



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 0211688611 et al. (1 Summons) NEW YORK CITY POLICE DEPT, -against- CHARLES K MAXIUS Hearing Date: 11/29/2024 Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0211688611	Dismissed	10/09/2024	Ave K / E 53 St. Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AD6L	AC 19-190(B)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Petitioner NYPD did not appear. Attorney Michael Nacmias appeared on behalf of CHARLES K MAXIUS at telephone hearing on November 29, 2024. Respondent's counsel waived the present of the issuing officer, a formal reading of the summons and the use of a translator.

Respondent was charged with violating section 19-190(B) of the Administrative Code. The summons states "Right of way failure to yield with physical injury pedestrian crossing southeast corner to southwest corner." Date of occurrence was 10/09/24.

Respondent's counsel made two arguments in support of the dismissal of the summons. First, the summons was defective since it had a blank affidavit of service. Thus, Petitioner failed to provide proper proof of service as per the CPLR. Second, the summons is facially defective because it does not allege a violation since it does not describe what kind of injury the pedestrian suffered. Such as, was the injury substantial or significant. The summons also fails to state what was Respondent's conduct that led to a violation. No additional evidence was submitted.

The Board has held that service is improper when the Issuing Officer fails to provide any information on the affidavit of service and petitioner offered no testimony or other evidence at the hearing as to how the summons was served. See *NYC v. M & G General Construction*, Appeal No. 1200063 (May 31, 2012); reaffirmed in *NYPD v. Doe*, Appeal No.1800218 (May 17, 2018).

I give credit to the issuing officer's sworn statement but find that Petitioner failed to establish a violation. The officer failed to state if Respondent was operating a vehicle and if the pedestrian had the right of way. In addition, I find that the Affidavit of Service is blank and there was no evidence presented to show that the Respondent was properly served with the summons.

Therefore, the summons is dismissed.



11/29/2024

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Raul Quezada, Hearing Officer

Date