



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 037025466N et al. (1 Summons) DEPT OF BUILDINGS, -against- 2331 GLEASON AVENUE LLC Hearing Date: 08/02/2024 Hearing Location: Remote Type of Hearing: By Telephone
---	---

Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
037025466N	Dismissed	10/11/2023	2331 Gleason Avenue Bronx

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B187	28- 201.1	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

2331 GLEASON AVENUE LLC

037025466N

Respondent is charged with a Class 1 violation under NYC AC 28-201.1.

Jennifer Clouden, Esq. appeared on behalf of Petitioner, along with the issuing officer (IO), Yegal Shamash. Ms. Clouden had to leave in the middle of the hearing. Daniel Brickman, Esq. took over for her. Phoebe Dossett, Esq. appeared on behalf of

Respondent.

Initially, Ms. Clouden stated the referenced DOB violation had been dismissed, but the summons was issued because Respondent had not complied with the violation within 30 days.

Ms. Dossett argued the DOB violation is separate and distinct from the summons, and Petitioner must present evidence that the DOB violation references a Commissioner's Order with which Respondent must comply. She said there's no order to comply with in the summons. She said Respondent never received the referenced DOB violation containing an order. She said it's Petitioner's burden to show Respondent was served with a violation containing a Commissioner's Order. She said at the last hearing, she requested the Affidavit of Service (AOS) for the instant summons as well.

Ms. Clouden requested a second adjournment to get the AOS and for the IO, whom she could not reach initially. Said request was denied, and she was able to reach the IO when she reached out again.

Ms. Dossett was provided the AOS for the instant summons and acknowledges service was proper.

Ms. Clouden stated she had been mistaken, and the DOB violation was not dismissed. She submitted the DOB violation containing the Commissioner's Order referenced in the summons (P Ex 1) as well as the AOS for that violation (P Ex 2).

Ms. Clouden then had to leave the hearing, and Daniel Brickman joined.

Ms. Dossett objected to P Ex 2, as it is a separate document from P Ex 1 and electronically signed and not printed. She said she cannot link it with the actual DOB violation, which her client did not receive.

I note P Ex 2 is electronically signed by Inspector Andre Farrer, who also issued the relevant DOB violation, and P Ex 2 references P Ex 1. Ms. Dossett's objection is overruled.

Ms. Dossett then argued as per Appeal No. 2400683 DOB v. 27 BED STUY HOUSING DEVELOPMEN June 27, 2024, Petitioner was required to mail the violation to Respondent, as Respondent did not give permission for electronic delivery. She said as per NYC AC 28-209.2, the order must be served by mail or with permission from Respondent, be electronic delivery, and no such permission was granted.

The IO checked to see if it had been mailed and was told the unit had to research to find out. Mr. Brickman requested another adjournment to get the mailing. Ms. Dossett stated she was told Respondent had requested proof of service at the last hearing. The Court noted Mr. Brickman appeared at the last hearing and made an adjournment request at that time. His second adjournment request was denied.

Ms. Dossett said DOB only provided the violation with the order today, Respondent did not give permission for electronic delivery, and Respondent never received the violation with the order. She argued Respondent cannot be held liable for a Commissioner's Order which was not communicated to Respondent. She said Petitioner must prove there was a DOB violation containing a Commissioner's Order served on Respondent by mail. She said she has nothing to offer on the merits.

Mr. Brickman argued service of the predicate violation was properly effectuated, as Inspector Ferrar indicates in his AOS that he posted it. He said there is no need for Petitioner to produce proof of mailing. He said the Code does not say they need to show regular mailing at the hearing.

The IO said he got an email from the Department saying they are reviewing but there is nothing to show yet.

Ms. Dossett said Respondent is in the process of correction, but the burden is on Petitioner to present proof of mailing, which they have not done, and she offered nothing further.

Appeal No. 2400683 DOB v. 27 BED STUY HOUSING DEVELOPMEN June 27, 2024 reads in relevant part:

The Board affirms the JHO's decision but on a different basis. On this record, the Board finds that Petitioner failed to establish that the DOB violation containing the Commissioner's order Appeal No. 2400683 DOB v. 27 BED STUY HOUSING DEVELOPMEN p. 2 of 2 was served on Respondent. Per Code § 28-209.2, all orders issued by the Commissioner to correct an unlawful use or condition "shall be served by regular mail or, upon consent, electronically." Respondent challenged service of the cited DOB violation at the hearing. Petitioner had the opportunity to present proof of service at the hearing but failed to do so. Consequently, on this record, the Board finds that Petitioner failed to show that service of the Commissioner's order was effectuated as required by Code § 28-209.2, warranting dismissal of the violation of Code § 28-201.1.

Accordingly, the Board affirms the JHO's decision dismissing a Class 1 violation of Code § 28-201.1

§ 28-209.2 Contents and service of order.

All orders issued by the commissioner shall contain a description of the building, structure, premises, equipment or subject matter affected, and shall be designated by address where applicable. All such orders shall be served by regular mail or, upon consent, electronically. Such orders may be served by any officer or employee of the department, or by any person authorized by the commissioner. An order may be given orally, followed within a reasonable time by a written order as described in this section. Failure to comply with a commissioner's order within the stated time period shall be a violation of this code punishable by civil penalties or criminal fines and imprisonment as set forth in this code. Proof of compliance with a commissioner's order shall consist of certification as prescribed by the rules of the department.

I credit Ms. Dossett's argument and find as per Appeal No. 2400683, "Petitioner failed to show that service of the Commissioner's order was effectuated as required by Code § 28-209.2, warranting dismissal of the violation of Code § 28-201.1.

Therefore, the instant summons is DISMISSED.

 08/14/2024	08/14/2024
Susan Brand, Hearing Officer	Date