



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# : 039535028X et al. (1 summonses) DEPT OF BUILDINGS, -against- IN GEREBUZZA CONSTRUCTION Hearing Date : 10/23/2025 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
039535028X	Dismissed	12/10/2024	259-31 148 AVENUE, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B109	BC 3301.2 & 27-1009(a)	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

The summons alleges a class 1 violation of NYC Building Code 3301.2 in that the respondent failed to safeguard persons and property affected by construction operations.

Cassie Rene, Esq appeared for the petitioner, NYC Department of Buildings. Inspector S. Downes, Badge #3637, testified for the respondent.

Phoebe Dossett, Esq. appeared for the respondent, Gerebruza Construction Inc.

Petitioner submitted photographs taken by the inspector. The inspector described her observations and what protections should have been in place. The inspector noted that debris was in the alleyway between the properties and the alleyway was accessible.

Respondent moved to dismiss the summons contending it did not meet the requirements of 48 RCNY 6-08(C) and that the summons contained only a conclusory statement. Respondent stated the summons did not identify what safeguards were lacking. Respondent stated that the facts constituting the charge need to be articulated in the summons and that the IO could not supplement the summons at the hearing. Respondent noted that an accident alone did not establish a failure to safeguard and the instant summons needed to stand independently of a related summons heard prior to this one. Respondent submitted several appeals cases in support of her motion.

Petitioner maintained the violation contending that the inspector was not required to allege all the missing safeguards in the summons. Petitioner stated that the summons alleged there was a failure to safeguard during a demo operation and that demo operations were inherently dangerous thereby requiring safety measures and protections be in place. Petitioner stated that the summons also alleged there was property damage.

NYC Building Code 3301.2 provides "Contractors, construction managers, and subcontractors engaged in construction or demolition operations shall institute and maintain all safety measures required by this chapter and provide all equipment or temporary construction necessary to safeguard the public and property affected by such contractor's operations."

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 is not eligible for mitigation, so proof of correction, even if timely, would not alter the fine.

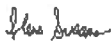
48 RCNY 6-08(c) requires that the summons contain at a minimum a clear and concise statement sufficient to inform the respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation and information about the specific section of law, rule or regulation alleged to have been violated.

A conclusory statement on the summons, without further evidence being presented in support, is insufficient to sustain the violation charged. See *Terrilee 97th St. LLC v. ECB*, 102 A.D.3d 637, 638 (1st Dept. 2013) (finding characterization of units or tenants on summons as "transient" to be a mere conclusory statement insufficient to support charge of illegal transient occupancy).

[I]t was error for the hearing officer to find Respondent in violation based upon allegations that were not charged in the summons. See *NYC v. Lend Lease (US) Construct*, Appeal No. 1700871 (November 2, 2017).

Here, the inspector's testimony along with the corroborating evidence establishes the elements of the charge. However, I agree with respondent that the violation details in the summons do not provide notice of same. The violation details regurgitate the language of the provision of law and only adds the "GC fail to safeguard the adj property during demo operation which cause property damage to the adj building siding Exp#2" There is no allegation as to how the GC failed to safeguard the property or what he did or didn't do that caused the property damage. As noted by the respondent an accident in and of itself is not sufficient to establish a failure to safeguard. Thus, alleging that damage occurred due to same or during demo operations is insufficient. The Summons here only gives notice of where the incident occurred (as the date of occurrence was not the date that the incident and/or damage was alleged to take place) and the provision of law being charged. No other facts except for a job number are provided.

I credit the the inspector's testimony and petitioner's evidence which support a violation of the cited code section. However, I find the summons did not meet the requirements of 48 RCNY 6-08(c) in that it did not apprise the respondent of the essential facts alleged to constitute the violation. Accordingly, the summons is dismissed.

	
10/23/2025	10/23/2025
Ilene Sussman, Judicial Hearing Officer	Date