



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Matthew Whitening, Esq., Nacmias Law Firm 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 0218100989 et al. (1 Summons) DEPT OF TRANSPORTATION, -against- PINK NORI Hearing Date: 03/05/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$500.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0218100989	Sustained	09/06/2024	36-03 30th Avenue Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ADS3	34RCNY5-02(A)	Sustained	\$500.00

Findings of Fact & Conclusions of Law

The summons is sustained.

The Respondent, PINK NORI, appeared by its counsel, Matthew Whitening, Esq., Nacmias Law Firm. The Petitioner, NYC DEPARTMENT OF TRANSPORTATION (DOT), appeared by its representative, Inspector Paul Stewart. An additional summons, #0218100989, issued to the same Respondent for a second violation of the same section of law was also heard at the hearing.

The summons alleges a violation of 34 RCNY 5-02(a), " Any person owning, leasing, managing or operating a ground floor

restaurant upon property which abuts upon any street may establish and operate a sidewalk cafe upon the sidewalk or sidewalk widening of such street in an area immediately adjacent to its premises, or a roadway cafe upon the roadway adjacent to the curb in front of such ground floor restaurant, or both, provided that such sidewalk cafe or roadway cafe must be granted a license and a revocable consent by the Commissioner, and provided further that a sidewalk cafe located entirely on a sidewalk widening must be granted a license and consent for the use of such sidewalk widening as a sidewalk cafe by the Commissioner." The Issuing Officer specifically alleged that the establishment had no application on file for its sidewalk cafe on file with NYC DOT as of the final registration date of August 3, 2024.

Petitioner's representative relied on the summons for Petitioner's main case and produced the following evidence: two (2) photographs of the alleged violating conditions (RxA and RxB).

Respondent's counsel did not challenge the merits of the summons but moved to dismiss asserting that the summons was fatally because the named-Respondent was Respondent's D/B/A and not the legal name of the sited premises. In support of Respondent's assertion, Respondent's counsel produced the following evidence: the New York State Department of State Certificate of Assumed Name for the subject premises (RxA). The document shows that Pink Nori is the assumed for E&P Tong LLC.

I do not find the fact that the summons was issued to Respondent d/b/a to be a fatal flaw. The Respondent has assumed the name for its establishment and can be served under that name for the purposes of this court. However, the instant summons will be considered a first offense, because the Petitioner provided insufficient notice of a prior violation as no previous summons number was listed on the instant summons.

If find on the Petitioner's credible case that the violating condition described in the summons existed and the standard penalty is imposed.

The summons is sustained.

	
03/07/2025	03/07/2025
Jamin Sewell, Hearing Officer	Date