



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# : 039106280M et al. (1 summonses) DEPT OF BUILDINGS, -against- 1138 WHITE PLAINS ROAD LLC Hearing Date : 9/23/2025 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount :	0.00	Community Service(Hr):	Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039106280M	Dismissed	02/19/2024	650 1 AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	27-Misc, 28-Misc, BC -Misc	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

hazardous condition."

Motion to dismiss for failure to make out a prima facie case is granted.

I find the allegations did not provide Respondent sufficient notice of the specific violation per Section 6-08(c)(2) the SUMMONS must contain "[a] clear and concise statement sufficient to inform the Respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation or the violations charged, including the . . . place . . . where such facts were observed"

I find the allegations in the instant SUMMONS matched the facts in Appeal No. 1800650 and I find the failure to tie did not constitute a violation of BC § 3301.2 under either prong of the statute.

Accordingly, I dismiss.

	
09/24/2025	09/24/2025
Linda Agoston, 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

112018

Respondent, Facade Improvement Inc appeared by its counsel, Phoebe Dossett, Esq., and the Petitioner, NYC Dept. of Buildings, appeared by its counsel, Laura Slavin.

The SUMMONS alleged a class1 violation and an aggravated II condition of a miscellaneous section of the Building Code (BC) for failure to carry out safety measures during construction operations. Specifically, the issuing officer (IO) observed a "worker was performing demolition on the floor and fell to the 8th floor. due to not being tied off to a secure location of the building. BC 3301.1."

The IO was no longer employed by DOB on the date of the hearing.

Ms. Slavin moved to amend to BC 3301.2 to match the allegations and submitted photos (Exh. 1) photos of construction debris. She submitted the Digital Log ERT (Exh. 2) that indicated that a worker was injured during demo operations and was transported to a hospital via ambulance and the complaint that indicated that the emergency response team (ERT) was assigned as a worker was injured during demo operations and the stop worker order (SWO) was issued on 3/1/24 and was fully rescinded on 3/5/24 (Exh. 3).

Ms. Dossett objected to the motion and moved to dismiss as the allegations failed to make out a prima facie case and challenged the class and condition.

Ms. Slavin submitted an Appeal (Exh. 4) and the violation number : 39092711K, that was appealed (Exh. 5). She noted that the appealed SUMMONS cited the same facts as the instant SUMMONS as the prior violation cited a miscellaneous section of the BC and the IO alleged that a worker was injured and noted BC 3301.1.1 in the allegations. She argued that the Board held in Appeal No. 2400451, DOB v. Spaxel Builders LLC, dated April 25, 2024 and noted that the Board held that " the JHO erred in not granting Petitioner's attorney's motion to amend the provision of law charged to BC § 3301.2, as the amendment was reasonably within the scope of the original summons, did not allege any additional violation based on an act not specified in the original summons, Construction worker injured during concrete foundation form stripping operations done under permit #X00658681-1I-FO.; BC 3301.1.1."

Ms. Dossett moved to dismiss a the allegations failed to make out a prima facie case and challenged the class and argued that the Respondent had no notice of the amendment to BC § 3301.2 and that there was no Chapter 33 safeguard in the allegations of the instant SUMMONS that the Respondent failed to implement.

Ms. Dossett submitted Appeal No. 2500010, DOB v. Koula Merousis dated February 27, 2025, (Exh. A) and noted that the Board held that the "narrative portion of the summons did not identify any specific ZR provision either; it ordered Respondent to '[c]omply with zoning resolution" but again cited only "ZR-Misc.' The summons thus failed to provide adequate notice."

Ms. Dossett submitted Appeal No. 1800650, DOB v. L2 Construction dated August 23, 2018, (Exh. B) and noted that the Board held:

"BC § 3301.2 requires contractors engaged in construction or demolition operations to (1) institute and maintain safety measures required by Chapter 33 of the BC and (2) provide all equipment or temporary construction necessary to safeguard the public and property affected by such contractor's operations. While the first provision may apply to site conditions that affect workers, the second provision limits its application to safeguards for "the public and property," which does not include safeguards for workers. See NYC v. Gemstar Contracting Corp., Appeal No. 1700381 (July 20, 2017). The Board finds that Petitioner has not established that the workers observed performing masonry work above exposed rebars, wearing harnesses that were not tied off to any system, constituted a violation of BC § 3301.2 under either prong of the statute."

Motion to amend is denied.

I find the same facts were considered in Appeal No. 2200860, DOB v. Sunshine Constr USA Inc., dated October 27, 2022, and the Board held that the "only safeguard cited in the summons is the lack of tie-offs to a 5,000-pound anchor point, which is not found in Chapter 33. Because Petitioner has not cited any Chapter 33 safeguard that Respondent failed to implement, it did not establish the BC § 3301.2 violation."

I find that the same facts were considered in Gemstar Contracting Corp., Appeal No. 1700381, dated July 20, 2017, as the Board held that "the requirement that a worker has to be tied off, and that a fall of over six feet is not an immediately