



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Michael Nacmias, Esq. - Nacmias Law Firm
592 Pacific Street 1st Floor
Brooklyn, NY 11217

Summons# : 0207766323 et al. (1 summonses)

NEW YORK CITY POLICE DEPT,

-against-

SANDY B KERN

Hearing Date : 3/20/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 0.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0207766323	Dismissed	11/11/2024	Albany Ave and Midwood St, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	AD6L	AC 19-190(B)	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

This matter was heard remotely, via telephonic conference, on March 20, 2025. Respondent appeared via Michael Nacmias, identified as the attorney the named respondent. Petitioner did not appear.

The summons alleges a violation of NYC AC 19-190(b). The date of occurrence was December 23, 2024, at 2:30PM.

Respondent requested the affidavit of service; I agreed to circulate it. Respondent moved to dismiss, as the affidavit was not filled out, and OATH thereby lacks jurisdiction over the matter; respondent submits NYPD v. Barrett Cherelle, Appeal No. 2000420 (June 18, 2020), in support of that contention. Respondent further asserts that the summons does not allege that the pedestrian had the right of way, nor that the motorist failed to yield.

I credit respondent's testimony, and find that, as a matter of law, this summons must be dismissed, as the affidavit of service, attached to the summons, is completely blank, and not filled in at all. OATH rules require that a petitioner submit both a valid summons, and proof of service; otherwise, OATH cannot assert jurisdiction over the matter.

[Moreover, I note that 19-190(b) implicitly incorporates 19-190(a), and a component of 19-190(a) is that the pedestrian have the right of way at the time of occurrence. Respondent correctly notes that this is not explicitly stated in the summons; instead, it is only noted that the pedestrian was crossing the crosswalk at the time.]

As such, the summons is hereby dismissed.



03/20/2025

03/20/2025

Craig Messing, Hearing Officer

Date