



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

FRANK TAMBERINO, ESQ. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039534382Y et al. (1 Summons) DEPT OF BUILDINGS, -against- LEE, PATRICIA A Hearing Date: 08/11/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$2,400.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039534382Y	Sustained	11/14/2024	1991 ATLANTIC AVENUE Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B223	BC 3307.1	Sustained	\$2,400.00

Findings of Fact & Conclusions of Law

Summons 039534382Y alleges a Class 2 violation of § 3307.1 of the Building Code (BC), found in Title 28 of the Administrative Code of the City of New York, for pedestrian protection that did not meet code specifications.

According to the IO's affirmation of service, he served the summons using the alternative "affix and mail" method of service under § 1049-a(d)(2) of the New York City Charter (Charter). The pre-printed language reads, "I made the following reasonable but unsuccessful attempt to effectuate service upon respondent or upon any other person whom service may be made as follows." The IO then wrote, "Looking for someone authorized to accept service of summons on behalf of respondent."

Thereafter, he posted a true copy of the summons to the "exposure # 1 at main entrance mental door." In the Additional

Information section, the IO wrote "at time of service the summons no one was available to accept service of summons on behalf of respondent."

Respondent, Patricia Lee, appeared by Frank Tamberino, Esq., who did not dispute the merits of the violation, but challenged the reasonableness of the IO's attempt at service prior to posting.

Petitioner, Department of Buildings, appeared by Malka Amar, who relied on the IO's statements on the summons, and submitted photographs taken by the IO at the time of inspection.

The Issuing Officer, E. Cantos (# 2995), also appeared and testified regarding service as follows. He recalls going to the site early in the morning (5:20AM) on the date of offense. Due to the inclement weather conditions, however, he attempted to serve the summons later in the morning (7:48 AM). When he came back to the site to attempt service, no one was there. He knocked on the door, but no one responded, and no one came out. On cross-examination, the IO testified further that: he saw two doors at the location, but only knocked on the main door, since the other door was the entrance to a Chinese restaurant. After he knocked on the main door, he waited approximately three minutes, and walked the perimeter of the building, but found no one at the location, so he posted the summons on the main door.

Respondent's attorney contended service was improper because the attempt was made at 7:48AM, during non-business hours, where it would have been unlikely anyone would have been present at the location.

Regarding service, I credit the IO's hearing testimony and find that the IO made a reasonable attempt to personally deliver the summons before affixing it to the premises. Charter § 1049-a(d)(2) permits "affix-and-mail" service of a summons after a reasonable attempt has been made to serve the summons to a person at the cited premises upon whom service may be made, as provided in the CPLR Article 3. A reasonable attempt at service is established where the IO makes attempts to ascertain whether anyone authorized to accept service on behalf of the respondent was present at the cited premises. See *NYC v. 1262 Broadway LLC*, Appeal No. 1700647 (August 17, 2017). Here, the summons indicates that the IO observed the violation at 5:20 a.m. The IO testified that, upon returning to the location to attempt service later that morning, the IO knocked on the main door, waited approximately three minutes, walked the perimeter of the building, but found no one at the location. At 7:48 a.m., he affixed the summons to the premises door. Respondent's attorney argues that service was improper because the IO attempted personal service at an unreasonable time. I disagree. That the IO's attempt at personal service occurred at 7:48 a.m. does not render service improper. See *NYC v. 163 South One LLC*, Appeal No. 1501019 (November 19, 2015) (finding attempt to serve LLC outside of regular business hours not unreasonable where the respondent did not assert that a person authorized to accept service would be present during business hours). Consequently, I find that the IO properly served the summons.

I credit the IO's statements on the summons.

Accordingly, the violation is sustained.

K. Lawner

08/12/2025

08/12/2025

Kevin Lawner, Hearing Officer

Date