



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 04373-25F0 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- CARIDAD BAKERY CAFE INC 2 Hearing Date: 08/06/2025 Hearing Location: Remote Type of Hearing: By One-Click
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Total Penalty Amount: \$1,150.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
04373-25F0	Sustained	03/28/2025	5595 BROADWAY Bronx

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1	NA	02G	NYCHC 81.09(a)(2)	2	Sustained	\$300.00
2a	NA	04L	NYCHC 81.23(a)	5	Sustained	\$350.00
2b	NA	04L	NYCHC 81.23(a)	5	Sustained / Bundled with Line 2a	\$0.00
3a	NA	05D	NYCHC 81.21(b)	4	Sustained	\$300.00
3b	NA	05D	NYCHC 81.21(b)	4	Sustained / Bundled with Line 3a	\$0.00
4	NA	06A	NYCHC 81.13(b)	1	Sustained	\$0.00
5a	NA	08A	NYCHC 81.23(a)	4	Sustained	\$200.00
5b	NA	08A	NYCHC 81.23(b)(3)	4	Sustained / Bundled with Line 5a	\$0.00

6	NA	10F	NYCHC 81.17(e)(1)	N	Dismissed	\$.00
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Findings of Fact & Conclusions of Law

This summons was issued as a result of an inspection conducted on 3-28-25 at 11:04am. Michael Nacmias, attorney for respondent, appeared by online submission.

LINE ITEM 1

This charges intact raw shell eggs found not held at ambient temperature of 45 °F or below in that three cases of raw shelled eggs (32 dozen each) eggs found at ambient temperature of 52 °F in a cardboard box on the floor in the kitchen. Food has been in observed location for 1 hour and 38 minutes as per Food Worker Kayleen's statement. Food was delivered, then transferred to observed location 1 hour and 38 minutes prior to testing as per said Food Worker's statement. Food was observed left unattended. Michael Nacmias said "motion to dismiss. The cited shell eggs were out for immediate use during active breakfast service at approximately 11:00 AM on a Friday morning. Under NYC Health Code §81.09(a)(2), eggs may be held at ambient temperature if they are being used for immediate preparation, which was the case here. The eggs had been removed from refrigeration shortly before the inspection to fulfill ongoing customer orders and were not being stored for later use."

I credit the charge and find that it makes out a violation of the cited code section. I do not credit the claim that the cited eggs had been removed from the refrigerator shortly before the inspection to fulfill ongoing orders. I so find because I credit the inspector's testimony that food worker Kayleen stated that the eggs had been in a box on the kitchen floor for 1 hour and 38 minutes before the inspector observed them, and I credit Kayleen's testimony as well. I additionally credit the inspector's testimony that the eggs were observed left "unattended." In light of all of the above, I find that respondent failed to make out a defense to the charge. Accordingly, I sustain this Line Item.

LINE ITEM 2a

This charges mouse activity present in that 1 live mouse was observed crawling on the black caste iron waste pipes in the meter room in the basement. Michael Nacmias said that "the respondent has ongoing, routine extermination services in place and is actively addressing the pest issue in coordination with a licensed pest control provider."

I credit the charge and find that it makes out a violation of the cited code section. Nacmias' statement that respondent has ongoing routine extermination services in place and is actively addressing the pest issue, even if true, is not a defense to the charge. Accordingly, I sustain this Line Item.

LINE ITEM 2b

This charges mouse activity present in that 30 fresh mice excreta observed the following areas: 21 observed on the floor in the meter room in the basement, 4 observed on the floor in the storage area in the basement, and 5 observed on the bottom wooden shelf under the service counter in the kitchen. Michael Nacmias said that "the respondent has ongoing, routine extermination services in place and is actively addressing the pest issue in coordination with a licensed pest control provider."

I credit the charge and find that it makes out a violation of the cited code section. Nacmias' statement that respondent has ongoing routine extermination services in place and is actively addressing the pest issue, even if true, is not a defense to the charge. Accordingly, I sustain this Line Item. Bundled with Line Item 2a.

LINE ITEM 3a

This charges hand wash sink at kitchen was observed without an approved hand drying device and soap/detergent. Michael Nacmias said "motion to dismiss. While one handwashing sink lacked soap and/or paper towels at the time of inspection, all other designated handwashing stations on the premises were fully stocked and accessible to staff."

I credit the charge and find that it makes out a violation of the cited code section. The assertion that other designated handwashing stations on the premises were fully stocked and accessible to staff, even if true, is not a defense to the charge. I so find because cited code section NYCHC 81.21(b) requires all handwash sinks to have soap or detergent and single use

disposable towels or mechanical drying devices. Accordingly, I sustain this Line Item.

LINE ITEM 3b

This charges hand wash sink at food prep/service area was observed without soap or a detergent. Michael Nacmias said "motion to dismiss. While one handwashing sink lacked soap and/or paper towels at the time of inspection, all other designated handwashing stations on the premises were fully stocked and accessible to staff."

I credit the charge and find that it makes out a violation of the cited code section. I do not find that respondent made out a defense to the charge for the reason discussed with regard to Line Item 3a. Accordingly, I sustain this Line Item. Bundled with Line Item 3a.

LINE ITEM 4

This charges effective hair restraint not worn to keep hair from contaminating food or food contact surfaces in that one baker with long black hair observed preparing pastries on the food prep table in the kitchen without hair restraint(s). Michael Nacmias said "motion to dismiss. The employee observed without a hair restraint was a member of the service staff, not engaged in food preparation, and therefore falls within the exception outlined in §81.13(b)."

I credit the charge and find that it makes out a violation of the cited code section. I do not credit the claim that the cited worker was not engaged in food preparation because I credit the inspector's testimony, affirmed under penalty of perjury, that the worker was observed preparing pastries. Accordingly, I find that the worker did not fall under the cited code section's exemption and sustain this Line Item. As a first-time violation a zero penalty is imposed.

LINE ITEM 5a

This charges harborage or conditions conducive to rodents, insects or other pests exist in that the following was observed: a gap (approximately 1/4 inch) between the metal mesh and the cement wall above the pipes in the meter room and a gap (approximately 1/4 inch in width by 8 inches in length) between the baseboard and the floor in the storage area in the basement. Michael Nacmias said "motion to dismiss. The cited structural condition is part of the building infrastructure and falls under the landlord's responsibility, not the tenant restaurant; the Department has therefore named the incorrect respondent in this matter."

I credit the charge and find that it makes out a violation of the cited code section, which requires food establishments to be free of conditions conducive to the existence of pests, including "cracks, gaps, or holes in establishments' exteriors or interiors that permit free movement of pests." The claim that this condition "falls under the landlord's responsibility" is incorrect. The cited NYC Health Code section regulates food establishments. Thus, it applies to respondent, the food establishment permittee regulated by this section. Respondent's landlord is not regulated by this section, nor does this section contain an exception for food establishments with problematic landlords. In light of all of the above, I sustain this Line Item.

LINE ITEM 5b

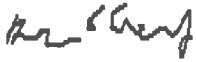
This charges door that opens into the establishment from the outside were observed not properly constructed or installed to prevent entry of rodents in that 2 door(s) in the customer service area were observed inadequate when pests or signs of pests are present in the establishment. Said door(s) were not observed equipped with any barriers and have spacings at the bottom of the doors(s) measuring approximately 1/4 inch. Michael Nacmias said "motion to dismiss. The cited structural condition regarding the restaurant doors is part of the building infrastructure and falls under the landlord's responsibility, not the tenant restaurant; the Department has therefore named the incorrect respondent in this matter."

I credit the charge and find that it makes out a violation of the cited code section, which requires "all doors opening into the establishment from the outside shall be equipped with barriers such as anti-pest tension brushes or space no larger than one-eighth of an inch to prevent entry of rodents." The claim that this condition "falls under the landlord's responsibility" is incorrect. The cited NYC Health Code section regulates food establishments. Thus, it applies to respondent, the food establishment permittee regulated by this section. Respondent's landlord is not regulated by this section, nor does this section contain an exception for food establishments with problematic landlords. In light of all of the above, I sustain this Line Item. Bundled with Line Item 5a.

LINE ITEM 6

This charges flooring improperly constructed or maintained in that cement floor observed with 2 dead mice on glue trap in the storage area in the basement. Michael Macmias said "motion to dismiss. The presence of two dead mice in a trap does not indicate that the flooring was improperly constructed or unclean; rather, it reflects that pest control measures were in place and functioning as intended. This supports the respondent's ongoing efforts to maintain a sanitary environment and eliminate pests, as noted in items 2a and 2b."

I find that the charge fails to make out a prima facie violation of the cited code section. I so find because this section applies to floors of "food storage, food preparation, utensil washing areas, walk-in refrigerating units, dressing rooms, locker rooms, lavatories and rest rooms." Since the charge does not indicate that the cited floor area was any of those enumerated above, I dismiss this Line Item.



August 11, 2025

8/11/2025

Deena F. Greenberg, Hearing Officer

Date