



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

**DECISION**

|                                                                                                             |                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Michael Nacmias, Esq. - Nacmias Law Firm<br/>592 Pacific Street<br/>1st Floor<br/>Brooklyn, NY 11217</p> | <p>Summons No: 06063-25F2 et al. (1 Summons)</p> <p><b>DEPARTMENT OF HEALTH &amp; MENTAL<br/>HYGIENE,</b></p> <p><b>-against-</b></p> <p><b>881 BISTRO INC.</b></p> <p>Hearing Date: 12/18/2025</p> <p>Hearing Location: Remote</p> <p>Type of Hearing: By Telephone</p> |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Total Penalty Amount: <b>\$850.00</b> |                     |                    |                               |
|---------------------------------------|---------------------|--------------------|-------------------------------|
| SUMMONS #                             | SUMMARY DISPOSITION | DATE OF OCCURRENCE | PLACE OF OCCURRENCE           |
| 06063-25F2                            | Sustained           | 10/29/2025         | 881 LEXINGTON AVENUE Brooklyn |

| LINE ITEM | OATH CODE | VIOL CODE | CODE SECTION/RULE | CONDITION (SEVERITY) | RESULT    | PENALTY  |
|-----------|-----------|-----------|-------------------|----------------------|-----------|----------|
| 1         | NA        | 04N       | NYCHC 81.23(a)    | 5                    | Sustained | \$350.00 |
| 2         | NA        | 06C       | NYCHC 81.07(a)    | 2                    | Sustained | \$200.00 |
| 3         | NA        | 08A       | NYCHC 81.23(a)    | 3                    | Sustained | \$200.00 |
| 4         | NA        | 08B       | NYCHC 81.24(a)    | N                    | Dismissed | \$0.00   |
| 5         | NA        | 10F       | NYCHC 81.17(e)(3) | 1                    | Sustained | \$100.00 |

**Findings of Fact & Conclusions of Law**

Respondent, 881 BISTRO INC, appeared by in person hearing through a Cantonese interpreter in response to the summons for an alleged violation of Article 81 of the New York City Health Code. Respondent was represented by its attorney Michael Nacmias. Petitioner, Department of Health and Mental Hygiene, did not appear.

**Line item 1:** Mr. Nacmias argued that the condition level should be lowered because the fruit flies were observed in a couple of specific areas, kitchen and customer seating area. Mr. Nacmias also stated that Respondent cleaned and sanitized all areas where fly activities were observed.

I credit the issuing officer's statement and find that Petitioner proved this line item by a preponderance of the evidence. I find that Respondent did not establish a valid defense. A total condition 5 is warranted if there are more than 30 flies at the premises. The inspector noted in the summons that he observed 34 fruit flies.

Accordingly, this line item is sustained.

**Line item 2:** Mr. Nacmias stated that all uncovered food items were immediately discarded. Mr. Nacmias requested that the severity level be reduced.

I credit the issuing officer's statement and find that Petitioner proved this line item by a preponderance of the evidence. I find that Respondent did not establish a valid defense or rebut the Petitioner's case.

Accordingly, this line item is sustained.

**Line item 3:** Mr. Nacmias argued that the inspector did not describe what kind of vermin activity he observed. The statement was conclusory without any supporting facts. Mr. Nacmias also stated that no photos were submitted. Mr. Nacmias stated that the condition should be lowered to 1. Mr. Nacmias testified that Respondent cleaned and sanitized the indirect drain and repaired all holes, cracks and crevices. He also provided photos.

I credit the issuing officer's statement and find that Petitioner proved this line item by a preponderance of the evidence. I find that Respondent did not establish a valid defense. The description of the violation states that harborage conditions conducive to rodents exist in that indirect drain in kitchen was observed with old food particles. The cited code states that food service and non-retail food processing establishments shall be kept free of rodents, insects and other pests, and of conditions conducive to pests.

Accordingly, this line item is sustained.

**Line item 4:** Mr. Nacmias testified that all garbage cans are covered with lids. He submitted photos into evidence. Mr. Nacmias stated that the inspector was present when the employees were moving the garbage around.

I credit Respondent's testimony and find that Respondent established a valid defense.

Accordingly, this line item is dismissed.

**Line item 5:** Mr. Nacmias argued that it is not clear if the fruit flies were on the door frame before the inspector arrived or if the inspector let the flies in when he opened the door the freezer. Mr. Nacmias stated that the reach-down freezer was cleaned and sanitized immediately.

I credit the issuing officer's statement and find that Petitioner proved this line item by a preponderance of the evidence. I find that Respondent did not establish a valid defense or rebut the Petitioner's case.

Accordingly, this line item is sustained.



December 31, 2025

12/31/2025

Date

Erisa Cepa, Judicial Hearing Officer