



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Caroline Kane, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street, 1st Floor Brooklyn, NY 11217	Summons No: 039531484L et al. (1 Summons) DEPT OF BUILDINGS, -against- J&J DESIGNS INC Hearing Date: 03/11/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$1,000.00**

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

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039531484L	Sustained	08/16/2024	259-03 81 AVENUE Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B211	BC 3307.7	Sustained	\$1,000.00

Findings of Fact & Conclusions of Law

Respondent, J & J Designs Inc., appeared by Caroline Kane Esq., as attorney, and Deanna Lamberti Esq., appeared for the petitioner, DOB.

The respondent is charged with a violation of BC section 3307.7 of the NYC Administrative Code for construction fence not constructed or maintained pursuant to the code in that the construction fence was leaning towards the pedestrian walkway and was out of plum.

Ms. Kane moves to dismiss the violation on the grounds that it is duplicative of violation no. 039531470K (70K); that the instant violation is concerning one single construction fence surrounding all of the same construction site as in 70K. She submits in evidence, a copy of the construction permit and asserts that the permit shows that the fence is one structure, and cites in support Appeals Board decision no. 2400307

Ms. Lamberti opposed the motion and states that the instant violation is not duplicative of violation 70K. She states that whereas 70K pertains to the construction fence gates swinging outwards to the pedestrian walkway, the instant violation deals with the construction fence leaning towards the pedestrian walkway, being out of plum with several open plywood panels.

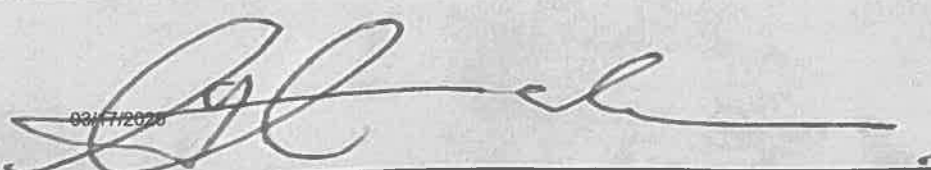
Respondent's motion to dismiss is denied. I find that the instant violation is not duplicative of the violation 70K. A review of violation 70K shows that whereas it charges the respondent with a violation of BC section 3307.7.2 of the code for construction fence gates swinging outwards into the pedestrian walkway, the instant violation charges the respondent with a violation of BC section 3307.7 for construction fence leaning towards the pedestrian walkway, out of plum with several plywood panels missing and leaving the adjacent property open and unprotected. Section 3307.7 cited in the instant violation provides the general rules for construction fence, while section 3307.7.2 cited in violation 70K provides the rules specific to construction gates albeit part of the construction fence. I find that even if the violations concern the same construction fence, they are not duplicative because they cited different violating conditions under different sections of law. Therefore, respondent's motion to dismiss is denied.

The Appeal Board decision no. 2400307 cited by Ms. Kane is distinguishable. In that case, two violations were issued for failure to maintain adequate housekeeping both citing the same "Pile of construction debris" as the violating condition. The cited case is dissimilar to the instant case where the two violations were issued for two different violating conditions: Outward swinging condition of the construction gate; and the defective condition of the construction fence.

Ms. Kane raised no defense on the merits of the violation.

Ms. Lamberti reaffirmed the violation and recommends the statutory penalty.

The violation is sustained. As the petitioner has proved its case, and the respondent has not established a sufficient legal defense to the violation, I credit the facts alleged in the charge. Therefore, the violation is sustained, and an approved penalty is hereby imposed.

 03/17/2025	03/17/2025
Cornelius Ojinnaka, Hearing Officer	Date