



# OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

## Decision

|                                                                                                             |                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC</b><br>592 Pacific Street, 1st Floor<br>Brooklyn, NY 11217 | <b>Summons# : 039520798K et al. (1 summonses)</b><br><br><b>DEPT OF BUILDINGS,</b><br><br><b>-against-</b><br><br><b>M BUILD BUILDERS INC</b><br><br>Hearing Date : 7/22/2025<br><br>Hearing Location : Remote<br><br>Type of Hearing : By Telephone |
|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                               |             |                               |                       |
|-------------------------------|-------------|-------------------------------|-----------------------|
| <b>Total Penalty Amount :</b> | <b>0.00</b> | <b>Community Service(Hr):</b> | <b>Not Applicable</b> |
|-------------------------------|-------------|-------------------------------|-----------------------|

| <b>SUMMONS #</b> | <b>SUMMARY DISPOSITION</b> | <b>DATE OF OCCURRENCE</b> | <b>PLACE OF OCCURRENCE</b>       |
|------------------|----------------------------|---------------------------|----------------------------------|
| 039520798K       | Dismissed                  | 08/21/2023                | 372 BRADFORD STREET,<br>Brooklyn |

| <b>LINE ITEM</b> | <b>OATH CODE</b> | <b>CODE SECTION / RULE</b> | <b>RESULT</b> | <b>PENALTY</b> |
|------------------|------------------|----------------------------|---------------|----------------|
| 1                | B206             | AC 27MISCAC28MISCBCMI      | Dismissed     | 0.00           |

**Total Penalty for Summons: 0.00**

### Findings of Facts & Conclusions of Law

The Department of Buildings (DOB) issued this Summons to M Build Builders Inc. The Summons charges a Class 1 or "immediately hazardous" violation of BC 3309.9 on the date and at the location indicated above for not having permanent water proofing on the wall of an adjoining structure during construction operations. Andrew Berger, Esq., represented DOB at the remote hearing, and Phoebe Dossett, Esq., represented M Build Builders. The hearing had been adjourned for the testimony of the inspector who issued the Summonses, but he was not present.

Mr. Berger initially relied on the Summons. Ms. Dossett said the Summons should be dismissed for failure to state a case for the violation because the cited provision of law requires permanent water-proofing only in limited circumstances and the Summons contains no details that justify a conclusion that it was required. Alternatively, she said that the charge should be downgraded to a Class 2 or "major" violation because the Summons said there was a blue tarp providing temporary protection; she also said that if a violation were found at Class 2 a reduced or mitigated penalty—still available for this violation on the date at issue—should be imposed. In support of that argument, she submitted a DOB record showing that a related stop work order was rescinded eight days later.

In response, Mr. Berger moved to downgrade to Class 2, and that motion was granted without prejudice to consideration of Ms. Dossett's dismissal request. In that regard, Mr. Berger argued that a need to comply with BC 3309.9 could be presumed because the work in progress—described in the Summons as construction of a four-story new building with pile-driving in process—could be assumed to have impaired the wall so that permanent waterproofing was required. Ms. Dossett responded that an essential element could not be assumed.

The rules of this forum require that a summons contain a clear and concise statement of the essential facts alleged to constitute the violation (48 RCNY 6-08(c)(2)). Here, where the provision of law applies only in limited circumstances, the inspector's assessment of why it applies is an essential fact. Therefore, I now find that Ms. Dossett was correct when she argued that the reason could not be assumed and therefore that the Summons fails to state a case for the violation.

This Summons is dismissed.

|                                                                                    |            |
|------------------------------------------------------------------------------------|------------|
|  |            |
| 07/22/2025                                                                         | 07/22/2025 |
| Sara Piovio, Hearing Officer                                                       | Date       |

**IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE  
COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION  
DATE OR 35 DAYS IF MAILED.**

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to [www.nyc.gov/citypay/oath](http://www.nyc.gov/citypay/oath)

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

**CAN I DO  
COMMUNITY  
SERVICE?**

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

**COMPLETION OF  
COMMUNITY  
SERVICE**

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/*Pro Se* Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

**How to Contact the Help Center to Schedule Community Service:**

**Manhattan:** (212) 436-0845 CSmanhattan@oath.nyc.gov  
**Brooklyn:** (718) 923-6216 CSbrooklyn@oath.nyc.gov  
**Queens:** (718) 393-6044 CSqueens@oath.nyc.gov  
**Bronx:** (718) 503-5565 CSbronx@oath.nyc.gov  
**Staten Island:** (718) 876-2314 CSstatenisland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

**NON-DISCLOSURE  
FOR SUMMONSES  
ELIGIBLE FOR  
COMMUNITY  
SERVICE**

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

**IF YOU DISAGREE  
WITH THE DECISION,  
YOU MAY APPEAL IT**

To submit your appeal, you MUST use OATH's online or mail-in appeal forms available on OATH's website at [www.nyc.gov/oath/appeal](http://www.nyc.gov/oath/appeal). Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal MUST be received by the OATH Hearings Division within 30 days of the decision date, or 35 days if the decision was mailed to you.

To appeal you may need to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

**APPEAL BY  
ENFORCEMENT  
AGENCY**

If you wish to answer an appeal filed by an enforcement agency, you MUST use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received within 30 days of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,  
visit OATH's website [www.nyc.gov/oath](http://www.nyc.gov/oath)  
or call 1-844-OATH-NYC

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