



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Frank Tamberino, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 0703782530 et al. (1 Summons) DEPT OF TRANSPORTATION, -against- P CITYWIDE CONTAINER SERVICE COR Hearing Date: 06/26/2025 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
0703782530	Dismissed	12/20/2024	51 Street Between Avenue K and L Brooklyn

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

Findings of Fact & Conclusions of Law

The hearing was conducted via telephone hearing on June 26, 2025. Frank Tamberino, counsel for the Respondent, Citywide Container Service Corp. appeared and Inspector Michelle Heard appeared on behalf of Petitioner, DOT.

The Summons charges AC 19-123 for having a commercial refuse container on the street. Inspector Heard rested on the summons and submitted an evidence packet which contained photos. The Respondent made a motion to dismiss arguing that the container was being used for construction activity and not a refuse and submitted a sworn affidavit from an officer at Citywide who stated that the container was not functioning as a commercial refuse container and an OATH appeal.

§19-123 states the owner of a "commercial refuse container" is required to obtain a DOT permit before placing the container on the street. However, if the container is used for any activity for which a DOB permit and/or a DOT construction activity permit is required, the responsibility of obtaining the DOT permit falls to the contracting company. Such a container is not a "commercial refuse container," as defined in 34 RCNY Section 2-14(f). Consequently, the owner of the container may establish a defense to a violation of Code Section 19-123 by showing that the container was used for construction activity on the date of the violation. See NYC v. Skillman Contracting Inc. (ECB Appeal No. 1300460, August 29, 2013; NYC v. Citywide Container Service Corp. (ECB Appeal No. 1300183, May 30, 2013).

After reviewing the evidence, I find that the Respondent did establish a defense to the violation in showing that the container was being used for construction activity. Therefore, I am dismissing the summons.



07/11/2025

07/11/2025

Melissa Petrozza, Hearing Officer

Date