



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000781360X et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- FORT MEAT INC Hearing Date: 01/14/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000781360X	Sustained	02/09/2023	INTERSECTION OF UNION STAND COU Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA51	24 -163	Sustained	\$350.00

Findings of Fact & Conclusions of Law

Lance Chebin appeared as the authorized representative of the named respondent, and Antwan Gibbs appeared for the petitioner.

The summons cites a violation of 24-163.

The petitioner submitted the idling summons affidavit and complaint, and photos.

A video which exceeded three minutes was played into the record and described.

The petitioner stated that while there is a refrigeration unit on the top of the truck, as shown in the photos. This is a "supra 760" model which operates independently of the engine. This is verified in the complaint.

The respondent contended that the refrigeration unit is a part of the vehicle and the engine must be on for it to work. The company was making food deliveries that day.

I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense.

In Appeal No. 2100178 DEP v. Mr. Pickle Inc. April 22, 2021, it was held that "The Board further finds that Respondent failed to establish an affirmative defense that the truck's engine was used to run its refrigeration unit. Code § 24-163 prohibits idling a motor vehicle engine for longer than three minutes while parking, standing, or stopping, "unless the engine is used to operate a loading, unloading or processing device." This limited exception only applies if the vehicle is performing its function at the time the engine is running. See NYC v. Jenna Concrete Corp. Appeal No. 40554 (October 26, 2006). It was Respondent's burden to establish the affirmative defense that its truck's engine was operating a processing device during the cited time. See DEP v. Academy Express, LLC, Appeal No. 1901519 (March 3, 2020); DEP v. Branca Contracting Group, Appeal No. 2001530 (March 17, 2021). Here, Respondent's representative submitted a letter from the truck driver stating that the truck engine was necessary to run the refrigeration unit without presenting any further substantiation to refute Petitioner's evidence that the truck was using an independently powered refrigeration unit. After weighing the conflicting evidence, the hearing officer credited Petitioner's evidence and did not credit Respondent's evidence. A hearing officer's credibility findings are generally accorded deference on appeal, see NYC v. Michele Radolovic, Appeal No. 44124 (January 18, 2007), and the Board sees no basis in the record for departing from them here. See DEP v. Westside Foods Inc, Appeal No. 1901796 (April 23, 2020)."

Here, there is substantially the same issue, and insofar as there is nothing more than the respondent's statements that the engine was powering the refrigeration unit, I find that this is insufficient to rebut the prima facie case and establish the affirmative defense of a processing device. Accordingly, the summons is sustained.

Amy Baranoff

01/14/2025

01/14/2025

Amy Baranoff, Hearing Officer

Date