



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: 035483446L et al. (1 Summons) DEPT OF BUILDINGS, -against- KELECHI HONORE Hearing Date: 10/16/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$2,500.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035483446L	Sustained	07/27/2024	1011 Lenox Road Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B103	AC 28-118.3.2	Sustained	\$2,500.00

Findings of Fact & Conclusions of Law

This hearing was held telephonically on October 16, 2025.

Phoebe Dossett appeared on behalf of Respondent. Rafeena Khairullah appeared for DOB. Issuing Officer Vaughn Bryan, Badge 4103, also appeared.

Petitioner charges a class 1 violation of AC 28-118.3.2, occupancy contrary to Certificate of Occupancy in that rooms for living were in the cellar along with an unlawful gas range, kitchen sink, and bathroom with wash closet, wash basin, and shower stall. It was also noted that no second means of egress was present. A vacate order was issued. Petitioner submitted the

Certificate of Occupancy and the IO's sketch and notes in support.

IO Bryan testified that he went to the premises and saw there was an illegal dwelling unit in the cellar, that he inspected the ceiling height and window size and found that the windows were not full size, that there was a full bathroom, and a boiler room you had to pass through in order to get to a back entrance.

Respondent denied the charge, moving to dismiss based on the doctrine of Res Judicata, arguing that the allegations in this summons have been previously adjudicated in a previous summons with the same Respondent, same section of law, and same violating condition where a full decision was made. Respondent argued that Res Judicata is applicable to OATH proceedings, and submitted Appeal 2301237, *DOT v. Karapanjo's Construction* (Dec. 21, 2023) and Appeal 1100289, *NYC v. Leon Goldstein* (Nov. 17, 2011) in support. Respondent also argued that this summons was duplicative of the previous summons.

Respondent further argued that the living arrangements, while contrary to the Certificate of Occupancy, were expressly allowed by a "Letter of No Objection" from the DOB, dated November 5, 2004. Respondent testified that they specifically wrote to the DOB to apply for the living arrangements to be allowed. Respondent also submitted a screenshot from the NYC Housing Authority showing that an inspection was performed at the premises, and that the inspection passed.

Respondent also argued that the living rooms and arrangements were not located in a "cellar," as the summons alleges, but in a "basement." In support, Respondent submitted the previous summons and decision issued, a survey that stated the lower living area was a "basement."

Finally, Respondent argued that there was a second means of egress, as there was a way into the basement from the front door and there was a way out through the back door.

Petitioner responded by pointing out the following:

1.The violation at issue is a continuing one and Res Judicata does not apply to continuing violations (Appeal 1100289, "The Board notes that the violation charge is not a continuing violation"), the previous charge was charged as a class 2 violation as opposed to class 1, additional facts regarding the lack of second means of egress are alleged in the instant summons, and the identifies of the individuals residing at the premises are listed on the instant summons. Petitioner also argued that at the prior hearing, Petitioner did not offer rebuttal and the issuing officer did not appear.

2.The "Letter of No Objection" merely states that the DOB "has No Objection to a Two-Family Dwelling" but does not state that occupancy of the cellar or basement is allowed. Additionally, the controlling Certificate of Occupancy states that the building has a "cellar." It does not state that there is a basement.

3.The survey that Respondent submitted in support of her argument that the living areas were in a basement and not a cellar was not issued or conducted by the DOB and thereby had no weight on whether, by DOB standards, the living areas were in a basement or a cellar. Similarly, a passed inspection by NYCHA, which is not the DOB, is not sufficient to show that the living area was legal under the Building Code or housing maintenance code.

4.The back exit of the living areas was not a clear and direct paths to the street, and thereby could not be considered a means of egress.

To support the class, Petitioner stated that living on the same floor as the boiler poses an immediate and serious safety risk to occupants due to the emission of carbon monoxide. Petitioner also noted that not having a clear path to the street posed a risk to the occupants and to first responders in the case of fire. Petitioner also noted that cellars, under the law, can never be legally occupied.

I credit the summons details and the IO's testimony and evidence.

The parties' arguments regarding Res Judicata are noted and preserved for the record. However, this decision will not reach this issue, as it is beyond the scope of the hearing.

I find that this summons is not duplicative, as it was issued on a separate date, as this summons is charged as a class 1 violation, and as there is no dispute that Respondent was occupying the premises contrary to the Certificate of Occupancy at the time the instant summons was issued.

While I credit Respondent's evidence, I find that Respondent did not have an updated or amended certificate of occupancy which allowed the violating conditions at issue and I find that Respondent did not dispute that there were individuals living there, did not show that the cellar was a considered a "basement" by DOB standards, or – even assuming the cellar was a basement – that the basement was legal and safe under the Building Code and Housing Maintenance Code.

For all these reasons, I find Respondent in violation. Accordingly, this summons is upheld as charged and the standard penalty imposed.



10/30/2025

10/30/2025

Artesia Tso, Judicial Hearing Officer

Date