



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Matthew Whitening 592 PACIFIC STREET BROOKLYN, NY 11217	Summons No: 039526978P et al. (1 Summons) DEPT OF BUILDINGS, -against- FRONT WAVE CONSTRUCTION Hearing Date: 01/03/2025 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
039526978P	Dismissed	03/29/2024	59 HENRY STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B1F1	BC 3301.1.3 (2014 code)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Petitioner, the DOB, appeared by Daniel Brickman, Esq. Respondent appeared by its attorney, Matthew Whitening. Also appearing was the issuing officer, Timadayo Adegboyega (Badge # 3149).

On March 29, 2024, Respondent was charged with a violation of NYC BC 3301.1.3 for a failure to comply with manufacturer specifications.

Officer Adegboyega testified that he went to the job site to investigate an incident involving a worker who was injured after falling off an A frame ladder; that he himself did not witness the incident; that he spoke to the site safety manager who told

him a worker was working on the ladder using a caulking gun with both hands and fell of the ladder; and that he issued the Summons because workers are to maintain three points of contact while on an A frame ladder.

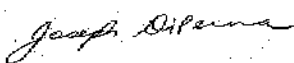
Mr. Brickman submitted five photos (Pet. # 1) which depict the A frame ladder on the floor (Two photos); a photo of the outside of the building; a photo of the ID of the site safety manager; and a photos of the area alleged to be worked on by the worker using the caulk gun. He also submitted the OSHA specifications of the use of an A Frame ladder (Pet. # 2).

Mr. Whitening did not object to the evidence being submitted.

Mr. Brickman stated that the specifications require that a person using a ladder must have three points of contact while ascending and descending a ladder.

Mr. Whitening argued that there is no violation of the cited rule because the worker was working on the ladder. The worker was not descending or ascending the ladder.

I credit Petitioner's evidence and Officer Adegboyega's testimony. However, I find that a valid defense was raised. Here the worker apparently fell off a ladder while working. The Petitioner was arguing that the worker must have three points of contact. However, that only applies to ascending and descening the ladder. When working on a ladder, there are no OSHA restrictions that say you cannot use both hands to do work while standing on a ladder. If there were such a rule, it would take two people on side by side ladders to take off a light fixture and change a light bulb. This would be absurd. An A frame ladder is used for the purpose of climbing to reach an area to use both hands to do something, whether it be to change a light bulb, use a caulking gun, or mount a ceiling fan. Accordingly, the Summons is dismissed.

	
01/09/2025	01/09/2025
Joseph Diperna, Hearing Officer	Date