



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: 0200194354 et al. (1 Summons) NEW YORK CITY POLICE DEPT, -against- RICHARD E SMILEY Hearing Date: 03/06/2025 Hearing Location: Remote 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
0200194354	Dismissed	01/15/2025	ocean and parkside avenue 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

This hearing was conducted remotely by telephone. Petitioner NYPD was not present for this hearing. Respondent appeared by his attorney Michael Nacmias Respondent is charged with violating section 16-19-190(b) of New York City Administrative Code.

Mr. Nacmias stated that since the affidavit of service is blank, there is not proper service and the summons should be dismissed. Mr. Nacmias also argued that the summons does not establish a prima facie case as no injury was alleged and no allegation that the pedestrian had the right of way.

Administrative Code § 19-190(b) makes it unlawful for the driver of a motor vehicle to fail to yield to a pedestrian who has the right of way "and whose motor vehicle causes contact with a pedestrian . . . and thereby causes physical injury." In NYPD v. Hershel Rosenfeld, Appeal No. 1900526 (June 27, 2019) the Board held that where the IO never alleged that Respondent's vehicle made contact with the pedestrian or that the pedestrian was in the crosswalk or had the right of way the summons must be dismissed. This summons does not establish a prima facie case as there is no allegation that the pedestrian had the right of way. Further the summons is defective as the affidavit of service page is blank. The Board has stated in NYPD v. Ajaz B. Kiani, Appeal No. 1801238 (June 18, 2020), that upon Respondent's challenge to service, Petitioner failed to establish proper service where the purported proof of service on the reverse side of the summons was left blank and not signed and Petitioner did not appear at the hearing to supplement its proof of service. Accordingly, the summons is defective on its face and it is dismissed.

	
03/06/2025	03/06/2025
Genna Rosten, Hearing Officer	Date