



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: 03720-25F0 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- FULKOLE RESTAURANT INC Hearing Date: 04/16/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$900.00			
SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
03720-25F0	Sustained	03/17/2025	1211 LIBERTY AVENUE Brooklyn

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1	NA	02I	NYCHC 81.09(e)(2)	1	Sustained	\$200.00
2	NA	06D	NYCHC 81.27(b)	1	Sustained	\$200.00
3	NA	06E	NYCHC 81.07(h)	2	Sustained	\$200.00
4	NA	10B	NYCHC 81.20(b)	1	Sustained	\$100.00
5	NA	10C	NYCHC 81.19(a)	1	Sustained	\$100.00
6	NA	10F	NYCHC 81.17(e)(1)	1	Sustained	\$100.00

Findings of Fact & Conclusions of Law

Summons #03720-25F0 charges Respondent with the following violations of the New York City Health Code based upon an inspection that took place on March 17, 2025 between 9:07am and 11:54am at 1211 Liberty Avenue, Brooklyn, NY.

Attorney Michael Nacmias appeared at a remote hearing on April 16, 2025 as an authorized representative of Respondent. Petitioner did not appear.

CHARGE

Line Item 1 charges Respondent with a violation of New York City Health Code §81.09(e)(2) for "Time/Temperature Control for Safety cooked food not cooled by a method that will reduce the temperature of the product from 140 °F(60 °C) to 70 °F(21.1 °C) within 2 hours and from 70 °F(21.1 °C) to 41 °F(5 °C) or less within 4 additional hours....."

This section of the Code provides that:

"(2) Other cooling. Potentially hazardous foods removed from cold holding or prepared from or combined with ingredients at room temperatures must be cooled to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 hours of preparation using cooling methods described in paragraph (1) of this subdivision...."

TESTIMONY

Mr. Nacmias denied without rebuttal.

DECISION

Line Item 1 is sustained.

I credit the sworn allegations of the issuing officer as set forth in summons and find that Respondent's Representative has presented not evidence or testimony to rebut them or to establish a valid defense.

Therefore, I find that at the date and time of the summons, Respondent was in violation of New York City Health Code §81.09(e)(2).

Accordingly, Line Item 1 is sustained.

CHARGE

Line Item 2 charges Respondent with a violation of New York City Health Code §81.27(b) and alleges that "Food contact surface including food contact surfaces on equipment or utensils unclean...."

This section of the Code provides that:

"Food contact surfaces. Food contact surfaces, including food contact surfaces on equipment, and utensils shall be clean to sight and touch and shall be kept free of dust, dirt, food residues, grease deposits, and other contaminants. Equipment must be disassembled for the purpose of cleaning unless specifically constructed to enable cleaning in place."

TESTIMONY

Mr. Nacmias represented that the inspection took place very early in the morning, and the machine was dirty from the night before but was going to be cleaned before cooking operations began. Mr. Nacmias argued that this was not a critical violation.

DECISION

Line Item 2 is sustained.

I credit the sworn allegations of the issuing officer and find that the arguments and hearsay testimony of Respondent's Representative fails to persuasively rebut the allegations or to present a valid defense. Specifically, I find that Respondent has

failed to rebut the allegations and that the claim that the machine was going to be cleaned after having been left dirty overnight serves to corroborate rather than disprove them.

Therefore, I find that at the date and time of the Summons, Respondent was in violation of New York City Health Code §81.27(b).

Accordingly, Line Item 2 is sustained.

CHARGE

Line Item 3 charges Respondent with a violation of New York City Health Code §81.07(h) and alleges that "Food or ice dispensing utensils improperly stored during intervals of intermittent use...."

This section of the Code provides that:

"Utensils. Food dispensing utensils equipped with handles must be provided for use by food workers and for self-service in dispensing food and ice. Utensil handles must be of sufficient length to prevent bare hand contact with ready to eat potentially hazardous food. Between uses, food dispensing utensils shall be stored in the food with the handles extended so that the handles do not come into contact with food...."

TESTIMONY

Mr. Nacmias argued that the facts as stated should not count as two instances, that the violation does not make sense because it's just a knife on an unclean surface. Mr. Nacmias acknowledged that he did not have actual knowledge of the condition but said in substance: "So it's a dirty knife. Just clean it."

DECISION

Line Item 3 is sustained.

As a threshold matter, I find the Condition 2 designation to be appropriate as the summons cites two separate knives improperly stored. Motion to Reduce denied.

I credit the sworn allegations of the issuing officer as set forth in the summons and find that the any testimony and evidence presented by Respondent's Representative failed to rebut the allegations or to establish a valid defense. I find that Respondent's Representative failed to prove that the condition did not exist, and I find his arguments to be unpersuasive.

Therefore, I find that at the date and time of the Summons, Respondent was in violation of New York City Health Code §81.07(h).

Accordingly, Line Item 3 is sustained.

CHARGE

Line Item 4 charges Respondent with a violation of New York City Health Code §81.20(b) and alleges that "Liquid waste not carried to sewer or sewage disposal system so as to prevent contamination of the premises and its contents...."

This section of the Code provides that:

"Sewage and liquid wastes including but not limited to condensates discharged by equipment, such as refrigerators, ice machines, air conditioners, drain pans, evaporator trays, hoses and other plumbing or cooling lines and fixtures; fluids drained from culinary, slop or ware washing sinks...shall be conveyed to the sewer or sewage disposal system so as to prevent contamination of the premises and its contents and so as not to create harborage conditions."

TESTIMONY

Mr. Nacmias denied without rebuttal, but then argued that there was no reason why it should have been charged as a Condition 3 since multiple incidents were not alleged.

DECISION

Line Item 4 is sustained.

As a threshold matter, I find that as only one violating condition was alleged, it is appropriate to lower the condition. Therefore, the condition is lowered from Condition 3 to Condition 1. Motion to Reduce granted.

I credit the sworn allegations of the issuing officer as set forth in summons and find that Respondent's Representative has presented not evidence or testimony to rebut them or to establish a valid defense.

Therefore, I find that at the date and time of the summons, Respondent was in violation of New York City Health Code §81.20(b). I further find that no evidence of correction was presented.

Accordingly, Line Item 4 is sustained.

CHARGE

Line Item 5 charges Respondent with a violation of New York City Health Code §81.19(a) and alleges that "Lighting inadequate in that functioning light source is not provided in walk-in freezer in basement...."

This section of the Code provides that:

"Lighting. Sufficient artificial light shall be provided so that operations and cleaning are conducted safely, and food workers are able to recognize the condition of food, equipment, utensils, and supplies...."

TESTIMONY

Mr. Nacmias denied without rebuttal.

DECISION

Line Item 5 is sustained.

I credit the sworn allegations of the issuing officer as set forth in summons and find that Respondent's Representative has presented not evidence or testimony to rebut them or to establish a valid defense.

Therefore, I find that at the date and time of the summons, Respondent was in violation of New York City Health Code §81.19(a).

Accordingly, Line Item 5 is sustained.

CHARGE

Line Item 6 charges Respondent with a violation of New York City Health Code §81.17(e)(1) and alleges that "Flooring improperly constructed or maintained...."

This section of the Code provides that:

"Floors, floor coverings, and materials used to repair floors of food storage, food preparation, utensil washing areas, walk-in refrigerating units, dressing rooms, locker rooms, lavatories and rest rooms shall be constructed of a hard, smooth, durable, non-absorbent and easily cleanable material and shall be kept clean, without cracks, holes or gaps or other unintended openings at floor and wall junctions or around plumbing pipes and fixtures."

TESTIMONY

Mr. Nacmias denied without rebuttal.

DECISION

Line Item 6 is sustained.

I credit the sworn allegations of the issuing officer as set forth in summons and find that Respondent's Representative has presented not evidence or testimony to rebut them or to establish a valid defense.

Therefore, I find that at the date and time of the summons, Respondent was in violation of New York City Health Code §81.17(e)(1). I further find that no evidence of correction was presented.

Accordingly, Line Item 6 is sustained.



May 07, 2025

5/7/2025

Sharah Thomas, Hearing Officer

Date