



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# : 039111554R et al. (1 summonses)

DEPT OF BUILDINGS,

-against-

MOKEN HOME IMPROVEMENT

Hearing Date : 3/17/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 0.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039111554R	Dismissed	04/12/2024	71 SOUTH 4 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B109	BC 3301.2 & 27-1009(a)	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

The summons alleges that on 4/12/24, the Respondent, Moken Home Improvement, was in violation of BC section 3301.2, Class 1, in that the IO observed cold form steel was modified and installed on the partial underpinning wall on metal tracks, cut and short on length, wood joist cut short supporting floors by make-shift wood and make-shift diagonal wood used for structural bracing, exposed undermining foundation and exposed existing foundation on open soil. Work being performed without plans or PE approved drawings 71 South 4th Street, Brooklyn, NY.

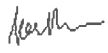
Phoebe Dossett, Esq. appeared for Respondent. Rafeena Khairullah, Esq. appeared for Petitioner DOB with IO Gutierrez #2868. Petitioner rested on the summons and provided photographs taken by the IO on the date of inspection (See Pet. Ex.). IO testified that the support of excavation (SOE) wall was not approved in plans. The makeshift diagonal wood used for support throughout was not indicated in the plans. The diagonal bracing could not support the weight of the above floors.

Ms. Dossett denied the charge, arguing that work was being performed with approved plans. She also argued 1) there was no failure to safeguard, Respondent had all approved plans on site at the time of inspection. Some of the work might not have conformed to the existing plans, but that was solely a paper violation requiring Respondent to amend the plans and/or provide a PE inspection in order to remedy the violating condition(s) 2) She moved for dismissal arguing that Petitioner failed to identify any applicable BC Chapter 33 provision that Respondent failed to comply with and 3) Ms. Dossett challenged class. In support of her arguments, she provided the approved SOE plans, foundation plans, structural plans, underpinning plans, PE assessment report and AEU20 Certificate of Correction (See Res. Ex.),

IO testified that the work he observed was not on the plans, the PE assessment was dated after the date the summons was issued so it was not available for him to review on the date of his inspection, and that he stands by the class as of the date of his inspection.

BC § 3301.2 provides that "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."

I agree with Respondents argument. While I credit the IO's testimony that the work he observed differed from the work in the approved plans which could cause serious safety issues for both public and property, Petitioner failed to identify any specific BC Chapter 33 provision that the Respondent did not comply with. Petitioner did not show, by a preponderance of the evidence, any safety measures that the GC did not institute and maintain as required by Chapter 33. Nor did Petitioner show what, if any, equipment, or temporary construction was not provided to safeguard the public and property. Further, even though the PE inspection occurred after the inspection, the PE confirmed that everything was structurally stable, including the adjacent building. This same report was used to obtain DOB's approval of correction (compliance on 5/23/24). Had the summons been issued as a violation of NYCAC section 28-105.12.2 for work not conforming to approved construction documents and/or approved amendments the narrative and testimony would be applicable. The violation as written does not make out a prima facie case. Accordingly, the summons is dismissed.



03/21/2025

03/21/2025

Lara Bianchi, Hearing Officer

Date

IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to www.nyc.gov/citypay/oath

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

CAN I DO COMMUNITY SERVICE?

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

COMPLETION OF COMMUNITY SERVICE

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/*Pro Se* Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

How to Contact the Help Center to Schedule Community Service:

Manhattan: (212) 436-0845 CSmanhattan@oath.nyc.gov
Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
Queens: (718) 393-6044 CSqueens@oath.nyc.gov
Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
Staten Island: (718) 876-2314 CSstatenisland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

NON-DISCLOSURE FOR SUMMONSES ELIGIBLE FOR COMMUNITY SERVICE

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at www.nyc.gov/oath/appeal. Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division within 30 days of the decision date, or 35 days if the decision was mailed to you.

To appeal you may need to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

APPEAL BY ENFORCEMENT AGENCY

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received within 30 days of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,
visit OATH's website www.nyc.gov/oath
or call 1-844-OATH-NYC

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