



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Andre Autz, Esq. - Nacmias Law
592 Pacific Street
Brooklyn, NY 11217

Summons# : 035666681N et al. (4 summonses)

DEPT OF BUILDINGS,

-against-

DELTA PROJECTS GC LLC

Hearing Date : 12/12/2024

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
035666681N	Dismissed	03/22/2023	41 RIVER TERRACE , Manhattan

LINE ITEM	OATH CODE	SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035666682P	Dismissed	03/22/2023	41 RIVER TERRACE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035666683R	Dismissed	03/22/2023	41 RIVER TERRACE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035666684Z	Dismissed	03/22/2023	41 RIVER TERRACE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

Andre Autz, Esq. appeared for Respondent. Maria Dollas, Esq. appeared for Petitioner DOB. Ms. Dollas advised that the IO was no longer with DOB.

Respondent was issued 4 summonses: 035666681N, 035666683R, 035666684Z, and 035666682P.

Summonses 81N and 84Z were issued for violating AC 28-201.1 for inadequate Tenant Protection Plan (TPP). The IO noted that the submitted TPP lacks specific means and methods under the health section. All means and methods must be clearly identified, and describe how protective measures will be carried out to safeguard all tenants occupying the building while the proposed construction is ongoing.

Ms. Dollas stated that the 2 summonses are not duplicative as they are based on 2 sets of TPP plans under 2 different job numbers. She submitted the photos of the work site, the TPP, and the complaint for 81N (Exhibit 1,2).

Mr. Autz argued that the wrong section of law is cited because a TPP is not a commissioner's order. He challenged the Class 1 designation arguing that the site is relatively clean and the egress is not blocked. He argued the summonses are duplicative even though there are 2 different job numbers.

Ms. Dollas cited Appeal No. 2000258 and Appeal No. 2000997 and argued that the summonses are not duplicative. She argued that the section of law is applicable and cited Appeal No. 2301587. She argued that the cited section of law has only a Class 1 designation. She further argued that dust is a Class 1 violation and cited Appeal No. 2000876,

Pursuant to Appeal No. 2301587 submitted by Petitioner, I find that the section of law is applicable. However, I do not find Respondent in violation. Respondent's TPP states that "debris, dirt and dust to be kept to minimum and confined to the immediate construction area. Contractor to isolate construction area from the occupied building area by the means of temporary partitions or heavy weight drop cloths. Debris, dirt and dust to be cleaned up and cleared from the building site periodically to avoid excessive accumulation." I find that the TPP specified the means and methods to be used to control dust and remove construction debris. Petitioner failed to establish how the TPP is inadequate. These 2 summonses are dismissed.

Summonses 82P and 83R were issued for violating BC 3303.10 for failure to comply with Tenant Protection Plan (TPP). The summons alleges that the contractor failed to comply with TPP. There were no heavy weight drop cloths in place and any temporary partitions to isolate construction area as mentioned in TPP.

Ms. Dollas submitted photos and the TPP (Exhibit 3, 4). She repeated her argument that the summonses are not duplicative.

Mr. Autz challenged the Class 1 Designation. He argued that summons 82P is duplicative of summons 81N even though different section of law cited as both are based on the same job number. He raise the same duplicative argument for summons 83R and summons 84Z. He argued that dust is not immediately hazardous.

Ms. Dollas argued that summons 83R is not duplicative of 84Z because summons 84Z was issued for inadequate TPP and summons 83R was issued for failure to comply with TPP. She cited Appeal No. 2000876 arguing that dust is a Class 1 violation.

BC 3303.10 states: when construction or demolition activity occurs in an occupied building, barricades, signs, drop cloths, and other protective means shall be installed and maintained as necessary to provide reasonable protection for the occupants against hazard and nuisance. Such protective means shall be indicated on an occupant protection plan, or where a tenant protection plan is required by Section 3303.10.1, on a tenant protection plan.

I find that Petitioner established a prima facie case. I do not find the summonses to be duplicative of each other as they are based on 2 sets of TPP under 2 different job numbers. I do not find that Petitioner established the Class 1 designation. The allegation does not state an accumulation of dust was observed at the work site. These 2 summonses are dismissed.

Viven Chiu

12/13/2024

12/13/2024

Viven Chiu, Hearing Officer

Date

