



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Caroline Kane, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street, 1st Floor Brooklyn, NY 11217	Summons No: 0703722636 et al. (1 Summons) DEPT OF TRANSPORTATION, -against- P CITYWIDE CONTAINER SERVICE COR Hearing Date: 04/28/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0703722636	Dismissed	10/17/2024	52 CHARLES STREET BW 7 AVE S AND WEST 4TH ST Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ADC9	34RCNY 2-14(F)(6)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted via telephone conference call on April 28, 2025.

Caroline Kane, Esq., attorney for Respondent, appeared at the hearing. Paul Stewart appeared on behalf of Petitioner DOT. The Summons alleges a violation of Code 2-14(f)(6) for failure to have proper street protection under commercial refuse container at all times. The Issuing Officer observed commercial refuse container having 1 of 4 metal wheels without proper street protection, wheel directly on roadway. Respondent failed to have proper street protection under commercial refuse container at all times.

Petitioner's representative submitted Inspector notes, photographs, and DOT permit. See Petitioner's Exhibits. Petitioner's representative stated the photographs show the commercial refuse container without proper street protection. Respondent's representative moved to dismiss the Summons and submitted an Affidavit from an employee of Respondent indicating proper protections were in place when commercial refuse container was placed on the roadway. See Respondent's Evidence. Respondent's representative stated Respondent was not obligated to maintain the street protection once the protection was put in place upon delivery on roadway. Petitioner's representative stated statute requires protection remain in place for entire time container is on roadway. Petitioner's representative argued commercial containers are too heavy to be moved or altered and therefore questioned how sufficient protections were missing if they had been placed there by Respondent. In rebuttal, Respondent's representative relied on DOT v Citywide Container Service Corp., Appeal No 2401456 (October 31, 2024) which found Respondent had no duty to monitor container to ensure continuing compliance with rule. In rebuttal, Petitioner's representative relied on DOT v Guma Construction Corp Appeal No 2301373 (January 25, 2024) and reiterated Respondent's obligations of proper street protection for commercial refuse containers.

34 RCNY 2-14(f)(6) states, in pertinent part, street shall be protected with proper covering to prevent damage before containers are placed on the street. Protection must remain in place for the entire time the container remains on the roadway. Placement of all protection shall be done upon delivery by the owner of the container.

I credit the summons details and find that the Petitioner has established a valid charge against the Respondent. Petitioner established its prima facie case through the IO's affirmed statement in the Summons. See 48 RCNY § 6-12(b). Petitioner's documentary evidence further supports Petitioner's case. Once Petitioner established its case, the burden shifted to Respondent to refute the charge or establish an affirmative defense. See 48 RCNY § 6-12(a). I credit the employee Affidavit establishing proper street protections were in place when cited commercial refuse container was initially placed on the roadway. I find Respondent container company did not have a duty to monitor its container to ensure continuing compliance with the cited rule after proper protections were in place upon initial delivery. See DOT v Citywide Container Service Corp., Appeal No 2401456 (October 31, 2024) I find Petitioner has not submitted credible evidence or proper legal authority that Respondent was under duty to monitor the commercial refuse container for compliance. Therefore, I find Respondent has sufficiently refuted the charge. The Summons is dismissed.



05/07/2025

05/07/2025

Randee Rubenstein, Hearing Officer

Date