



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 No: 039135081M et al. (1 Summons) DEPT OF BUILDINGS, -against- GOULD HOTEL ON WEST 40TH STREET Hearing Date: 10/10/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$1,250.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039135081M	Sustained	01/09/2025	342 WEST 40 STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B151	28-304.1	Sustained	\$1,250.00

Findings of Fact & Conclusions of Law

Respondent, Gould Hotel on West 40th Street, is charged with violating Section 28-304.1 of the New York City Administrative Code, a Class 1 violation, for cease use as car door restrictor is not working and outside comm is not working. The Issuing Officer (I.O.) made this observation on January 9, 2025, at 3:40 p.m., at the premises located at 342 West 40th Street, New York, New York

The Code requires that “[e]levators and conveying systems shall be maintained in a safe condition and in accordance with ASME A17.1, as modified by Appendix K of the New York city building code. Every new and existing elevator or conveying system shall be inspected and tested in accordance with this article.”

At the hearing, Jennifer Clouden, Esq., represented Petitioner, NYC Department of Buildings. Phoebe Dossett, Esq., represented the Respondent, Gould Hotel on West 40th Street. This matter had previously been adjourned for the I.O.. Inspector M. Persaud (# 2767) appeared at the hearing and testified.

Petitioner submitted as evidence in support the Affidavit of Service; C of O; elevator device records and history; Overview for Complaint; Property Profile Overview; and the Mechanical Data Query for the 3 elevator devices at Respondent's premises (Petitioner's Exhibit 1). Ms. Dossett had indicated during the pre-conference that Respondent would be making a service challenge. Ms. Clouden then questioned Inspector Persaud who testified that nobody wanted to take the violation, he asked people and no one would take it. As to the Class 1, Inspector Persaud stated that he wrote the violation for safety issues. He explained that the car door restrictor was not working and that is a safety issue so he shut the elevator down. Inspector Persaud further testified that the elevator mechanic came to the building but did not have the part to fix it and also stated that the building owed him money from previous work so he would not fix it.

Ms. Dossett made a service challenge and asserted that the I.O. made a conclusory statement. Ms. Dossett questioned Inspector Persaud who testified that people were going in and out of the building/hotel, and he asked the workers, not guests. He asked if anyone was authorized. Ms. Dossett stated that this is a hotel so lots of staff, people around. Inspector Persaud also explained that he was told by a worker when he first got there to go upstairs to the mechanics room and the door was unlocked. After he wrote the summons, Inspector Persaud stated that he spoke to 2 or 3 people and no one wanted to take it, the doorman didn't want to take it because feared having to go to court.

Mr. Sicker made a service challenge asserting how did Petitioner conclude no one was available and cited to Appeals Board No. 2000937, DOB vs. The Doe Fund Inc., where it was held that service was defective when the I.O. walked around the premises before concluding that no one was present to accept service. The Board stated that the affirmation of service was insufficient to establish that the I.O. made the requisite reasonable attempt before resorting to posting the summons (Respondent's Exhibit A).

As to class, Ms. Dossett stated that there were other elevators at that hotel and it was not necessary to make this violation a Class 1.

Ms. Clouden responded that according to DOB records there are 3 active elevators, two of which service the lobby to 32nd floor, and a third which serviced the cellar to lobby.

I credit the testimony and evidence submitted by the representatives for the Petitioner and Respondent. As to the service challenge, I find that the Affirmation of Service as supplemented by Inspector Persaud's testimony was sufficient to establish proper affix and mail service. As to the class challenge, I do find that an inoperable car door restrictor is a safety issue for guests and staff at the hotel and was an immediately hazardous violation. The fact that there is another elevator available for guests does not negate that the elevator as observed by the I.O. was an immediately hazardous condition.

Accordingly, this summons is Sustained.

Eva Marie Russo-Lane

10/16/2025

10/16/2025

Eva Marie Russo-Lane, Hearing Officer

Date