



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 035483499P et al. (1 Summons) DEPT OF BUILDINGS, -against- 2331 GLEASON AVE. LLC Hearing Date: 08/05/2025 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
035483499P	Dismissed	06/07/2024	2331 GLEASON AVENUE Bronx

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B203	AC 28-118.3.2	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted on August 5, 2025, by Court Call. Petitioner appeared through counsel, Malka Amar, Esq. Respondent, 2331 Gleason Avenue LLC, appeared through counsel, Phoebe Dossett, Esq. of the Nacmias Law Firm. Inspector Chevaughn Wilson, Badge No. 3936, testified on behalf of Petitioner.

The summons charges a Class 1 violation of 28-118.3.2 of the Administrative Code – Occupancy Contrary to That Allowed by the Certificate of Occupancy or Building Department Record.

On the face of the summons the issuing officer states that illegal occupancy was noted at the second story portion of a duplex

apartment – The issuing officer states that an illegal Class A apartment, with full bathroom, was created at the cited location - converting 1 family private dwelling to 2 family. The issuing officer did not issue a vacate order as a second means of egress existed.

The issuing officer testified that at the time of their inspection, they observed the cited illegal apartment with a full bathroom but noted that the kitchen appeared to have been removed, leaving only a hot plate. The issuing officer stated that they then conferred with their supervisor by phone who informed them that the cited property was a 1 family dwelling and that a second dwelling was not authorized at the cited location.

Petitioner submits the issuing officer's inspection documentation, marked as Exhibit 1, together with Department of Buildings Documentation establishing occupancy of the cited location, marked as Exhibit 2.

Respondent moves to dismiss the Summons. Respondent does not challenge the observations of the issuing officer but argues that following the purchase of the property with the violating conditions it was physically and legally barred from correcting those violating conditions. This presents the affirmative defense of impossibility. Respondent provides a December 29, 2022 Purchase Deed for the cited property, a copy of a Holdover Petition dated June 7, 2023, and an April 17, 2024 Notice of Entry of Decision regarding the Holdover Petition, which have been marked as Exhibits A through C. Respondent also cites a Judicial Hearing Officer Decision dismissing an earlier summons issued to Respondent for the same violation.

I credit the statements of the issuing officer in the summons. Petitioner has, thus, established a prima facie case in the matter. I also credit the evidence presented by Respondent. I should note, however, that I have not considered the earlier Judicial Hearing Officer decision cited by Respondent as such decisions are not binding precedent.

In response to Respondent's argument that it was legally and physically prohibited from restoring the cited property, which was purchased by Respondent with the violating conditions already in place, Petitioner argues that Respondent did not prove that it attempted to enter the premises to correct the violating conditions and that, pursuant to *DOB v. Hajj and Umrah Committee U.S.A.*, Appeal No. 1800230 (May 3, 2018), it was barred from asserting an impossibility defense due to an initial authorization of the cited illegal occupancy.

I find that Respondent has established the affirmative defense of impossibility here. As required by Board precedent, Respondent has shown that it was physically unable to correct the violating conditions at the time the instant summons was issued. Any attempt by Respondent to remove the amenities which gave rise the cited violation would constitute constructive eviction which Respondent was legally barred from engaging in until the Holdover Petition, found at Exhibit B, was decided. Therefore, Respondent was physically barred from correcting the violating condition regardless of whether it attempted to enter the illegally occupied space. I also find that Respondent has met the prerequisites to establish that it was legally barred from correcting the violating conditions. The Board's decision in *Hajj and Umrah Committee U.S.A.* is distinguishable here. In *Hajj and Umrah Committee U.S.A.*, the respondents waited three years before initiating eviction proceedings against illegal occupants and only began such proceedings after those illegal occupants failed to pay rent. Here, Respondent served notice upon the illegal occupants that it intended to terminate their tenancy a mere month and half after purchasing the cited property. The brief period of time which elapsed prior to the beginning of the legal process required before Respondent could correct the violating conditions does not rise to the level of an authorization of the illegal occupancy.

Accordingly, the summons is dismissed.



09/10/2025

09/10/2025

Antonio Cavallaro, Hearing Officer

Date