



Office of Administrative Trials and Hearings

Hearings Division

Decision

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET Brooklyn, NY 11217	Summons# : 000864948K et al. (1 summonses) DEPT OF ENVIRONMENTAL PROTECTION, -against- BAGEL BITES USA INC Hearing Date : 5/9/2025 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount :	600.00	Community Service(Hr):	Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000864948K	Sustained	01/05/2024	2 WEST 46 STREET, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	BA1F	24 -163	Sustained	600.00

Total Penalty for Summons: 600.00

Findings of Facts & Conclusions of Law

This matter was heard remotely, via telephonic conference, on May 9, 2025. Respondent appeared via Lance Chebin, identified as the authorized representative for the named respondent. Petitioner appeared via Leah Smith.

The summons alleges a violation of NYC AC 24-163. The date of occurrence was January 5, 2024, at 11:08am.

This is noted to be a repeat violation, with underlying summonses 000754174Z and 000778097K. Respondent does not contest the repeat designation.

Petitioner submits eight documents, and a video, as evidence. Documents include: a picture of the vehicle's license plate; a picture of the side of vehicle, with respondent's name and DOT number visible; a photo testified to show the exhaust pipe on the refrigeration unit attached to the vehicle; a SAFER snapshot, showing respondent's information; the redacted idling complaint; a copy of the instant summons, and proof of service; and two screenshots showing the disposition of the underlying summonses. The citizen video of the incident is a 5:02 video, time-stamped in accordance with the summons. Petitioner testifies that the video shows the engine audible throughout the video, clearly idling for longer than three minutes, with no apparent loading or unloading, use of processing equipment, or other activity that would require the engine to run; petitioner notes that the redacted idling complaint states that the refrigeration unit does not require the engine to run, and has its own fuel source, and this is further evinced by the separate exhaust pipe for the unit. As such, petitioner contends that the violation should be sustained.

Respondent testifies the engine was required to be on, for the refrigeration unit to run.

Petitioner asks if there is any documentation showing that the engine is required to power the refrigeration unit; respondent does not.

I credit respondent's testimony, but find it insufficient to warrant dismissal of the charges. The sound of the engine noise, despite other ambient noise in the video, is consistent throughout, and increases noticeably in volume with the citizen approaches the front of the vehicle, where the engine would be, with no intervening sound to indicate an engine turning off or on. Moreover, petitioner submits convincing testimony that the refrigeration unit does not require the engine to run; further, however, I note that there is case law requiring that a respondent submit proof that a refrigeration unit requires the engine, and that mere testimony to that end is insufficient. See, e.g., DEP v. Bartlett Dairy, Appeal No. 2201546 (March 23, 2023).

As such, the summons is hereby sustained, and the statutory penalty imposed.



05/09/2025

05/09/2025

Craig Messing, 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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