



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

FRANK TAMBERINO, ESQ. - Nacmias Law Firm
592 Pacific Street 1st Floor
Brooklyn, NY 11217

Summons# : 039534383X et al. (1 summonses)

DEPT OF BUILDINGS,

-against-

LEE, PATRICIA A

Hearing Date : 8/11/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 6,250.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039534383X	Sustained	11/14/2024	1991 ATLANTIC AVENUE, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B2P7	Misc. BC—Chapter 33	Sustained	6,250.00

Total Penalty for Summons: 6,250.00

Findings of Facts & Conclusions of Law

Summons 039534383X alleges an Aggravated 1, Class 2 violation of miscellaneous section(s) of Chapter 33 of the Building Code (BC), found in Title 28 of the Administrative Code of the City of New York (Code). The IO indicated that Petitioner was seeking the Aggravated 1 penalty, pursuant to 102-01(f) of Title 1 of the Rules of the City of New York.

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 and support for the Agg 1 designation.

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 and the Agg 1 civil penalty is imposed.



08/12/2025

08/12/2025

Kevin Lawner, Hearing Officer

Date

**IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE
COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION
DATE OR 35 DAYS IF MAILED.**

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to www.nyc.gov/citypay/oath

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

**CAN I DO
COMMUNITY
SERVICE?**

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

**COMPLETION OF
COMMUNITY
SERVICE**

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/*Pro Se* Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

How to Contact the Help Center to Schedule Community Service:

Manhattan: (212) 436-0845 CSmanhattan@oath.nyc.gov
Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
Queens: (718) 393-6044 CSqueens@oath.nyc.gov
Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
Staten Island: (718) 876-2314 CSstateniland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

**NON-DISCLOSURE
FOR SUMMONSES
ELIGIBLE FOR
COMMUNITY
SERVICE**

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

**IF YOU DISAGREE
WITH THE DECISION,
YOU MAY APPEAL IT**

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at www.nyc.gov/oath/appeal. Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **may need to** pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

**APPEAL BY
ENFORCEMENT
AGENCY**

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

**For more information,
visit OATH's website www.nyc.gov/oath
or call 1-844-OATH-NYC**

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