



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: 00543-24F0 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- OCKY FRIED CHICKEN & PIZZA CORPORATION Hearing Date: 01/23/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$2,050.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
00543-24F0	Sustained	01/16/2024	155 EAST 149 STREET Bronx

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1a	NA	02B	NYCHC 81.09(a)	3	Sustained	\$350.00
1b	NA	02B	NYCHC 81.09(a)	3	Sustained / Bundled with Line 1a	\$0.00
1c	NA	02B	NYCHC 81.09(a)	3	Sustained / Bundled with Line 1a	\$0.00
2	NA	02G	NYCHC 81.09(a)	2	Sustained	\$300.00
3	NA	04A	NYCHC 81.15(a)	N	Dismissed	\$0.00
4	NA	04L	NYCHC 81.23(a)	4	Sustained	\$300.00
5	NA	06A	NYCHC 81.13(b)	1	Sustained	\$200.00
6	NA	06C	NYCHC 81.07(a)	1	Sustained	\$200.00

7	NA	06D	NYCHC 81.27(b)	1	Sustained	\$200.00
8	NA	08A	NYCHC 81.23(a)	4	Sustained	\$200.00
9	NA	10B	NYCHC 81.20(b)	2	Sustained	\$100.00
10	NA	10H	NYCHC 81.07(o)	1	Sustained	\$200.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone on January 23, 2025. Petitioner did not appear. Respondent was represented by Caroline Kane, Esq.

Line item 1a charged a violation of HC 81.09(a). Respondent's counsel denied the allegations with no rebuttal. The line item is sustained.

Line item 1b charged a violation of HC 81.09(a). Respondent's counsel denied the allegations with no rebuttal. The line item is sustained.

Line item 1c charged a violation of HC 81.09(a) and alleged hot food was not held at or above 140 degrees in that two pieces of cooked chicken rolls registered at 88 degrees unattended on the kitchen counter and the operator was unable to determine how long the food was at the observed location and was placed there to cool for future customer service. The summons alleged time as a public health control was not observed being used. Respondent's counsel argued the summons did not establish a prima facie case for this line item because it did not state how long the food was placed out for. Counsel argued the food could have been out for immediate service. I find the summons established a prima facie case. I note the summons alleged the food was placed out to cool and that time as a public health control was not observed in use. I do not find Respondent refuted the allegations nor established a valid defense. The line item is sustained.

Line item 2 charged a violation of HC 81.09(a). Respondent's counsel denied the allegations with no rebuttal. The line item is sustained.

Line item 3 charged a violation of HC 81.15(a) and alleged that there was not a Food Protection Certificate holder present supervising food operations. The summons alleged that that the certificate for FPC holder Ali Elfgeeh was provided, but that Mr. Elfgeeh was not present at the time of inspection. Respondent's counsel moved to dismiss the line item and submitted an affidavit from Mr. Elfgeeh. See Respondent Ex A. In it, Mr. Elfgeeh states that he was present during the entire course of the inspection. I credit Mr. Elfgeeh's statement and find Respondent refuted the allegation. The line item is dismissed.

Line item 4 charged a violation of HC 81.23(a) and alleged 73 fresh mouse excreta were observed. Respondent's counsel submitted invoices from Respondent's extermination company, and noted that the exterminator comes at least once a month. See Ex A. I credit the invoices but find Respondent did not refute the allegations nor establish a valid defense. It is not a defense to a HC 81.23(a) charge that the premises are treated by an exterminator. The line item is sustained.

Line item 5 charged a violation of HC 81.13(b). Respondent's counsel denied the allegations with no rebuttal. The line item is sustained.

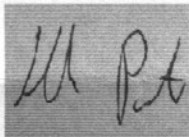
Line item 6 charged a violation of HC 81.07(a) and alleged food was not protected from potential sources of contamination in that an ice cream freezer chest was observed stored under fly strips with three house flies. Respondent's counsel moved to dismiss, and argued that Respondent was keeping the area clean and free from flies. Counsel argued that the cited conditions do not pose a risk of contamination. I credit the summons. I find Respondent did not refute the allegations. I find the conditions did pose a contamination risk as a fly could fall onto the ice cream. The line item is sustained.

Line item 7 charged a violation of HC 81.27(b) and alleged utensils were not maintained in that one can opener blade was observed encrusted with old food on the bottom shelf of the basement prep table and that per the operator's statement, the can opener was last used three days ago. Respondent's counsel stated that the can opener is not in use and moved for dismissal on that basis. I credit the summons and note it states that the operator stated the can opener was last used three days ago. I do not find counsel refuted the allegations nor established a valid defense. The line item is sustained.

Line item 8 charged a violation of HC 81.23(a) and alleged harborage conditions conducive to rodents, insects, or other pests. Respondent's counsel moved to dismiss, noting that Respondent had hired an exterminator was working to eliminate pests. I find Respondent did not refute the allegations. I do not find it a defense that Respondent had engaged an exterminator. The line item is sustained.

Line item 9 charged a violation of HC 81.20(b) and alleged liquid waste was not carried to the sewer so as to prevent contamination in that indirect waste pipe was observed extending directly down into funnel drains under two 3-compartment sinks in the kitchen and basement food prep area. Respondent's counsel argued that the summons did not establish a prima facie case for this line item. Counsel argued that the sink is not used for storage or mechanical processing. I credit the summons and find it established a prima facie case. I find Respondent did not refute the allegation nor establish a valid defense. The line item is sustained.

Line item 10 charged a violation HC 81.07(o). Respondent's counsel denied the allegations with no rebuttal. The line item is sustained.



January 23, 2025

1/23/2025

Hannah Pinto, Hearing Officer

Date