



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 24N01758 DEPARTMENT OF CONSUMER AND WORKER PROTECTION, -against- R & I DEPARTMENT STORE INC. Hearing Date: 12/16/2024 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$150.00	Restitution: \$0.00
Suspension/Revocation/Sealing:	

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
24N01758	Sustained	07/02/2024	1285 FULTON ST Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	OCCUR- RENCE	NO. OF COUNTS	RESULT	PENALTY	SUSPENSION/ REVOCATION/SEALING
1	NA	6 RCNY § 5-32(c)(5)	1	1	Sustained	\$150.00	

Findings of Fact & Conclusions of Law

Andre Autz appeared as the authorized representative of the named respondent, and Inspector Marshall appeared for the Petitioner.

The summons cites a violation of 6 RCNY § 5-32(c)(5)

The inspector submitted photos and a settlement offer.

The respondent contended that it was unclear if there was any kind of a bona fide purchase.

The respondent submitted the decision in DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- SERENDIPITY SALON, Respondent. DECISION AND ORDER Record No.: 4561-2013-ADJC NOH No.: 05336845.

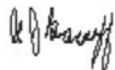
The inspector testified that the purchase was a "test purchase," and that there is never any money exchanged. After he brought over the item and had it rung up, he explained who he was and that he was conducting a test case. He requested a receipt, and was given one by the manager. He noted the missing information and was able to speak to the facilities manager, who told him the issues would be presented to the owner.

The respondent contended that this was a test receipt, not an actual receipt, and that all it really established was the price of the item.

I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense.

First, the allegations in the summons, even without further evidence, establish a prima facie case. Furthermore, the inspector specifically testified as to the circumstances which caused him to obtain what otherwise would have been a valid receipt should a purchase actually have been made. Finally, in Appeal No. 05433094 DCA v. 333 W 46th St Corp April 19, 2019, it was held that "This Tribunal has previously held that it is not a defense to a charge of 6 RCNY § 5-32(c), that there was not an actual retail purchase or request for a receipt. See DCA v. M&A Smoke Shop Corp., Appeal No. 05394642 (May 24, 2017); DCA v. P O Seng John Chen, Appeal No. 05379003 (February 8, 2017). As Respondent failed to refute the charge or establish a valid defense, it was in violation of 6 RCNY § 5-32(c)."

Accordingly, the summons is sustained.



December 17, 2024

12/17/2024

Amy Baranoff, Hearing Officer

Date