



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: 039107651R et al. (1 Summons) DEPT OF BUILDINGS, -against- PALACCI, ESTHER Hearing Date: 02/19/2026 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
039107651R	Dismissed	03/04/2024	1460 EAST 13 STREET Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B101	28-105.1	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Summons: 039107651R

Hearing date: 2/19/26

Appearing for petitioner: Andrew Berger, Esq.

Witness(es):

Appearing for respondent: Phoebe Dossett, Esq.

Witness(es):

The charge dated 3/4/2024, was work without a permit. (Two rooms with doors and locks in cellar, opening with sliding door in exterior wall, four feet tall concrete deck with landing and steps). The issuing officer wrote that an RCA was issued on 7/27/2023.

The issuing officer was unavailable. There have been two adjournments for him already.

Petitioner stated it relied on the summons and sworn statement of the issuing inspector.

Respondent made a preliminary motion to dismiss the summons on the ground of defective service. The affidavit of service reads:

"Female occupant stated respondent not available." The summons was posted.

Respondent argued that respondent was an individual and the issuing officer should have served the person present as one of suitable age and discretion.

Petitioner responded that the mailing address was different from the cited location, so service as suggested by respondent was not possible.

Respondent added nothing further.

Findings of Fact and Conclusions of Law:

I find service was proper.

Merits:

Respondent presented a pre-existing condition defense and presented the following affidavits:

1. affidavit (undated day of February 2025) of Fortune Hidary, real estate representative for the previous owner, in which he avers that the two-family house was sold to respondent in 2007; he was the sales representative, and the house had two cellar storage rooms with locks, the sliding glass door, and the concrete patio with steps.
2. affidavit of Jacklin Rubin, dated 2/18/2025, in which she avers she was the previous owner of the property and sold it to respondent. The cellar rooms and concrete deck, and the sliding glass door, were there before the sale.
3. Recorded deed of sale from Rubin to respondent, dated 6/25/2007.

Petitioner responded that the words were not enough to sustain the defense. More, such as an appraisal with photographs, was required.

Findings of Fact and Conclusions of Law:

I credit respondent's evidence. I find respondent bought the property in an arms' length sale and that the cited conditions existed before the purchase.

Respondent has established its defense.

Accordingly, I dismiss the charge.



02/19/2026

02/19/2026

Clive Morrick, Judicial Hearing Officer

Date



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

RECOMMENDED DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 25T00822 DEPARTMENT OF CONSUMER AND WORKER PROTECTION, -against- 5TH AVENUE CANDY & GROCERY, INC Hearing Date: 01/16/2026 Hearing Location: Remote Type of Hearing: By Telephone
---	---

Total Penalty Amount:	Restitution:
Suspension/Revocation/Sealing:	

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
25T00822	Recommended	03/25/2025	439 5TH AVE Brooklyn

This is a recommended decision and order. You will receive DCA's final decision on these New York State charges within the next 90 days. DCA may affirm, reverse or modify this decision or it may send the case back to OATH for an additional hearing.

YOU HAVE A RIGHT TO SUBMIT A WRITTEN ARGUMENT WHY DCA SHOULD OR SHOULD NOT FOLLOW THIS RECOMMENDED DECISION. You must submit your argument to DCA within thirty (30) days of the date of this recommended decision. You may submit your argument by email, regular mail or in person.

BY EMAIL: Send your written arguments to decisionreview@dca.nyc.gov. Make sure to include the Notice of Hearing number in the subject line of your email.

BY MAIL OR IN PERSON: Send or bring your written arguments to 42 Broadway, 8th Floor, Decision Review, New York, NY 10004. Make sure to include the Notice of Hearing number.

--	--	--	--	--	--	--	--

LINE ITEM	OATH CODE	CODE SECTION/RULE	OCCUR- RENCE	NO. OF COUNTS	RESULT	PENALTY	SUSPENSION/ REVOCATION/SEALING
2	NA	NY Pub Health § 1399-cc(2)	1	1	Recommended / Sustained		

Findings of Fact & Conclusions of Law

The summons was issued by the NYC Department of Consumer and Worker Protection for several tobacco sales violations.

Petitioner, DCWP, appeared by Inspector Rachid Aitoumghar.

Respondent appeared by Andre Autz, Esq.

Petitioner submitted into evidence; photographs, affidavit of minor and prior summons of 8/20/2020, without objection.

1) As to NYC Administrative Code Section 17-706(a) selling tobacco or tobacco products to a person under the age of 21 years;

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor.

The evidence in the record establishes the violation as written and the Petitioner has met its burden of proof.

As such, based on the record before me, the violation is sustained and the standard penalty is hereby imposed.

2) As to NY Public Health Section 1399-cc(2), sale of tobacco or tobacco products to a person under the age of 21 years.

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

Andre Autz, Esq. also argued that the charge is duplicative to NYC Administrative Code Section 17-706(a), and thus should be dismissed.

NY Public Health Section 1399-cc(2) is a different section compared to NYC Administrative Code Section 17-706(a), and thus not duplicative.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor.

The evidence in the record establishes the violation as written and the Petitioner has met its burden of proof.

As such, based on the record before me, the violation is sustained and the standard penalty is hereby imposed of \$1,500.00 and two points on the NYS Registry.

3) As to 24 RCNY Section 13--03(b), selling cigar for less than the floor price of \$8.00 plus \$1.75 for each additional cigar, as a subsequent offense dated 8/20/2020.

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

Andre Autz, Esq. also objected to the notation of a prior violation for the same condition cited dated 8/20/2020, as it is more than three years since the subject violation herein.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor, along with the corroborated evidence in the record.

As such, based on the record before me, the violation is sustained.



February 12, 2026

02/12/2026

John Ciafone, Judicial Hearing Officer

Date