



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: 03714-25U0 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- 80 SEVENTH BK LLC Hearing Date: 04/16/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$1,000.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
03714-25U0	Sustained	03/13/2025	80 7 AVENUE Brooklyn

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1	NA	1F	3.09	N	Sustained	\$1,000.00

Findings of Fact & Conclusions of Law

CHARGES

Summons #03714-25U0 charges Respondent with violating New York City Health Code §3.09, and alleges that on March 13, 2025, at 10:45am, at 80 7th Avenue, Brooklyn, NY: "Nuisance allowed to exist, an accumulation of construction type dust noted in common areas...."

Attorney Michael Nacmias appeared at a remote hearing on April 16, 2025 as an authorized representative of Respondent. Petitioner did not appear.

RELEVANT LAW

New York City Health Code §3.09 states:

"No person shall commit or maintain a nuisance as defined in §17-142 of the Administrative Code, and no person shall allow such a nuisance to exist or to be created in respect of any matter, thing, chattel or premises which he or she owns or controls."

Administrative code § 17-142 defines nuisance as:

"...public nuisance, as known at common law or in equity jurisprudence; whatever is dangerous to human life or detrimental to health...."

TESTIMONY

Mr. Nacmias represented that Respondent had a tenant protection plan and cleaning procedures in place (which included sweeping, mopping, washing walls, and putting plastic sheeting on the doors), and had been in compliance. Mr. Nacmias represented that these were ongoing construction operations and that the date of the summons was the last day of the operation, after which a thorough hallway cleaning was done. Mr. Nacmias represented that Respondent went every few weeks to clean and had an ongoing plan to abate dust during the construction, but that it was impractical to clean every day. Mr. Nacmias noted that the construction was on the 2nd floor, and that the 1 and 3rd floors were occupied, as allowed by the TPP. Mr. Nacmias argued that the dust may have been in an area that was not scrubbed down thoroughly, but that the summons does not specify what stairway component was involved. Mr. Nacmias argued that the allegation does not rise to the level of a nuisance and submitted an invoice (Respondent's A) and the TPP into evidence (Respondent's B 1-3).

DECISION

The summons is sustained.

I credit the sworn allegations of the issuing officer as set forth in the summons and find that the evidence and hearsay testimony presented by Respondent's Representative fails to persuasively rebut the allegations or to establish a valid defense. Specifically, I find that Respondent fails to persuasively establish that there was no nuisance condition at the time of inspection or that the condition was temporary. I further find that simply having a TPP in place and cleaning every few weeks was clearly insufficient to prevent the creation of said nuisance condition.

Therefore, I find Respondent in violation of New York City Health Code §3.09, the penalty for which is \$1000.

Accordingly, the summons is sustained.



May 07, 2025

5/7/2025

Sharah Thomas, Hearing Officer

Date