



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 0217998193 et al. (1 Summons) NEW YORK CITY POLICE DEPT, -against- JHOAN ENRIQUE GUTIERREZ BOLIVAR Hearing Date: 12/18/2024 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
0217998193	Dismissed	03/26/2024	95 STREET at ROOSEVELT Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AX25	AC 10-125	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Summons 0217998193 charges a violation of Administrative Code § 10-125 for failing to yield at a crosswalk resulting in physical injury. The hearing was on 12/18/2024. Petitioner did not appear. Respondent appeared through attorney Michael Nacmias.

The issuing officer wrote that they observed Respondent with open container of Smirnoff, 12 fluid ounces, on public sidewalk.

Respondent's counsel made a motion to dismiss for failure to file proof of service, and referred to Appeal No. 2000420 in support. Counsel made a second motion to dismiss, stating that the summons was facially defective for failure to identify the

body of law being violated, and failure to allege the alcohol content of the beverage being consumed.

Code § 10-125 (b) prohibits the consumption of an alcoholic beverage in any public place, except at a permitted event.

Before turning to the merits of the summons, service must be established. Per 48 RCNY § 6-08(a)(1), Petitioner is required to file proof of service before the hearing. Here, Petitioner has filed the summons without proof of service. Accordingly, the summons is dismissed.



12/18/2024

12/18/2024

Theresa Leary, Hearing Officer

Date