



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 039109662L et al. (1 Summons) DEPT OF BUILDINGS, -against- MARTUCCI DEVELOPMENT Hearing Date: 01/17/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039109662L	Dismissed	03/22/2024	118 OSGOOD AVENUE Staten Island

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B112	28-207.2.2	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Summons 039109662L came to hearing on January 17, 2025. Respondent appeared through attorney Andre Autz. Petitioner appeared through Henrietta Baidoo.

Inspector Brandefine charged a class 1 violation of Administrative Code § 28-207.2.2, requiring that work be discontinued when a worksite is under a stop work order (SWO). Specifically, the inspector observed full crew work at all levels (1st, 2nd, Cellar), including framing work and structural work on floors and new window openings and windows installed, after a stop work order issued.

This hearing was previously adjourned for the presence of the Inspector Brandefine. However, when the hearing was conducted, Inspector Brandefine refused to appear telephonically.

Petitioner submitted Exhibit 1, photos from the inspection that resulted in the Stop Work Order in February, and Exhibit 2, photos from the March inspection that led to the underlying summons. Petitioner stated it was the same inspector who visited the property both dates.

The Affidavit / Affirmation of Service filled out by Inspector Brandefine specifies Alternate Method / Charter Service (posting at place of occurrence). There is a checkmark for alternate method of service, followed by a pre-printed statement: "I made the following reasonable but unsuccessful attempt to effectuate service upon respondent or upon any other person whom service may be made as follows:" After the pre-printed statement, Inspector Brandefine wrote, "Looked all around for any one. No one at site." Another pre-printed statement says, "A true copy of the notice of violation was posted at the following conspicuous place on the premises where the violation occurred:" Inspector Brandefine wrote, "right front door."

Respondent's counsel moved to dismiss the charge for defective service. He pointed out that the summons is made out to an individual, not a business. He further argued that that affidavit does not say that he knocked or waited any reasonable amount of time. Finally, he argued that the inspector's statements were contradicted by his photos, which show people at the job site. On the merits, Respondent denied the charge but provided no rebuttal.

Regarding service, Petitioner argued that the presence of people in the photos does not contradict the inspector's statement on the affidavit of service. An inspector must go back to their vehicle, write up the violation, and speak to their supervisor before serving the violation. Petitioner states that this process can easily take an hour and a half, in which time workers may leave the worksite.

Administrative Code § 28-207.2.2 states, "No person shall with knowledge or notice of a stop work order allow, authorize, promote, continue or cause to be continued any work covered by the stop work order, except such work that may be required by order of the commissioner."

Before addressing the merits of the summonses, service must be established. Once Respondent challenges service, it is Petitioner's burden to prove compliance with the requirements of service. See *DOB v. SRGA Developers Inc*, Appeal No. 2400553 (May 30, 2024).

The standard for a summons served by the Department of Buildings is that there must be one reasonable attempt to personally serve the Respondent according to state law service procedures (CPLR § 308); if that reasonable attempt fails, the summons may be served by affixing it to a conspicuous place at the premises (Charter §1049-a(d)(2)(a)(ii)). This is known as "affix and mail" service.

CPLR § 308(2), provides in pertinent part, that service upon a natural person may be made by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served.

Respondent has not argued that the location was improper for service. The question is whether Inspector Brandefine made a reasonable attempt to serve someone of suitable age and discretion at the cited location.

While Petitioner speculated that the people photographed by the inspector may have left during the summons-writing process, there is no evidence of that on the record. The inspector made no note of that on the affidavit of service and did not appear at the hearing to testify about service.

Under these circumstances, I do not credit the inspector's statement on the affidavit. I find that Petitioner has not established that a reasonable attempt was made to personally serve Respondent before resorting to Affix and Nail alternative service.

Accordingly, the summons is dismissed.



01/23/2025

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Theresa Leary, Hearing Officer

Date