



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: 01196-25F1 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- JUICE ETERNITY 3 INC Hearing Date: 12/01/2025 Hearing Location: Remote Type of Hearing: By Telephone
---	--

Total Penalty Amount: **\$2,300.00**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
01196-25F1	Sustained	08/21/2025	1 EAST 28 STREET Manhattan

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1	NA	02G	NYCHC 81.09(a)	2	Sustained	\$300.00
2	NA	03I	NYCHC 81.04(e)	4	Sustained	\$400.00
3	NA	04N	NYCHC 81.23(a)	2	Sustained	\$200.00
4a	NA	06E	NYCHC 81.07(h)	2	Sustained	\$200.00
4b	NA	06E	NYCHC 81.07(h)	2	Sustained / Bundled with Line 4a	\$0.00
5	NA	08A	NYCHC 81.23(a)	4	Sustained	\$200.00
6	NA	08B	NYCHC 81.24(a)	N	Dismissed	\$0.00
7	NA	09C	NYCHC 81.17(d)(1)	2	Sustained	\$100.00
8	NA	10A	NYCHC 81.22(c)	1	Sustained	\$200.00

9	NA	10B	NYCHC 81.20(b)	1	Sustained	\$100.00
10	NA	10D	NYCHC 81.19(c)	1	Sustained	\$200.00
11	NA	10F	NYCHC 81.17(e)(3)	1	Sustained	\$100.00
12	NA	10H	NYCHC 81.07(o)	1	Sustained	\$200.00
13	NA	19-06	Admin. Code 16-401(c) (1)	N	Sustained	\$100.00

Findings of Fact & Conclusions of Law

The hearing was held via telephone on 12/1 2025. The respondent appeared by attorney, Mr. Michael Nacmias. The petitioner did not appear.

The summons alleges multiple violations of the New York city Health Code.

Line Item 1: NYCHC 81.09(a). Mr. Nacmias argued the FDA only considers the observed food hazardous if held at 41 degrees for more than four hours. The two hours noted in the summons does not constitute a violation as kale would not have reached unsafe bacterial growth levels within that time. He cites NYCHC 81.10 as a support for his position.

I find the respondent has not rebutted the facts alleged or presented a valid legal defense. Here the inspector noted he was advised the kale and spinach had been removed from a refrigeration unit. NYCHC 81.10(a)(1) mandates that initial temperatures upon removal from cold holding must be below 41 degrees. Here the respondent submitted no proof as to the initial temperatures of the food upon removal from the refrigeration unit.

I sustain the charge.

Line Item 2: NYCHC 81.04(e). Mr. Nacmias argued the fact that the bottles were unlabeled signaled to the customers that they were not for sale.

I find the respondent has not denied the inspector's observations or presented a valid legal defense. I find no exception in the regulation supporting the respondent's argument.

I sustain the charge.

Line Item 3: NYCHC 81.23(a). Mr. Nacmias argued the respondent is actively engaged in pest control measures.

I find the respondent has not denied the inspector's observations or rebutted the charge by a preponderance of credible evidence. Mr. Nacmias submitted no proofs of any pest control measures in place (i.e. cleaning, inspections, professional pest control servicing).

I sustain the charge.

Line Item 4a: NYCH 81.07(h). Mr. Nacmias argued any utensil handles observed in direct contact with food were the result of recent active use, or may have unintentionally shifted during service or replenishment.

Mr. Nacmias submitted no evidence tending to rebut the charge or support his argument.

I sustain the charge.

Line Item 4b: NYCH 81.07(h). Mr. Nacmias incorporated his argument from Line item 4a for this charge.

Mr. Nacmias submitted no evidence tending to rebut the charge or support his argument.

I sustain the charge.

Line Item 5: NYCHC 81.23(a). Mr. Nacmias argued splatters are regular occurrence in the juice and smoothie business. There respondent cleans the areas daily and in between use of the juice machines. Any observed splatter was incidental to ongoing food prep.

Mr. Nacmias submitted no evidence tending to rebut the charge or support his argument. If there were a sworn statement in the record addressing the routine cleaning I may have been persuaded otherwise. Without such evidence I find the respondent has not rebutted the charge.

I sustain the charge.

Line Item 6: NYCHC 81.24(a). Mr. Nacmias argued the trash area was in active use during the inspection.

NYCHC provides an exception to this charge when the receptacle is in active use. I find it reasonable to infer that a trash receptacle in the front service and food prep area was in active use during the inspection occurring during operating hours.

I dismiss the charge.

Line Item 7: NYCHC 81.17(d)(1). Mr. Nacmias argued there is no evidence that the observed cracks or stains rendered the board incapable of being cleaned. The condition was a result of normal wear and tear and cannot be said to cause harborage of bacteria.

I find the respondent has not rebutted the charge. The inspector indicated the cutting boards were badly worn with deep stained cut marks. There is no evidence in the record (i.e. photographs of the cutting boarding boards) tending to refute the inspector's description. Had this evidence been submitted I may have been persuaded otherwise.

I sustain he charge.

Line Item 8: NYCHC 8122(c). Mr. Nacmias argued the dirty bathroom area was a transient condition. It is routinely cleaned as part of a daily protocol.

I di not credit Mr. Nacmias' unsupported argument. I finds the respondent has not rebutted the charge by a preponderance of credible evidence.

I sustain the charge.

Line Item 9: NYCHC 81.20(b). Mr. Nacmias argued there was no evidence of contamination. Regardless, the staff has been instructed to cease use of this sink for washing produce.

I find the regulation does not require evidence of actual observed contamination. The regulation requires the system to be designed to prevent contamination. Here the inspector indicated such.

I sustain he charge,

Line Item 10: NYCHC 81.19(c). Mr. Nacmias stated the system was temporarily malfunctioning.

I find the respondent has denied the inspector's observations. Temporary malfunctioning is not a defense to this charge.

I sustain the charge.

Line Item 11: NYCHC 81.17(e)(3). Mr. Nacmias stated the appliance has been replaced.

I find the respondent has denied the inspector's observations. Correction after the date of offense is not a defense to the charge.

I sustain the charge.

Line Item 12: NYCHC 81.07(o). Mr. Nacmias argued the observed single-service plastic bowl covers were stored in sanitary conditions and not a source of contamination.

I do credit Mr. Nacmias' unsupported assertion. I find the respondent has not rebutted the charge by a preponderance of credible evidence.

I sustain the charge.

Line Item 13: NYCAC 16-401(c)(1). Mr. Nacmias stated his client advised him the straws were only provided upon request, The regulation applies to distribution, not storage.

Here, the inspector indicated the subject straws were available for customer self-service. Therefore, I do not credit Mr. Nacmias' unsupported assertion that the straws were only provided upon customer request.

I sustain the charge.



December 08, 2025

12/8/2025

Susan Huot, Judicial Hearing Officer

Date