



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: 0703742582 et al. (1 Summons) DEPT OF TRANSPORTATION, -against- CITYWIDE CONTAINER SERVICE CORP Hearing Date: 03/20/2025 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
0703742582	Dismissed	11/05/2024	260 Putnam Avenue between Bedford Avenue and Nostrand Avenue Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ADC4	AC 19- 123	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

CHARGES

Summons #0703742582 charges Respondent with violating NYC Administrative Code §19-123, alleging that on November 5, 2024, at 07:53am, on 260 Putnam Avenue between Bedford Avenue and Nostrand Avenue, Brooklyn, NY the issuing officer: "...I observed the above Respondent has a commercial refuse container stored on the roadway...without a valid DOT permit...."

Attorney Caroline Kane appeared at a remote hearing on March 20, 2025 as an authorized representative of Respondent. Michelle Heard appeared at the hearing as an authorized representative of Petitioner.

RELEVANT LAW

NYC Administrative Code §19-123 states in pertinent part:

"Commercial refuse containers. It shall be unlawful for any person using a commercial refuse container or the owner or lessee thereof to place or to permit the placement of such container on any street unless the owner of such container has obtained a permit therefor from the commissioner and unless such container is in compliance with the provisions of this section and the rules of the department in relation thereto...."

TESTIMONY

Ms. Heard relied on the summons and submitted photographs into evidence (Petitioner's 1).

Ms. Kane represented that Respondent did have a permit for the work done and submitted a permit, photographs, and Google Maps into evidence (Respondent's A 1-3). Ms. Kane noted that Respondent's permit is for 256 Putnam, which is next to the address in the summons, and argued that therefore the container, which is in front of 256, is covered by the permit. Ms. Kane further moved to dismiss on the grounds that the wrong party was cited in that the permit contractor should have been cited, not the container provider. Ms. Kane argued that when the receptacle is for construction activity, the owner of the receptacle is not responsible for pulling permits.

Ms. Heard argued that the container has to be stored directly in front of the premises as per the permit and submitted a GoogleMaps image into evidence (Petitioner's 2).

Ms. Kane argued that the container was at least partially in front of 256, and also argued about the positioning of the buildings.

Ms. Heard argued that Respondent took out a commercial refuse container permit s it is not for construction and submitted more Google photographs into evidence (Petitioner's 3 a-b).

Ms. Kane represented that Respondent took the commercial permit out just to place the receptacle on the street, but the contractor was responsible for getting the construction permit.

DECISION

The summons is dismissed.

As a threshold matter, the motion to dismiss is granted. The Appeals Board has found that when a container is used in relation to construction activity, the contractor, not the container owner, is responsible for maintaining the permits. Regardless of whether Respondent took out a commercial container permit to place the container, I find that said container was clearly being used for construction activity. Therefore, the wrong party was cited and the motion to dismiss is granted.

It is worth nothing that I credit the representations and evidence submitted by Respondent's Representative and find that it persuasively rebuts the sworn statements of the issuing officer as set forth in the summons as well as the evidence by Petitioner's Representatives. Specifically, I find that the permit Respondent had at the time of the summons covered the cited container, which appears to have been at least partially in front of the address on Respondent's permit, and that the there was no requirement in the permit that the container be centered in front of said premises. In fact, the permit's stipulations require that the container be positioned so as not to interfere with other construction and curb cuts etc, which it appears was done.

Accordingly, the summons is dismissed.

 04/01/2025	04/01/2025
Sharah Thomas, Hearing Officer	Date