



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# : 039520799M et al. (3 summonses)

DEPT OF BUILDINGS,

-against-

M BUILD BUILDERS INC

Hearing Date : 7/22/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 1,250.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039520799M	Sustained	08/21/2023	372 BRADFORD STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B2f7	BC 3301.7 (2014 code)	Sustained	625.00

Total Penalty for Summons: 625.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039520800K	Dismissed	08/21/2023	372 BRADFORD STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1F2	BC 3301.7 (2014 code)	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039520801M	Sustained	08/21/2023	372 BRADFORD STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B2F7	BC3301.7(2014 CODE)	Sustained	625.00

Total Penalty for Summons: 625.00

Findings of Facts & Conclusions of Law

The Department of Buildings (DOB) issued these Summonses to M Build Builders Inc. Each of the Summonses charges a Class 1 or "immediately hazardous" violation on the date and at the location indicated above for not having/producing for inspection a document that BC Chapter 33 requires to be present at a construction site: "vibrating" monitoring logs (039520799M), the site safety plan (SSP) (039520800K), and a pre-construction survey (039520801M). 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 Summonses. Ms. Dossett challenged the Class 1 designations and also requested reduced or mitigated penalties, which on the date at issue were available for these violations whether charged as Class 2 or Class 1. In support, she submitted a complaint history showing that related partial stop work orders (PSWOs) were rescinded eight days later. She argued that none of the Summonses actually cites any dangerous conditions and that the complaint history indicates that the inspector issuing the rescission did not observe any unsafe conditions.

Mr. Berger moved to downgrade 039520799M and 039520801M to Class 2, and those motions were granted without objection. But he stood by the Class 1 designation in 039520800K, noting that the Summons indicated that foundation/excavation work was underway for a four-story new building and that pile drilling was in progress and arguing that these facts on their face justified the Class 1 designation because the SSP was important.

I credit the sworn statements of fact in 039520799M and 039520801M, and I find that they support the amended Class 2 violations charged. I also credit Ms. Dossett's evidence as establishing that the violations were corrected long before the first scheduled hearing date of Oct. 25, 2023, therefore establishing eligibility for mitigation.

With regard to 039520800K, I note that when more than more Class can be charged, the Class 1 designation is an element of DOB's case. This means that DOB must establish by a preponderance of the evidence that the violating condition posed a threat to life, health, safety, property, the public interest, and/or a significant numbers of persons so as to warrant immediate corrective action. I failed to perceive how the absence of the SSP by itself falls to into that category, particularly as, as Ms. Dossett argued, no actual unsafe conditions were cited. Therefore, I find that DOB failed to establish a case for the Class 1 violation charged.

Accordingly, Summonses 039520799M and 039520801M are sustained as amended, and the mitigated Class 2 penalty of \$625 is imposed for each violation. Summons 039520800K 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

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. 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
or call 1-844-OATH-NYC

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