



**OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**  
*Hearings Division*

**DECISION**

|                                                                                                            |                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC</b><br>592 Pacific Street 1st Floor<br>Brooklyn, NY 11217 | <b>Summons No: 039524519R et al. (1 Summons)</b><br><br><b>DEPT OF BUILDINGS,</b><br><br><b>-against-</b><br><br><b>GREAT STONE GEN'L CONST*</b><br><br><b>Hearing Date: 03/24/2025</b><br><br><b>Hearing Location: Remote</b><br><br><b>Type of Hearing: By Telephone</b> |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                              |
|----------------------------------------------|
| <b>Total Penalty Amount: \$2,500.00</b>      |
| <b>Community Service(Hr): Not Applicable</b> |

| SUMMONS #  | SUMMARY DISPOSITION | DATE OF OCCURRENCE | PLACE OF OCCURRENCE        |
|------------|---------------------|--------------------|----------------------------|
| 039524519R | Sustained           | 01/04/2024         | 42-62 HUNTER STREET Queens |

| LINE ITEM | OATH CODE | CODE SECTION/RULE   | RESULT    | PENALTY    |
|-----------|-----------|---------------------|-----------|------------|
| 1         | B2P7      | MISC .BC-CHAPTER 33 | Sustained | \$2,500.00 |

**Findings of Fact & Conclusions of Law**

Phoebe Dossett appeared as the authorized representative of the named respondent, and Dallas Mahan appeared for the Petitioner.

The summons cites a violation of MISC .BC-CHAPTER 33

The respondent moved to dismiss insofar as the summons fails to cite a provision of law. She relied on the decision in

The Petitioner moved to amend to a violation of 3301.2 pursuant to the same OATH code. He relied on the decision in Appeal No. 2000291 DOB v. Julia Brill April 23, 2020. He argued that if an erroneous provision of law could be amended, which "pointed the respondent in the wrong direction," then here there was no reason that an amendment to add the specific charge could not be made. He also noted that in the Columbia Amsterdam Associates case, the Board did note that no motion to amend had been made.

The respondent contended that the remedy alleges various items that are not included in the narrative, such as the scaffold issues and the lack of approved plans.

Preliminary, I note that it appeared from the adjournment order in the prior hearing that there already was a motion to amend that was granted and that the adjournment was for the respondent to further prepare.

However, even if there were not, today I am today granting the motion to amend. It is true that a charge of "Misc BC Chap 33 with no provision of law cited in the narrative, has been found to be defective for failure to cite a specific chapter or rule (see Appeal No. 2401666 DOB v. SD Builders and Construct January 30, 2025} . However, in both the cases cited by the respondent, there was no motion to amend, and the case law does not state with specificity that a motion to amend in these situations must be precluded under all circumstances because the defect is always fatal. In fact, as was noted in one of the cases cited by the respondent, Appeal No. 2400150 DOB v. Columbus/Amsterdam Associates March 28, 2024 it was stated that that "Petitioner's attorney failed to make a motion to amend the summons to charge a specific provision of law." Similarly, in Appeal No. 1801777 DOB v. Chung Jae Woong February 21, 2019, where the same issue was presented, it was specifically noted that "Petitioner did not appear at the hearing to make a motion to amend the charge," which sets forth a reasonable inference that there can be circumstances where an amendment can be allowed under these same stated conditions..

Appeal No. 2000291 DOB v. Julia Brill April 23, 2020 involved a summons that was brought under an incorrect provision of law, (which, like here, would otherwise make it defective on its face) and the issue presented was whether or not an amendment to a correct provision is permitted. In that matter, the focus seemed to be whether or not one could demonstrate prejudice or confusion regarding knowledge of the violating condition, and the Board held that "Petitioner may move to amend a summons at any time within the confines of 48 RCNY § 6-13(e)."

The factors in 48 RCNY § 6-13(e) are whether "1. the subject of the amendment is reasonably within the scope of the original summons; 2. such amendment does not allege any additional violations based on an act not specified in the original summons; 3. such amendment does not allege an act that occurred after the original summons was served; and 4. such amendment does not affect the Respondent's right to have adequate notice of the allegations made against him or her.

Here, as to the second and third factor, there was no request to add any additional violating conditions and the proposed amendment does not cite incidents that took place after service. As to the first factor, relating to the scope of the summons, the narrative alleges that "

"AT THE TIME OF MY RE-INSPECTION A 13 STORY NB, ACTIVE SITE, OBSERVEDSUPPORTED SCAFFOLD AT EXPOS-3, MISSING GUARD RAILS SYSTEM, LOOSE PLANKS AND SCAFFOLD LEGS ON BALCONIES NOT APPROVED PLANS"

All these conditions do fall within the purview of a violation of 3301.2, which requires in relevant part that "Contractors, construction managers, and subcontractors engaged in construction or demolition operations shall institute and maintain all safety measures required by this chapter". A handrails violation is specified in the penalty schedule as a violation of 3301.2. Similarly, the defects in the scaffold and the failure of the scaffold legs on the balcony to be shown on the plans are violations of code chapters 3314.4.4.1, 3301.5, and 3301.7.

For the same reasons, as to the fourth factor, the respondent does have adequate notice of the nature of the charges, and I take notice of the fact that on the adjournment order are the last date, the reason was so that the respondent could have time to address the amendment to the cited charge.

As to the merits, having made the above findings, and no further evidence having been offered, I find the sworn account of the

issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. The summons is sustained.

|                                    |  |            |  |
|------------------------------------|--|------------|--|
| 03/24/2025                         |  | 03/24/2025 |  |
| Amy Jill Baranoff, Hearing Officer |  | Date       |  |