



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 No: 039535027Y et al. (1 Summons) DEPT OF BUILDINGS, -against- IN GEREBUZZA CONSTRUCTION Hearing Date: 10/21/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$5,000.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039535027Y	Sustained	12/10/2024	259-31 148 AVENUE Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B192	BC 3301.8	Sustained	\$5,000.00

Findings of Fact & Conclusions of Law

The summons alleges a class 1 violation of NYC Building Code 3301.8 in that the respondent failed to promptly notify the department of an accident and damage to adjoining property at a construction site.

Cassie Rene, Esq., appeared for the petitioner, New York City Department of Buildings. Inspector Downes, Badge #3637, testified for the petitioner.

Phoebe Dossett, Esq appeared for the respondent, In Gerebuzza Construction, and denied the violation.

Petitioner submitted photographs taken by the Inspector at the time of the inspection. The Inspector described her observations. The inspector stated the construction site was closed. The inspector stated she spoke to the occupants of the adjacent property who advised that the incident occurred several days prior to the inspection. The inspector stated that the respondent had a duty to report the accident to the DOB and according to department records no notification was made.

Upon inquiry the inspector stated that the FDNY had been onsite. The inspector stated she observed photographs taken by the occupants of the adjacent property since the structure that fell was no longer there and the incident several days prior.

Respondent noted that the incident occurred when the site was closed and they did not have notice of it until receiving the instant violation. Respondent stated they did not report it because they were unaware of it. Respondent stated due to the nature of the job they were not required to have a construction superintendent or watchperson due to the nature of the job. Respondent contended there was not a failure to notify as the respondent did not have notice of the incident. Respondent submitted supporting documentation.

Petitioner contended that the denial of notice was not a defense. Petitioner contended that the respondent had a duty to monitor the site even during a halt in the work and that physical presence at the site was immaterial.

NYC Building Code 3301.8 provides, "The department shall be notified immediately by the permit holder, or a duly authorized representative, of any incident at a construction or demolition site, or of any damage to adjoining property caused by construction or demolition activity at the site. Where required by Section 3301.13.11 or Section 3310.8.2.1, incidents or damage to adjoining property shall instead be reported by the construction superintendent or the site safety manager or coordinator."

Class 1 violations are those deemed to be immediately hazardous. Immediately hazardous violations are those specified as such by the New York City Construction Codes, or those where the violating condition poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action.

The violation here is not eligible for cure or mitigation so correction, even if timely, does not alter the penalty.

It is undisputed that Respondent did not notify DOB of the accident until the morning after the accident, a time period that cannot be considered immediate by any method of notification. See *DOB v. Riverside Developers USA, & Aron Goldberger*, Appeal No. 2101435 (December 16, 2021) (notification the next day was not "immediate").

While the above case can be distinguished from the instant one the board found notification the morning after an accident was not considered immediate. The provision of law essentially creates a strict liability standard as it does not qualify immediately, it does not provide a grace period nor does it contain language stating upon being advised of or finding out an accident occurred.

Additionally, the Board has held that, where there is an active permit, construction operations continue, even when there is a halt in work. See *NYC v. Owner of 113-02 Springfield Blvd.*, Appeal No. 42632, (January 2009).

I credit the factual allegations in the summons and the inspector's testimony which support a violation of the cited code section. While I find respondent's evidence credible I find the respondent did not establish a defense to the violation. Accordingly, the summons is sustained, and the mandatory penalty is imposed.

Ilene Sussman

10/27/2025

10/27/2025

Ilene Sussman, Judicial Hearing Officer

Date