



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Frank Tamberino, Esq. 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039517213Z et al. (1 Summons) DEPT OF BUILDINGS, -against- BULLS EYE CONTRACTOR INC Hearing Date: 09/19/2025 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
039517213Z	Dismissed	05/31/2023	55 HESTER STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B282	28-105.12.2	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

This hearing was conducted remotely by telephone. Attorney Frank Tamberino. Attorney Laura Slavin appeared for Petitioner Department of Buildings (DOB). Respondent was charged with a class 2 violation of section 28-105.12.2 of the Administrative Code.

Petitioner relied on the issuing officer's sworn to statement and provided pictures as evidence (P. Ex. 1). Regarding service Petitioner stated that the Affidavit of Service (AOS) searched the issuing officer searched and that even if that document could have had more details on what the search entailed it was clear he searched and found no one; thus, the AOS articulated a reasonable attempt, and the summons should be adjudicated on the merits.

Respondent moved to dismiss for improper service and provided evidence and an appeal (R. Exs. A-E). Further Respondent stated that the attempt described in the AOS, of searching the perimeter was unreasonable under the circumstances as the holder of the permit had a sidewalk shed, there was no construction site enclosed by a fence and thus searching the perimeter was unreasonable and the issuing officer should have attempted to enter the building. Respondent referred to their photographs and stated that they clearly showed an entrance and that the issuing officer should have attempted to enter. Further the AOS did not state that the site was closed and did not explain why the issuing officer just posted the summons and was not able to find someone. Moreover, the issuing officer was expected to try to find someone authorized to accept the summons and that did not happen, which made service unreasonable. Also, on the merits Respondent argued he could not have issued the summons if he had not spoken to anyone because, as he could not have reviewed the plan if he had not spoken to someone about them even though the summons indicates the building was occupied and this was a residential building where the issuing officer could have gained access. The issuing officer could have gone into the building without even knocking. At the very least the IO could have knocked or buzzed, even though here that would not have been necessary here because he could have accessed the building. Respondent further stated that per the appeal gaining entry by knocking/buzzing is part of reasonable attempted service. Walking the perimeter of an accessible building made no sense.

Petitioner reiterated the above arguments and added that service was proper even if the AOS could have been clearer about what was perimeter; and it did not say he walked around the fence. Regarding having reviewed the plans during the inspection and service, they were separate, and it was possible he had access to review them but did not have access when dealing with service.

Respondent reiterated above arguments and stated that the issue was not the level of detail, but that it was an inappropriate method of service, that searching the perimeter suggested a construction site, and this was not a construction site where fences are generally present.

I have reviewed the decision Respondent provided *DOB v. A & R Home Improvement*, Appeal No. 2200521 (2022). There the Board reversed because based on evidence, including video evidence and testimony, by the Respondent, because what the AOS said the IO had done and testified had done, was not consistent with the evidence the Respondent provided, which the Board implicitly found to have more probative value. That situation was different from ours. Here the issue is not whether the issuing officer searched, it is whether the description in the AOS is sufficient; and if whether having "searched the building perimeter" was sufficient before posting the summons.

I note that this had been adjourned initially for the issuing officer; a second and third times for Respondent to gather further evidence. The third adjournment was marked final for both parties.

I find that the description in the affidavit of service is not sufficient. It may be that the issuing officer did go into the building and spoke with persons, that he did not, or that there was no entry to that building; we also do not know what he meant by perimeter in this context. It may be his actions were sufficient, but his description is not. The language the issuing officer used: "physically searched the buildings [sic] perimeter found no one connected to the building or the named respondent." Is like language the Board has found to be conclusory and insufficient for proper service. In *DOB v. American Pen Corp*, Appeal No. 2101111 (2021) at 5, the Board stated: "the IO provided only a conclusory statement that he searched the property and, 'no one authorized to take violation.' However, he did not first describe what inquiries, if any, he made to locate a person authorized to accept service that informed his ultimate conclusion that no such person was present." (Citations omitted.)

For the above reasons I find that service is not proper. Thus, it is not necessary to discuss the merits arguments

The summons is dismissed.

Daniel A. Vazquez

09/26/2025

09/26/2025

Daniel Vazquez-Diaz, Hearing Officer

Date