



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039538456X et al. (1 Summons) DEPT OF BUILDINGS, -against- MOD CONSULTANTS LLC Hearing Date: 11/24/2025 Hearing Location: Remote Type of Hearing: By Telephone
--	---

Total Penalty Amount: \$10,000.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039538456X	Sustained	03/27/2025	2047 E. 8 St. Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B1P3	BC3309.1	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone on November 24, 2025. Petitioner appeared through Gurtej Sahni with Brian Loughlin observing and IO J. Williams as witness. Respondent appeared through Phoebe Dossett, Esq.

Respondent was charged with a Class 1 violation of BC 3307.3 (2008 Code) and BC 3307.1 (2014 Code) after the IO alleged observing Respondent's failure to provide overhead protection for pedestrians at a construction site.

Mr. Sahni introduced the IO's photographs into the record and asked IO Williams to testify. See Pet. Ex. 1. IO Williams testified that he issued the summons as he observed no overhead protection for the walkways or vehicles alongside the cited

steel construction taking place above and beside them. He noted that there was no fence or inadequate fencing between the worksite and the adjacent walkways, nothing to prevent steel from falling and causing property damage or damage to a person. He testified that he was informed at the time of inspection that Respondent could not get access agreements for the neighbors and that they did not obtain those agreements before beginning work.

Ms. Dossett moved to dismiss the summons for failure state a prima facie case under the cited section. She argued that the section requires a construction fence or a sidewalk shed and that there was a construction fence in place as required. She argued that since the fence was up, there was no need for the sidewalk shed, citing BC 3307.6.2. She further argued that the adjacent walkways were private property, not public walkways or sidewalks, and that the structure to be constructed was not to be higher than 40 feet such that a sidewalk shed would be required.

Mr. Sahni then made a motion to amend the charge to a Class 1 violation of BC 3309.1 instead. Ms. Dossett did not object to the amendment. I deny Ms. Dossett's motion to dismiss the charge and grant Mr. Sahni's motion to amend. Ms. Dossett then challenged the class designation on the amended charge.

Mr. Sahni, then, on class argued that the main issue was that cars were parking directly adjacent to the work and that the walkway, similarly adjacent, might be walked by children who could be injured due to the cited work.

Ms. Dossett replied that Respondent did obtain access letters from the owners of the adjacent properties and introduced same into the record along with Petitioner-approved plans. See Resp. Ex. A. She argued that the IO photographs reflect a construction fence in place at the cited premises and noted that the structure is only a few feet over the fence and not nearly high enough to require a sidewalk shed. She argued that the neighbors had consented to the construction and permitted access to the cited driveways through the access letters. She noted that the amended plans submitted to and approved by the Petitioner simply required the installation of a lip on the fence. She argued that this small fix, the IO's photographs and his testimony fail to establish the cited conditions as immediately hazardous to any persons with the cars being at risk of damage being not enough to establish a class 1 violation.

Mr. Sahni argued in conclusion that the construction fence, as depicted in the IO's photos, was not completely aligned and had gaps where a child might be able to reach into the site. He reiterated the risk that steel or a tool could fall from on top of the structure and could harm a person. Or that children could reach their arms or fingers through gaps in the construction fence and get injured.

Section 102-01 of 1 RCNY designates a Class 1, immediately hazardous violation as a condition that poses a severe threat to life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action.

I credit the IO's sworn statement, photographs, and testimony he observed Respondent failing to protect adjoining private property and potentially persons thereon by performing structural worker with steel rising approximately 6 feet above the construction fence and find they establish Petitioner's prima facie case, including the Class 1 designation insofar as IO Williams contends that the steel beams or construction items could fall from atop the structure and land on the adjoining properties, severely damaging vehicles or persons.

I credit Ms. Dossett's access letters and approved amended plan. However, the access letters only permit Respondent to use or access the cited driveways. The signatories thereto do not give up their rights to have their property or household members protected from the work next door in the letters. In fact, in one letter the signatory agrees to not use the driveway or rear yard during work hours – perhaps acknowledging the risk that they or their vehicle could be damaged by the work performed next door.

I find Petitioner has established an immediate hazard that poses a severe threat to life, health, or property by way of the IO's observation of the cited conditions. I find the charge neither refuted nor successfully defended against otherwise.

Therefore, Respondent is found in violation and I impose the standard penalty on a Class 1 violation of the amended-to section.



11/28/2025

11/28/2025

Charles Simpkins, Judicial Hearing Officer

Date