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: 039108740N et al. (1 Summons)** **DEPT OF BUILDINGS,** **-against-** **MORGAN SERVICES GROUP COR** **Hearing Date: 03/11/2025** **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
039108740N	Dismissed	03/14/2024	144 FREEMAN STREET Brooklyn

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

Findings of Fact & Conclusions of Law

As an initial matter, there were eight summonses issued on either 3/14/24 or 3/18/24 with the same fact pattern in which it is alleged that Respondent failed to comply with a Commissioner's order in its failure to ensure that certain workers completed the requisite safety training while performing at an active constructive site. Three of these summonses were issued to 144 Freeman Street, LLC, which is the owner of the property in question, and the other eight name Morgan Services Group Corp., (Morgan) as the Respondent. Morgan is the general contractor and permit holder at the place of occurrence. The place of occurrence is 144 Freeman Street, a multiple residence condominium building.

Phoebe Dossett, Esq. appears for the Respondents, along with 144 Freeman Street building owner Shalev Yishai Barkai. Mr.

Barkai is also authorized to speak on behalf of Morgan. Jennifer Clouden, Esq. and Issuing Officer Louis Phillips Jr., Badge #3489 (IO), appear for the Petitioner Department of Buildings (DOB).

All eight summonses allege a violation of Administrative Code 28-201.1 for unlawful acts and the failure to comply with an order of the Commissioner. The summonses are identical with the underlying violations dated 1/24/22, but all eight cite a different initial summons number, as each underlying act lists a different individual who did not have the proper safety credentials for working at an active job site. The verbatim language on each summons is the "failure to comply with Commissioner's Order contained in Summons #_________ issued on 1/24/22 and to file a certificate of correction, pursuant to 28-201.1 and 1 RCNY 102-01 (failure to ensure each worker has successfully completed the required training). Summons #039108991H was the first one to be heard, and all testimony and evidence from that hearing is to be applied to all of these sister summonses. Summons #s 039108999M, 039109054H, 039108740N, 039108744K, 039108756H, 039108746Y, and 039109057N are the remaining seven. Evidence of the various underlying violations are separate evidence packets submitted by Petitioner, as such documentation relates to the specific individual who is alleged to not have the proper safety training.

Respondent's counsel initially challenges service on the various summonses, but after hearing the IO's testimony, she withdrew all such challenges.

The IO credibly states that he was instructed to write up a violations against Respondent because the DOB did not receive a certificate of correction for the underlying summons. The predicate summons states that the Respondent failed to ensure that a particular construction/demolition worker had a valid Site Safety Training (SST) card, or temporary SST card. As evidence, the Petitioner submits the underlying summons, the individual's OSHA card (Occupational Safety and Health Administration), and the sign-in sheets indicating such individual's name appears. Petitioner states that such SST or OSHA cards were not valid.

The Respondent's attorney does not cross-examine the IO, and admits that such OSHA cards were counterfeit. She states that she is not relitigating the underlying violations, as such violations were found against her clients and fines were paid in association with those violations. She asserts an impossibility defense with respect to these new summonses on the failure to file proof of correction.

The property owner Mr. Barkai testifies and credibly states that he received the initial summonses in 2022, and that such workers were the employees of one of his sub-contractors. He admits that he did not perform due diligence at the time, and did not properly vet this subcontractor. He initially sought a different subcontractor for this interior framing job, but that person was unable to do the work, so he referred Respondent to his brother, who was this subcontractor he ultimately hired. At the time, Respondent reviewed the workers' OSHA cards and thought they were sufficient. He did not know about fake OSHA cards until he received the 2022 summons. He received those summonses four days after this subcontractor began his work When confronted with the counterfeits, the subcontractor fled, along with the questionable workers. Respondent states that he began the process of correction in 2022, which involved getting these workers certified. He states that it has been an uphill battle because they all went missing, including the subcontractor. He states that the subcontractor changed his phone number, so he tracked him down through his brother. Respondent offered to give him money so that he could find the workers, but the subcontractor refused and did not provide any contact information for them. As evidence, the Respondent submits a number of documents. First, the certificate of occupancy (CO) with open application. In order to obtain a CO, all open violations must be cleared. Respondent paid all of the civil penalties imposed on the property, but could not clear the Commissioner's order because he could not locate these workers. In this application, Respondent explained that the workers could not be found, and the DOB issued the CO in spite of this open violation. The CO was issued on 10/20/23.

Second, Respondent submits an email chain that Respondent initiated on 7/10/23 to the DOB leading up to the CO issuance, in which he explains that he cannot locate the workers in question. Third, an additional email correspondence in which Respondent's certificate of correction was disapproved. It explains that disapproval was issued because such workers must remain employed by Respondent, and that such workers must undergo the proper safety training. Respondent further states that it is impossible to correct such violations because he cannot locate such individuals. Fourth, Respondent submits the history of violations and points out that all fines were paid in full (including the underlying summonses), and that such CO was granted.

He further testifies that after receiving these eight summonses, he physically went down to the NYC's Commissioner's office to get this cleared up. He was referred to Sal Agostino and Supervisor Wolf. He spoke to them numerous times in May and sent them many emails (emails submitted into evidence). The emails went unanswered, and he states that they verbally agreed to help him, but ultimately told him he would need to appear at the hearings.

Respondent's attorney also points out that all of the underlying violations were downgraded to Class 2 offenses, and in the alternative, if the Court finds Respondent in violation, to charge as a Class 2 offense instead of the Class 1 alleged herin.