



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 039106267H et al. (1 Summons) DEPT OF BUILDINGS, -against- SARAH CONTRACTING CORP Hearing Date: 01/27/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$5,000.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039106267H	Sustained	02/16/2024	5616 3 AVENUE Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B209	BC 3301.2 & 27-1009(a)	Sustained	\$5,000.00

Findings of Fact & Conclusions of Law

The summons alleges a class 2 violation of NYC Building Code 3301.2 in that the respondent failed to safeguard persons and property affected by construction operations.

Malkar Amar, Esq. appeared for the petitioner, New York City Department of Buildings. Inspector Gelin, Badge #3615, testified for the petitioner.

Andre Autz, Esq. appeared for the respondent, Sarah Contracting Corp.

Petitioner submitted photographs taken by the inspector. The inspector described his observations and the photographs. The inspector stated there was no fence or pedestrian protection preventing the public from entering the site.

Respondent stated there had been a late-night delivery and a fence malfunction which led to a placement of a tarp to enclose the site. Respondent stated the condition was only temporary and corrected timely. Respondent submitted supporting documentation. Respondent requested an amendment to a provision of law that allowed for a lower penalty.

Petitioner contended that the provision of law was appropriated and noted that the violation was not mitigatable.

NYC Building Code 3301.2 provides "Contractors, construction managers, and subcontractors engaged 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."

A class 2 violation is considered a Major violation. Major violations are those specified as such by the New York City Construction Codes or those where the violating condition affects life, health, safety, property, or the public interest but does not require immediate corrective action.

The violation is not subject to mitigation or cure so correction, even if timely, does not alter the penalty.

The Board has no authority to rule on DOB's issuance, enforcement, or certification policies or procedures. DOB v. Fresh Meadows Childrens Farm L, Appeal No. 2200483(June 30, 2022)

I credit the factual allegations in the summons and petitioner's evidence which support a violation of the cited code section and find that the respondent did not establish a defense to the violation. Accordingly, the summons is sustained, and the mandatory penalty is imposed.

Ilene Sussman

02/03/2025

02/03/2025

Ilene Sussman, Hearing Officer

Date