



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons# : 035681115Y et al. (4 summonses) DEPT OF BUILDINGS, -against- 199 MALCOLM X AMS LLC Hearing Date : 12/2/2025 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount :	0.00	Community Service(Hr):	Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035681115Y	Dismissed	09/09/2024	199 MALCOLM X BOULEVARD , Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1E5	AC 28-210.3	Dismissed	0.00
2	B1E6	28-202 .1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035681116X	Dismissed	09/09/2024	199 MALCOLM X BOULEVARD , Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B189	28-301 .1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035681117H	Dismissed	09/09/2024	199 MALCOLM X BOULEVARD , Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B102	AC 28-301.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035681118J	Dismissed	09/09/2024	199 MALCOLM X BOULEVARD , Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B106	AC 27MISCAC28MISCBCMI	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

Phoebe Dossett, Esq., appeared as the attorney for the respondent, 199 Malcolm X Ams LLC, owner of the property at 199 Malcolm X Boulevard, Brooklyn. Daniel Brickman, Esq., appeared as the attorney for the petitioner, the Department of Buildings. Issuing Officer Eduardo Cautela, Badge #2903, also appeared for the petitioner.

Summons 035681115Y alleges, "Permanent dwelling offered/used/converted for other than permanent-residential purpose. C/o #302016299F indicates premises to be legally approved as a Class "A" multiple dwelling. Now, unites 1B (4 guests), 2F (3 guests) and 3R (6 guests) are used transiently. Staying for less than 30 days without host present (booked via AirBnB.com)."

The respondent is charged with Administrative Code 28-210.3 and 28-202.1. AC 28-210.3 states in pertinent part, "It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or to convert for use or occupancy such multiple dwelling or dwelling unit for other than permanent residence purposes." AC 28-202.1 states in pertinent part, "In addition to such civil penalty, a separate additional penalty may be imposed of not more than \$1,000 for each day that the violation is not corrected."

Summons 035681116X alleges, "Failure to maintain building in a code compliant manner: Lack of required number of means of egress for every floor per BC 1018.1 (2008 code); 27-366; BC 1021.1 (2014 code); BC 1006.3 (2022 code) for transient use at units 1R, 2F and 3R."

The respondent is charged with Administrative Code 28-301.1, which states in pertinent part, "All buildings and all parts thereof and all other structures shall be maintained in a safe condition. All service equipment, means of egress, materials, devices, and safeguards . . . shall be maintained in good working condition . . . The owner shall be responsible at all times to maintain the building and its facilities and all other structures regulated by this code in a safe and code-compliant manner and shall comply with the inspection and maintenance requirements of this chapter."

Summons 035681117H alleges, "Failure to maintain building in a code compliant manner. Lack of a system of automatic sprinklers where required as per BC 903.2 and 27-954 for transient use at units 1R, 2F and 3R."

The respondent is charged with Administrative Code 28-301.1.

Summons 035681118J alleges, "Failure to provide fire alarm system for transient use at units 1R, 2F and 3R."

The respondent is charged with Building Code 907.2.8, which states, "Fire alarm systems shall be installed in Group R-1 occupancies as required in Sections 907.2.8.1 through 907.2.8.5.

Petitioner's attorney submitted a certificate of occupancy, inspector's notes and complaint overview.

The inspector testified that he went to the premises for an ongoing investigation. He was able to speak to guests staying for a short term without the host present. They were AirBnB reservations. The guests from 3R were just checking out, so they did not let him in, but they showed him their confirmations via photos on cell phone and how much they paid. He also saw the confirmations and payment for the other two units. Each of the guests had the entire units to themselves and did not have the host present, which is a violation.

Upon cross-examination, he testified that he started the inspection at 10:45 AM and posted the summons at 12:30 PM. He underwent his usual routine, ringing the main bells on the side of the door and he knocked, as well. He gained access only at 1R. He determined that the host was not present by asking the guests. They all said that they had the units to themselves. It is part of his usual practice to ask that. It is the same host for each of the apartments, so he could not have been with all of the units. This was an active investigation. Sometimes there is a previous complaint through BIS, which is how an investigation is started in-house. This one was in-house, so it could be someone contacting the office directly; it could be anything. BIS and their in-house system are two different systems. The AirBnB receipts were the confirmation that they get from the app for their stay. Usually when they go there and it is proactive, there would already be listings for the building. The inspector was able to gain access into premises. He was not able to gain access into 2F and 3R. There were no sprinklers on the ceilings throughout, only in the front hallway. There was no fire alarm system. The building has only one staircase, and it would require two staircases to be used transiently. The units are on the first through third floors. The COO has 1st, 2nd and 3rd floors.

Respondent's attorney made a motion to dismiss the summons, citing Appeals No. 2400783. A transient use violation is dismissed against respondent when respondent does not have knowledge or participate in the transient use. Petitioner has to show that the owner had knowledge or opportunity to acquire the knowledge. Here, it was the first transient use summons issued to respondent, and the only complaint history concerning transient use was made on the same day that the summons was issued. The complaint history shows that on 9/9/24, it is the second complaint ever recorded for the property. Respondent had no knowledge, constructive or otherwise, letting them know that transient use was made at the premises. Petitioner has not established that respondent had knowledge of transient use at the premises. Secondly, she challenged the class. Evidence shows that it is the first summons issued to the property. A transient use is an immediate hazard when it is a second violation; here, it is the first. This summons should be written as a class 2, B2K6. Daily penalties run from the day after the summons was served. This was served 9/9/24 and certified corrected the very next day, 9/10/24. If found in violation as a class 1, she requested \$0 for daily penalties.

Petitioner's attorney stated that the COO does not allow for a class B dwelling. The photos show AirBnB listings for multiple units, establishing that respondent could not have been aware of it. There was evidence prior to the summons being issued. There was no means of egress or fire safety, such as sprinklers or fire alarm system, which made it a class 1 violation, due to multiple units without fire safety.

Respondent's attorney stated that petitioner's photos do not show the exterior of building. They also show a different address, so even if owner was looking at AirBnB listings, they would not have known. This does not rise to an ongoing use of transient use.

Petitioner's attorney recommended \$0 daily penalties.

Respondent's attorney's statements and evidence are persuasive and provide a meritorious defense. "An agency seeking to prove that an owner permitted transient occupancy must present evidence that the owner had either actual knowledge of the transient occupancy or the opportunity through reasonable diligence to acquire that knowledge." *DOB v. Woodside Capital, LLC*, Appeal No. 2400783, July 25, 2024, citing *DOB v. PVM Acquisition Owner LLC*, Appeal No. 2000427, June 18, 2020; *JNPJ Tenth Ave., LLC v. Department of Buildings*, 178 A.D.3d 636, 1st Dep't. 2019 ("an owner may be found to have permitted tenants to use their apartments for transient occupancy upon evidence that it either had knowledge of such transient occupancy or had the opportunity to acquire knowledge of the transient occupancy through the exercise of reasonable diligence"). I find that respondent did not have actual knowledge of the transient occupancy, as no complaints had been made prior to the date of violation. Nor did respondent have opportunity through reasonable diligence to acquire that knowledge, as the inspector's own photos of the Airbnb reservations showed a different address than that of the premises and the listings did not show the building exterior or distinct features of the apartment. Compare *DOB v. Gold 423 Wythe, LLC*, Appeal No. 2500012, February 27, 2025 (Appeals Board found that respondent had the opportunity to acquire knowledge of the transient occupancy through the exercise of reasonable diligence, including photographs in the listing showing the building exterior and several distinct features of the apartment). See also *DOB v. 259 Bleecker LLC*, Appeal No. 200652, July 22, 2021 ("egress and fire safety violations should have been dismissed for lack of evidence that [r]espondent had knowledge of the transient use at the premises or had the opportunity to acquire knowledge of the transient use through the exercise of reasonable diligence," in part because "[p]etitioner produced no evidence of complaints in DOB records of transient use prior to the date of inspection, nor evidence that short-term rentals had been ongoing prior to the date of violation"). Accordingly, the summonses are dismissed and no penalty is due.



12/02/2025

12/02/2025

Grace Chen, Judicial Hearing Officer

Date