



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division
Decision

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons# : 039136707J et al. (1 summonses) DEPT OF BUILDINGS, -against- ALMA DESIGN INC Hearing Date : 9/25/2025 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount : 10,000.00	Community Service(Hr): Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039136707J	Sustained	01/27/2025	3202 EMMONS AVENUE, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B109	BC 3301.2	Sustained	10,000.00

Total Penalty for Summons: 10,000.00

Findings of Facts & Conclusions of Law

The summons alleges that on 1/27/25, the Respondent, Alma Design Inc, was in violation of BC section 3301.2, Class 1, in that there was a failure to safeguard at roof top level at 3202 Emmons Avenue, Brooklyn, NY. At the time of inspection, the IO observed no fall protection in place for large opening on the roof. Also, easy access can be attained from the adjacent building into the construction site as well as the roof level.

Frank Tamberino, Esq. appeared for Respondent. Maria Dollas, Esq. appeared for Petitioner DOB with IO Lucas #3226. Petitioner rested on the summons and provided photographs taken by the IO on the date of occurrence (See Pet. Ex.).

The IO testified that at the time of inspection the site was closed, no ongoing construction activity. No one was present. The IO testified he saw construction materials and gaps at roof level including debris bags, things left scattered, no guardrails for areas that had holes. There was a hotel adjacent to the property with stairs that allowed access to the roof that were not closed off. No railings, no coverings, area was open. Wind could cause items left behind to dislodge.

Mr. Tamberino moved to dismiss, arguing that Petitioner failed to identify any applicable BC Chapter 33 provision that Respondent failed to comply with, relying on Appeal #2500089. There is no requirement that Respondent provide fall protection. In lieu of dismissal Mr. Tamberino requested the section of law remain the same, but the infraction code be amended to a B115 for failing to install guardrails.

BC § 3301.2 requires contractors engaged in construction or demolition operations to (1) institute and maintain safety measures required by BC Chapter 33 and (2) provide all equipment or temporary construction necessary to safeguard the public and property affected by such contractor's operations. While the first provision may apply to site conditions that affect workers, the second provision limits its application to safeguards for "the public and property," which does not include safeguards for workers.

In the Respondents cited Appeal, the IO did not see any personal fall protection equipment or guardrails around an opening. Petitioner's representative did not identify any BC Chapter 33 provision requiring personal fall protection equipment or guardrails around a floor opening. The Board found that the violation resulted solely from a worker's unauthorized removal of a cover and not because Respondent failed to institute and maintain all safety measures required by BC Chapter 33.

Petitioner declined to amend and argued that by having an open area accessible to the public with no fall protection, Respondent failed to safeguard the public, therefore no specific chapter 33 provision is required, relying on Appeals #2300646 and #1800283.

In Appeal #2300646 the Board found that an open, unguarded manhole posed a danger to first responders, who are members of the public, thereby establishing a violation under the second prong of the statute. Similarly in appeal #1800283 the IO testified that there were uncovered holes and loose planking in areas outside the controlled access zone, which were accessible to inspectors and first responders, who are members of the public. The Board found Petitioner established a prima facie case under the second prong of the statute.

Respondent has not rebutted the charge that there was no fall protection in place for large openings on the roof which were

accessible to the public via the adjacent property. Respondent failed to safeguard the public, no specific chapter 33 provision is required. Accordingly, the summons is sustained.



10/07/2025

10/07/2025

Lara Bianchi, 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 CSstatenisland@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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