



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 858 LEXINGTON AVENUE NEW YORK, NY 10065	Summons No: 01760-25F0 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- AKIMORI UES LLC Hearing Date: 04/10/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$1,300.00**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
01760-25F0	Sustained	01/27/2025	858 LEXINGTON AVENUE Manhattan

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1	NA	04J	NYCHC 81.09(g)	1	Sustained	\$200.00
2	NA	04L	NYCHC 81.23(a)	4	Sustained	\$300.00
3a	NA	06C	NYCHC 81.07(a)	2	Sustained	\$200.00
3b	NA	06C	NYCHC 81.07(a)	2	Sustained / Bundled with Line 3a	\$0.00
4	NA	06D	NYCHC 81.27(b)	1	Sustained	\$200.00
5a	NA	08A	NYCHC 81.23(b)(3)	4	Sustained	\$200.00
5b	NA	08A	NYCHC 81.23(b)(3)	4	Sustained / Bundled with Line 5a	\$0.00
5c	NA	08A	NYCHC 81.23(a)	4	Sustained / Bundled with Line 5a	\$0.00

6	NA	08C	NYCHC 81.23(d)	1	Sustained	\$200.00
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Findings of Fact & Conclusions of Law

Petitioner, NYC Department of Health and Mental Hygiene was not present for the telephone hearing. Respondent Akimori UES LLC dba Akimori was represented by attorney Michael Nacmias.,

Line item #1 alleges Thermometer for measuring the temperature of food defective and not able to measure temperatures of Time/Temperature Control for Safety Foods (TCS) during cooking, cooling, reheating, hot holding and cold holding. At the time of inspection, Operator provided a defective digital thermometer that was unable to display temperatures on screen. Corrective action: Operator instructed to obtain an accurate metal stem-type or thermocouple thermometer. NYCHC 81.09(g)

Mr. Nacmias stated that the details of the charge do not make a prima facie case. There are no details as to how the determination was made for the thermometer.

The credited statements of the inspector are that the thermometer provider was digital and unable to display temperatures on the screen. Respondent did not rebut the charge and the charge is sustained.

Line item # 2 alleges Evidence of mouse activity present in that 98 fresh mice excreta observed in the following areas: 12 observed on shelf next to window in kitchen, 10 observed in wooden bowl on shelf under microwave in kitchen, 11 observed on shelf under microwave in kitchen, 5 observed on floor next to 2-door lowboy refrigerator in kitchen, 6 observed on floor next to 2-door lowboy refrigerator in front food prep area, 7 observed on shelf next to 2-door lowboy refrigerator in front food prep area, 24 observed on floor under shelves in food storage area in basement, and 23 observed on floor next to rear door leading to backyard in dining area.

For this charge, Mr. Nacmias stated that the rear door area referenced in the details of the charge is not connected to the food service establishment and the condition severity should be lowered from 4 to 3.

The credited statements of the inspector in the summons are that the observed mice excreta (24) were on the floor next to the rear door leading to the back yard. The inspection was at the interior of the service establishment. There is no reference that the inspector was in the backyard making the observation. The condition was observed in the food service establishment. The charge is sustained as written in the summons.

Line item 3a alleges Food not protected at all times from potential sources of contamination in that approximately 100 pounds of rice observed stored on floor and not in vermin proof container in food storage area in basement. Said food was observed at mentioned location in the vicinity of fresh mice excreta at the time of inspection.

Mr. Nacmias stated that the items were in vermin proof containers. There was no chance of contamination and the charge should be dismissed.

The statements of the respondent's counsel are insufficient to rebut the credible statements of the inspector, and the charge is sustained.

Line item 3b alleges Food not protected at all times from potential sources of contamination in that approximately 15 pounds of raw potatoes observed stored uncovered and not in vermin proof container on shelf next to 2-door lowboy refrigerator in front food prep area. Said food was observed at mentioned location in the vicinity of fresh mice excreta at the time of inspection.

The statements of the inspector in the summons are credited and establish the charge. The charge was not rebutted.

Line item #4 alleges Food contact surface including food contact surfaces on equipment or utensils not maintained in that top inner plastic panel above ice forming tray in ice machine observed with heavy brown mildew build-up in kitchen. Said mildew was easily removed by alcohol swab at the time of inspection. Ice in said ice machine is used for customer consumption, as per Operator's statement.

Mr. Nacmias stated that the statements of the inspector are insufficient to establish the charge in that there is no statement regarding the maintenance of the equipment.

The statements of the inspector regarding this charge are credited. The inspector clearly describes the "heavy brown mildew build-up".on the inner plastic panel. Respondent is required to maintain the machine clean and clear such as not to contaminate the ice that is for customer consumption. Respondent did not rebut the charge. The charge is sustained.

Line item #5a alleges Door that opens into the establishment from the outside were observed not properly constructed or installed to prevent entry of rodents in that 2 door(s) in rear dining area were observed inadequate when pests or signs of pests are present in the establishment. Barrier on said door(s) were observed inadequate in that gaps (approximately 1-2 inches in diameter were observed at bottom corners of doors at the time of inspection.

Line item #5b alleges Door that opens into the establishment from the outside was observed not properly constructed or installed to prevent entry of rodents in that 1 door(s) in front cashier service area was observed inadequate when pests or signs of pests are present in the establishment. Said door(s) was not observed equipped with any barriers and has spacings at the bottom of the doors(s) measuring approximately 1/2 inch wide at the time of inspection.)

Line item #5c alleges Harborage or conditions conducive to rodents, insects or other pests exist in that multiple holes (approximately 1-2 feet wide) were observed in ceiling in food prep area in basement. NYCHC

For Line items 5a, 5b, 5c Mr. Nacmias stated that these are general conditions and not such that they should be condition severity 4. He stated that they are all related and the additional instances should not count. He stated that they related to the prior charges. Respondent's statements did not rebut the charges. The charges are sustained as a condition 4.

Liner item #6 alleges Pesticide not properly labeled, not approved for use or not used by a licensed pest professional. One 15 ounce can(s) of Raid Flying Insect insecticide was observed with label indicating that product is not to be used in a food processing establishment on shelf in front service area. Said product was observed with label indicating for use in residential areas only at the time of inspection.

Mr. Nacmias stated that there is no statement that the pesticide was in use at the time of inspection. The statement of the inspection sufficiently establishes the charge in that the pesticide is not permitted in a food service establishment. This charge is sustained.



April 24, 2025

4/24/2025

Therese A Tomlinson, Hearing Officer

Date

IF YOU ARE FOUND IN VIOLATION, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.

- **To pay by mail**, send a check or money order to the Dept. of Finance Commissioner, PO Box 4199, Church Street Station, New York, NY 10261-4199. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number and ACCELA ID on the check or money order.
- **To pay in person**, bring a check, money order or credit card and this decision to the OATH Hearings Division locations in:
 - Manhattan at 66 John Street, 11th floor, New York, NY
 - Brooklyn at 9 Bond Street, 6th floor, Brooklyn, NY
 - Queens at 31-00 47th Avenue, 3rd floor, Long Island City, NY
- **To pay online** using a credit or debit card, go to nyc.gov/mylicense. First time users will be required to set up a User ID, password, and request a PIN to use this service. A summons number is required to pay. Instructions are provided on the website. A service fee is charged for all credit and debit card transactions.

IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT

You MUST use OATH's online or mail-in appeal forms available on OATH's website to submit your appeal. Instructions for filing an appeal may be found on the form and OATH's website at nyc.gov/oath/appeals.

Your appeal MUST be received by the OATH Hearings Division within 30 days of the decision date, or 35 days if the decision was mailed to you.

To appeal you MUST pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, also available on OATH's website.

APPEAL BY ENFORCEMENT AGENCY

If you wish to answer an appeal filed by an enforcement agency, you MUST use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website at nyc.gov/appeals.

Your answer must be received within 30 days of the date of the enforcement agency's appeal, or within 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty even if your case was originally dismissed after the hearing.

For more information,
see OATH's website nyc.gov/oath
or call 1-844-OATH-NYC

GN3c Decision Back Health 5-9-17