



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Caroline Kane, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street, 1st Floor Brooklyn, NY 11217	Summons No: 01760-25F1 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- AKIMORI UES LLC Hearing Date: 07/14/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$1,100.00**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
01760-25F1	Sustained	04/03/2025	858 LEXINGTON AVENUE Manhattan

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1	NA	04A	NYCHC 81.15(a)	5	Sustained	\$400.00
2	NA	04L	NYCHC 81.23(a)	2	Sustained	\$200.00
3	NA	06D	NYCHC 81.27(b)	1	Sustained	\$200.00
4	NA	08A	NYCHC 81.23(a)	3	Sustained	\$200.00
5	NA	10B	NYCHC 81.20(a)	1	Sustained	\$100.00

Findings of Fact & Conclusions of Law

For the reasons stated below, the summons is sustained.

Caroline Kane, Esq. for the Respondent restaurant, and the Petitioner Department of Health (DOH) does not appear. The

summons alleges multiple violation under the New York City Health Code (NYCHC), including the following:

Line Item 1 – NYCHC 81.15(a). Food Protection Certificate not held by manager or supervisor of food operations in that Garcia Marisol Brianna who was supervising food operations at the time of inspection does not hold a Food Protection Certificate. No other supervisor of food operations that was present holds a Food Protection Certificate. Certificate for Food Protection Certificate holder Meyer Safdieh (17-03515) was provided however the individual was not present at the beginning of the inspection. Meyer Safdieh was observed entering through FSE's front entrance door 1 hour 20 minutes after the inspection had begun..Corrective action: Operator was instructed that at least one person who holds a Food Protection Certificate must be present during all hours of operation.

Respondent's attorney states that the restaurant has two certificate holders and admits that Mr. Safdieh arrived late on the date of inspection. She cannot account for the other certificate holder. I do not find this to be a credible defense, especially since the rule specifically provides that a certificate holder must be present at all times. As such, Line Item 1 is sustained.

Line Item 2 – NYCHC 81.23(a). Evidence of mouse activity present in that 28 fresh mice excreta observed in following areas: 2 observed on metal storage shelf next to 2-door lowboy refrigerator in front sushi prep area, 2 observed on floor behind dry goods storage shelf in basement foods/dry goods storage area and 24 observed on top of metal grease trap next to boiler room in basement.

Respondent's attorney states that Respondent has employed an outside exterminating company for the past two years, and that such company performs work once or twice per month. However, the exterminator does not address the magnitude of the mouse droppings here. A few excreta could be explained, but 24 fresh mouse droppings were observed. That is not something that an outside company would be dealing with, as the owner/manager of such restaurant should keep up the daily maintenance/cleaning of such premises. Twenty-four fresh mouse droppings reflect an unsanitary condition and an external exterminator for throws down the occasional bait traps and spray does not provide an adequate defense for this violation. As such, Line Item 2 is sustained.

Line Item 3 – NYCHC 81.27(b). Food contact surface including food contact surfaces on equipment or utensils unclear in that inner upper white plastic panel was observed with brown mildew buildup inside the ice machine in kitchen. Mildew observed easily removable with alcohol wipe at time of inspection. Said ice is for customer consumption as per Manager Garcia Marisol Brianna.

Respondent's attorney does not deny the presence of mildew, but states that such dirt was only on the surface. She presents a photo of the area cleaned. I find the sworn summons credible, plus the fact that it was easily able to be cleaned is not an adequate defense. As such, Line Item 3 is sustained.

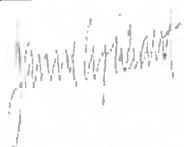
Line Item 4 – NYCHC 81.23(a). Harborage or conditions conducive to rodents, insects or other pests exist in that a gap of approximately 2 inches by 2 inches observed on ceiling above reach down freezer chest in basement food/dry goods storage area. A gap of approximately 1 an inch wide observed on ceiling around metal pipe next to staircase leading to basement..

Respondent's attorney advances the same defense as she had for Line Item 2, in which an outside exterminator was employed prior to the issuance of the summons. She also states that since it is a structural damage, it is the responsibility of the owner, not the Respondent tenant. Again, the exterminating company provides bait traps and sprays. Open gaps in the ceiling is not covered by an outside exterminator. As such, the presence of an outside exterminating company does not provide a defense to structural deficiencies. Passing the buck to the owner is also not a credible defense, as either owner and/pr tenant/habitant of the premises can be held responsible. Line Item 4 is sustained.

Line Item 5 – NYCHC 81.20(a). Potable water system not protected from back-siphonage or back-flow in that vacuum breaker not provided on ice machine in kitchen. Corrective action: Operator instructed to have vacuum breaker installed. Work to be done by a licensed plumber where required.

Respondent's attorney does not rebut this charge, but states the condition has since been corrected. Since there is no rebuttal, Line Item 5 is sustained.

In sum, the summons is sustained in its entirety.



July 16, 2025

7/16/2025

Janine Azriliant, Hearing Officer

Date