its removal, which established knowledge of the existence of the vacate order. See PX 1 at 2-5.

Respondent contended that notice of the vacate order was not provided as required. In support, Respondent submitted a copy of the deed showing that Respondent became owner of the property February 24, 2020, which is after the initial July 17, 2019 vacate order. Respondent further contended that Petitioner has not established that the vacate order had been re-posted after Respondent became owner of the property. And that Petitioner bears the burden to show that the vacate order had been re-posted. Respondent further contended that there is insufficient evidence to show that the vacate order was re-posted by Petitioner as part of the June 30, 2021 re-inspection.

In support, Respondent relies on DOB v. 861 Holdings LLC Appeal No. 2200086 (March 24, 2022), which held that when respondent asserts that it had no notice of the vacate order (in that case because the vacate order issued prior to respondent's purchase of the property), Petitioner bears the burden to show that it complied with the requires of Code § 28-207.4.2 for providing notice to a subsequent owner of the existing vacate order. At that time, Code § 28-207.2 required Petitioner to file the vacate order with the county clerk or to file it within its own department and make it accessible to the public in order to establish the required notice to a subsequent owner. Id. The decision rejected a BIS printout that referenced

a vacate order as insufficient actual or constructive notice to the respondent. Id.

Code § 28-201.1 provides, in pertinent part, that “[i]t shall be unlawful to fail to comply with an order of the commissioner or to violate any order of the commissioner issued pursuant to this code[.]”

Code § 28-207.4 regarding vacate orders provides: “Where there is a condition that is or may be imminently perilous, dangerous or detrimental to life, public safety or property, or where an order to remedy such condition has not been immediately complied with, or the commissioner determines that an emergency exists requiring such action, the commissioner may order and immediately cause any building, structure, place or premises to be vacated. The vacate order may be given verbally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons executing the work. Any verbal order to vacate shall be followed promptly by a written order and shall include the reason for the issuance of the vacate order. The written vacate order shall include the date by which the owner shall certify the correction of any and all violations giving rise to such vacate order.”

Code § 28-207.4.5 regarding tampering (2022 code) provides: “It shall be unlawful to remove or deface a written posted vacate order from the location where it was affixed unless and until such vacate order has been rescinded by the commissioner. The owner or other person in control of the location shall ensure that the vacate order remains posted until rescinded by the commissioner.”)Code § 28-207.4.4 in the 2014 Code is the same.)

The current version of Code § 28-207.4.2 regarding enforcement of vacate order provides in relevant part: “All orders issued pursuant to section 28-207.4 shall be posted upon the premises and made available to the public. . . . A copy of the vacate order may be filed with the county clerk of the county in which the premises is located. A record of the vacate order shall be maintained by the department. When active, the vacate order shall also be documented on the department's website, which is accessible to the public. Such documentation on the department's website shall constitute notice of any active vacate order to any owner or subsequent owner, who shall be subject to such order.” This version became effective June 11, 2023 after amendment by Local Law 2023/77.

I credit the IO's testimony and documentary evidence submitted by Petitioner. This evidence establishes that there was a vacate order dated July 17, 2019 and posted prior to Respondent becoming owner of the property on February 24, 2020. Upon re-inspection on June 30, 2021, the vacate order was missing and re-posted. At that time, Respondent owned the property. This re-posting of the vacate order on the premises provided notice to Respondent of the vacate order. As the owner, Respondent also was obligated to “ensure that the vacate order remains posted until rescinded by the commissioner.” See § Code § 28-207.4.5. The vacate order subsequently was removed and was missing upon IO Nakhla's August 9, 2023 inspection. See *DOB v Gafar Olijide Oyewo*, Appeal No. 1901578 (Nov. 21 2019) (finding owner responsible for removal of vacate order). At that time, the identified premises was occupied in violation of the vacate order and still owned by Respondent. This evidence is sufficient to establish Petitioner's prima facie case as to each violation.

Respondent failed to refute this evidence or establish a defense. Respondent contended that the vacate notice was not re-posted, but this contention is contravened by the evidence, which shows that the vacate order was re-posted at a time when Respondent owned the property. Further, Petitioner also established notice of the vacate order pursuant to Code § 28-207.4.2, which provides that “documentation on the department's website shall constitute notice of any active vacate order to any owner or subsequent owner, who shall be subject to such order.” Petitioner's PX 2 at 1 established such documentation with its prominent display of notice regarding a partial vacate order. Respondent's reliance on *DOB v. 861 Holdings LLC* Appeal No. 2200086 (March 24, 2022) is misplaced, because that case did not deal with the facts presented here, namely the re-posting of the vacate order while respondent owned the property, and pre-dates the change to Code § 28-207.4.2 providing for notice to owners and subsequent owners through the department's website.

Each summons consequently is sustained.

**IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE
COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION
DATE OR 35 DAYS IF MAILED.**

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to www.nyc.gov/citypay/oath

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

**CAN I DO
COMMUNITY
SERVICE?**

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

**COMPLETION OF
COMMUNITY
SERVICE**

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/Pro Se Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

How to Contact the Help Center to Schedule Community Service:

Manhattan: (212) 436-0845 CSmanhattan@oath.nyc.gov
Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
Queens: (718) 393-6044 CSqueens@oath.nyc.gov
Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
Staten Island: (718) 876-2314 CSstatenisland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

**NON-DISCLOSURE
FOR SUMMONSES
ELIGIBLE FOR
COMMUNITY
SERVICE**

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

**IF YOU DISAGREE
WITH THE DECISION,
YOU MAY APPEAL IT**

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at www.nyc.gov/oath/appeal. Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **may need** to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

**APPEAL BY
ENFORCEMENT
AGENCY**

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,
visit OATH's website www.nyc.gov/oath
or call 1-844-OATH-NYC

112018

Michael Gallagher

05/13/2025

05/13/2025

Michael Gallagher, Hearing Officer

Date