



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Mathew Whitening 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039513245P et al. (1 Summons) DEPT OF BUILDINGS, -against- R & S Contracting NY Hearing Date: 11/14/2024 Hearing Location: Remote Type of Hearing: By Telephone
---	--

Total Penalty Amount: \$10,000.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039513245P	Sustained	02/16/2023	588 MARCY AVENUE Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B131	BC 3307.3.1 (2008 code), 27-1021(a) & BC 3307.6.2 (2014 code)	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

Respondent R & S Contracting NY appeared by authorized representative Matthew Whitening via telephone hearing on 11/14/2024. The petitioners appeared by Malka Amar.

The Summons alleges a Class 1 violation of BC 3307.3.1 (2008 code), 27-1021(a) & BC 3307.6.2 (2014 Code), "Failure to provide sidewalk shed required. ATOI, structural beams erected above 40ft at exposure 3 and no sidewalk shed was installed."

The Petitioners stated that they would be seeking the standard penalty, and they are resting on the summons. The

Representative argued that the summons should be dismissed because the code violation cited to primarily deals with a sidewalk that is open to the public and there is an exception to the rule when it is closed to the public. Here, as the summons indicates, the violation is cited to is at exposure 3, which is the backyard, and that is closed to the public. The Petitioners requested Proof from the Representative to substantiate that the sidewalk was in fact closed to the public. The Representative submitted into evidence Respondents exhibit A, which is a PDF that DOB had given to the Respondents at a prior hearing. The petitioners did not object to the evidence. The Representative stated that exhibit A shows that the sidewalk was in fact closed to the public, as you can see there are barriers preventing the public from entering the space. In rebuttal Petitioners submitted into evidence appeals 2400672 and 2201484, marked petitioners exhibit 1. The petitioners stated that the Respondents have not properly established the exception because they did not receive an order from the commissioner, and they did not show that the area was completely closed off to the public. The Petitioners highlighted the fact that in one of the photos, a pedestrian can clearly be seen in the work area.

I give credit to the statements made on the summons and find that the petitioners have established a prima facia case. Furthermore, the Court does not find the Representatives defense convincing. The Representative relies on photographs taken by the inspector to show that the sidewalk was closed to the public. However, the photographs are not convincing in showing that the sidewalk was closed. The photo does show orange barriers, but those orange barriers contain Gaps. Since the Representative did not present a credible legal defense to the violation, the Respondent is in violation of the alleged charge and the summons is sustained.



11/21/2024

11/21/2024

Muminur Rahman, Hearing Officer

Date