



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET Brooklyn, NY 11217	Summons No: 000836259R et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- EMKAY INC TRUST Hearing Date: 03/11/2025 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
000836259R	Sustained	12/05/2023	W 53rd and 10th Ave Manhattan

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 Dantay Parks appeared for the Department.

The summons cites a violation of 24-163.

The Petitioner submitted DMV information, the idling summons affidavit and complaint, and photos.

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

The respondent's representative contended that the video and photos showed that there was no connection of the named respondent to the cited vehicle.

I find the sworn account of the issuing officer and Petitioner's other evidence to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. Although the name of another entity appears on the vehicle, there was no evidence submitted to rebut the DMV information that listed the named respondent as owner. In Appeal No. 2300571 DEP v. Penske Truck Leasing Corporation July 27, 2023, it was held that " Respondent, as the title owner of the idling equipment, is a responsible party per both Code § 24-163(a) and Code § 24-180(b)(2), even if it was not operating the equipment at the time of violation. See DEP v. U-Haul Co of Arizona Inc., Appeal No. 2000010 (April 23, 2020). Although Petitioner could have cited CSI as the operator of the vehicle, Petitioner's decision to charge one of the possible parties rather than another with violating Code § 24-163(a) is within its discretionary enforcement policy and as such is not reviewable by the Board."

Accordingly, the summons is sustained.

 03/11/2025	03/11/2025
Amy Baranoff, Hearing Officer	Date