



**OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**  
Hearings Division

**DECISION**

|                                                                                                              |                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Caroline Kane, Esq. - Nacmias Law Firm, PLLC<br/>592 Pacific Street, 1st Floor<br/>Brooklyn, NY 11217</p> | <p>Summons No: 039108516Z et al. (1 Summons)</p> <p>DEPT OF BUILDINGS,</p> <p>-against-</p> <p>2246 FOREST AVE, LLC</p> <p>Hearing Date: 01/06/2025</p> <p>Hearing Location: Remote</p> <p>Type of Hearing: By Telephone</p> |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                              |
|----------------------------------------------|
| Total Penalty Amount: <b>\$6,250.00</b>      |
| Community Service(Hr): <b>Not Applicable</b> |

| SUMMONS #  | SUMMARY DISPOSITION | DATE OF OCCURRENCE | PLACE OF OCCURRENCE              |
|------------|---------------------|--------------------|----------------------------------|
| 039108516Z | Sustained           | 03/12/2024         | 2246 FOREST AVENUE Staten Island |

| LINE ITEM | OATH CODE | CODE SECTION/RULE | RESULT    | PENALTY    |
|-----------|-----------|-------------------|-----------|------------|
| 1         | B103      | 28-118.3.2        | Sustained | \$6,250.00 |

**Findings of Fact & Conclusions of Law**

2246 FOREST AVE, LLC

039108516Z

Respondent is charged with a Class 1 Aggravated 1 violation under NYC AC 28-118.3.2.

Deanna Burbridge, Esq. appeared on behalf of Petitioner, along with the issuing officer (IO), Franklyn Stephens. Caroline Kane, Esq. appeared on behalf of Respondent.

## SERVICE:

Ms. Kane stated Respondent is challenging service.

On direct examination by Ms. Burbridge, the IO testified: he remembers serving the instant summons; he spoke to a guy on a forklift, who directed him to another guy; he asked both if they were owners of Respondent; he asked if anyone was available to accept service and if they could accept on behalf of Respondent; both men answered no to all questions; no one else was present at the location.

Ms. Kane stated she has no questions for the IO. She made a motion to dismiss the summons, arguing service was improper. She said Respondent is an LLC, and the IO is required to ask if they are authorized to accept and if anyone else is present that is authorized to accept. She argued the IO asked if anyone was available, which is not the proper question, and he must ask if anyone is authorized. She relied on Appeal No. 2300410 (R Ex A).

Ms. Burbridge argued service was proper here, and the IO made a reasonable attempt to serve. She said he asked two people, and both said no. She argued R Ex A is distinguishable, as there, the IO did not ask anyone if they could accept or if they were authorized to accept. As to the language the IO used, she said "authorized" is just a word, and the IO asked if they could accept and was told no.

I find the IO made the required reasonable attempt to serve prior to posting. He asked two people if they could accept and if anyone else was available to accept, and he was told no. He also testified that no one else was present at the time. I find he is required to enquire if anyone is authorized or able to accept service on behalf of Respondent, but he is not required to use the word, "authorized," as long as he conveys what information he is seeking. I find his inquiries did convey that he wanted to know if there was anyone present who could accept service on behalf of Respondent, which means anyone authorized to do so. As such, I find service was properly effectuated.

## MERITS:

Ms. Burbridge submitted photo evidence (P Ex 1).

On direct examination, the IO testified: he took the photos in P Ex 1; he went to the cited location pursuant to a complaint; he observed conditions contrary to the Certificate of Occupancy (C of O) (P Ex 3) on the site; there was a metal frame for storage of tires in containers; the C of O allows for auto sales and repairs on the lot on the ground floor only; there were stacked shipping containers full of tires, which is not allowed under the C of O; the lot was being used for storage and should not be; he wrote the summons as an Aggravated I charge because this is a repeat violation (see P Ex 2 – relevant prior violation 039093376R, which references the same C of O and the same metal frames and containers and was found in violation on 12/10/24).

On cross-examination by Ms. Kane, the IO testified: he issued this as a Class 1 violation, because it was a recurring condition of unsafe storage; the containers were stacked three high; there was no permit on file, so the DOB could not know if they were built correctly; there was no DOB approval; he did not issue a work without a permit violation (one had been issued previously); the containers looked unsafe and were stacked three stories high; the location is a residential neighborhood with people walking below the unsafe storage; there is no certainty that the containers won't fall due to high winds, because of their height; he does not know if it is allowable to stack containers in residential areas.

On re-direct, the IO testified: he knew the containers had tires inside from previous inspections; he and other inspectors had been on the roof and looked inside the containers a couple of days before.

Ms. Kane said as to the merits, she requests an amendment to a Class 2 designation. She said the conditions do not rise to the level of a Class 1 violation. She said the containers are a separate structure from the shop, so there are no repairs or sales there. She argued just because there were no permits issued does not mean the containers were constructed contrary to Code.

Ms. Burbridge stated she is maintaining the Class 1 designation. She said the photos show parked cars in the lot below the containers, and there is a sign that says there are 100,000 tires there, so any collapse would cause harm in this residential

area, and the public would be in immediate danger.

Ms. Kane then made a motion to dismiss the summons, arguing class is an element of the charge, and this is not a Class 1 condition. She said this is not a work-without-a-permit violation, and selling tires in addition to repairs and sales doesn't warrant a Class 1.

The IO then stated he checked the profile, and a different unit issued a work-without-a-permit violation the same day the prior was issued, and that violation cannot be issued again.

Ms. Kane argued that work-without-a-permit violation was dismissed on 1/17/24, and the instant summons was issued on 3/12/24, so the work-without-a-permit violation was not pending at the time the instant violation was issued.

Ms. Burbridge argued the instant summons was issued as an occupancy charge, because Respondent was storing 100,000 tires, not because they were selling tires, but because they were stacked three stories high, contrary to the use approved for the space.

The IO said even if Respondent had had a permit, he would have issued this summons as a Class 1 charge, because of the height of the containers and the frame.

Ms. Burbridge stated this is a Class 1 violation because they added two additional stories, and if they had had a permit, they would have had to change the C of O.

Ms. Kane offered nothing further.

I find the Class 1 designation to be proper here. If Respondent had been storing and selling a few tires, a Class 2 designation may have been more appropriate. But where Respondent constructed three stories of containers storing 100,000 tires, a Class 1 charge is the appropriate charge. I credit the details as alleged in the summons as well as the IO's testimony and Ms. Burbridge's arguments and submitted evidence and find Respondent failed to rebut them.

Therefore, the summons is SUSTAINED.

The Class 1 Aggravated I penalty is imposed.



01/09/2025

01/09/2025

Susan Brand, Hearing Officer

Date