



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division
Decision

Andre Autz, Esq. - Nacmias Law
592 Pacific Street
Brooklyn, NY 11217

Summons# : 039527393Y et al. (2 summonses)

DEPT OF BUILDINGS,

-against-

CARLIN CONTRACTING OF NY

Hearing Date : 11/19/2024

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 6,250.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039527393Y	Sustained	04/10/2024	10-03 127 STREET, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B118	BC 3301.2 & 27-1009(a)	Sustained	5,000.00

Total Penalty for Summons: 5,000.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039527394X	Sustained	04/10/2024	10-03 127 STREET, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B2F7	BC 3301.7 (2014 code)	Sustained	1,250.00

Total Penalty for Summons: 1,250.00

Findings of Facts & Conclusions of Law

CHARGES

Summons #039527393Y charges Respondent with violating New York City Building Code §3301.2 & 27-1009(a), Class 1, and alleges that on April 10, 2024, at 8:50am, at 10-03 127 Street, Queens, NY: "Failure to maintain/display safety equipment measures or temporary construction—No toe boards...."

Attorney Andre Autz appeared at a remote hearing held on November 19, 2024 as an authorized representative of Respondent. Attorney Malka Amar appeared on behalf of Petitioner.

RELEVANT LAW

NYC Building Code §3301.2 states in pertinent part:

"Safety measures and standards. Contractors, construction managers, and subcontractors engaged in construction or demolition operations shall institute and maintain all safety measures required by this chapter and provide all equipment or temporary construction necessary to safeguard the public and property affected by such contractor's operations."

TESTIMONY

Ms. Amar relied on the summons.

Mr. Autz moved to dismiss on the ground that the violation is not immediately hazardous as there were no workers n site and therefore the summons fails to make out a prima facie case for a Class 1.

Ms. Amar argued that the charge is a per se Class 1 and submitted Appeals cases and a chart into evidence (Petitioner's 1 a-d).

Mr. Autz argued that the Appeals case is distinguishable as there were workers on site in that case.

DECISION

The summons is sustained.

As a threshold matter, the motion to dismiss is denied. I find that the cited section of law is a per se Class 1, and that there is no corresponding Class 2 charge, and as such the class designation cannot be reviewed by the court. I further find that the summons makes out a prima facie case for the violation.

I credit the sworn allegations as set forth in the summons and find that the arguments or Respondent's Representative fails to rebut them or to establish a valid defense.

Therefore, I find that at the time of inspection, Respondent was in violation of New York City Building Code §3301.2 & 27-1009(a), Class 1, the penalty for which is \$5,000. The penalty is not mitigable.

Accordingly, the summons is sustained.

CHARGES

Summons #039527394X charges Respondent with violating New York City Building Code §3301.7 (2014 code), Class 2, and alleges that on April 10, 2024, at 8:50am, at 10-03 127 Street, Queens, NY: "Failure to maintain/display on site documents required by BC Chapter 33...."

Attorney Andre Autz appeared at a remote hearing held on November 19, 2024 as an authorized representative of Respondent. Attorney Malka Amar appeared on behalf of Petitioner.

RELEVANT LAW

New York City Building Code §3301.7 (2014 code) part:

"Documents to be kept on site. Where this chapter requires construction documents, drawings, inspection reports, logs, checklists, site safety plans, fire safety and evacuation plans, tenant protection plans, occupant protection plans, or monitoring plans, copies of such shall be maintained at the site for the duration of the job and made available to the commissioner upon request...."

TESTIMONY

Ms. Amar relied on the summons.

Mr. Autz denied the violation without rebuttal.

DECISION

The summons is sustained.

I credit the sworn allegations as set forth in the summons and find that Respondent's Representative has presented no testimony or evidence to rebut or to establish a defense.

Therefore, I find that at the time of inspection, Respondent was in violation of New York City Building Code §3301.7 (2014 code), Class 2, the penalty for which is \$1,250. The penalty is not mitigable.

Accordingly, the summons is sustained.



11/20/2024

11/20/2024

Sharah Thomas, Hearing Officer

Date

