

Phoebe Dossett, Esq., appeared as the attorney for the respondent, Bayside Abode LLC, owner of the property at 199-16 32 Avenue, Queens. Daniel Brickman, Esq., appeared as the attorney for the petitioner, the Department of Buildings. Issuing Officer Eduardo Cautela, Badge #2903, also appeared for the petitioner.

Summons 035673242R alleges occupancy contrary to that allowed by DOB records. Illegal occupancy. Noted: First floor, occupied/operating as an unlicensed physical treatment establishment known as "New Spa Day."

The respondent is charged with Administrative Code 28-118.3.2, which states, "No change shall be made to a building, open lot or portion thereof inconsistent with the last issued certificate of occupancy or, where applicable, inconsistent with the last issued certificate of completion for such building or open lot or which would bring it under some special provision of this code or other applicable laws or rules, unless and until the commissioner has issued a new or amended certificate of occupancy."

Summons 035673241P alleges Illegal use in a commercial district. Unlicensed physical treatment establishment. A prohibited use per ZR 12-10, operating in a C1-2 district on the first floor, known as "New Spa Day." Noted: An individual not licensed by NYS as a health care professional or under the supervision of an NYS licensed healthcare professional offered to perform a body massage at a rate of \$60/hour. Business equipped with four massage rooms/tables, oils and towels.

The respondent is charged with Zoning Resolution 32-00, which provides that uses within buildings or other structures, as well as the open uses of zoning lots, have been classified into 10 separate Use Groups. ZR 12-10 provides that a "commercial building" is a building used only for a commercial use. C1 or C2 Districts mapped within Residence Districts are Commercial Districts and subject to the regulations of Article III.

Respondent's attorney did not dispute service. She had a duplicative summons argument and also disputed the fact that this was an unlicensed massage parlor. There is proof of a certificate for bodywork therapy at the premises.

The inspector testified that he was offered a full body massage by someone who was not licensed. He observed four massage rooms at this location. They did have a few certifications and licenses posted on the wall, but none of which was a massage therapist license. This was in violation because the licensed individual was not present to do massage therapy work.

Upon cross examination, he testified that at the time of inspection, he was offered services. Upon arrival, he requested service in the form of a full body massage. He did not get the individual's name. In ascertaining whether the individual was licensed, he asked if she was licensed; the person said no and pointed to the wall with licenses. When he asked her to provide licenses, she took out a folder to show her licenses. The ones that she took out were for cosmetology and acupuncture. When attempting to serve the summons, there was a doorbell outside; they did not allow him in, and she may have thought that she was in trouble. When he was there, there was only one individual there on that day. As for whether there was any language barrier, she seemed fine with English; when he asked for her license, she pointed to the wall of license, and went to grab her folder, so she understood what he was asking for.

Respondent's attorney had legal arguments. Summons 035673241P was issued as a zoning violation for ZR 32-00. She moved to dismiss that. The inspector's testimony is undisputed that at the time of inspection, there were active licenses kept on site, specifically acupuncture and other services. At the time of inspection, the respondent did have a license, but it was not on site at the time. This was corrected based on proof that they were not operating without licenses. Regarding 035673242R, she moved to dismiss the summons. She submitted Appeals No. 2401430, which holds that the issuance of a summons for occupancy contrary predicated on a zoning resolution is a duplicative charge. The occupancy contrary charge is duplicative of the zoning resolution. Based on this, she moved to dismiss 035673242R as duplicative of 035673241P.

Petitioner's attorney rebutted this by stating that according to the COO, this is a residential building and it is not supposed to be used for this use. The inspector testified that he went on an inspection and observed massage rooms; he made an offer and they accepted it. Regarding the duplicative argument, the law changed on that recently.

Respondent's attorney stated that the Appeals case is a recent case. There was a split as far as the duplicative argument. It was referenced in the footnote. There are two other Appeals cases that were overruled. The prior Appeals case held that Occupancy Contrary predicated on the Zoning Resolution was not duplicative. This case has held that the ZR is duplicative of ZR-00 when it is based on the same occupancy. Here, because 035673241P is citing the same treatment establishment, the basis for the ZR violation and occupancy contrary violation, 035673242R is duplicative and should be dismissed.