



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: 0218917977 et al. (1 Summons) NEW YORK CITY POLICE DEPT, -against- CESAR A GUARDADO - SILVERIO Hearing Date: 05/06/2025 Hearing Location: Remote Type of Hearing: By Telephone
---	---

Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0218917977	Dismissed	12/12/2024	Etna Street and Crescent Street Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AD6L	AC 19-190(B)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

On May 6, 2025, a telephonic hearing was held with respect to the instant matter, alleging a violation of Admin. Code 19-190(B). Petitioner, the New York City Police Department, did not appear. Respondent, via attorney Michael Nacmias, waived the appearance of an interpreter and elected to proceed without the issuing officer present.

Respondent requests dismissal for two reasons: (1) there is no affidavit of service, and therefore, service was inadequate and (2) the allegations fail to make out a prima facie violation of Admin Code 19-190 since there is no factual allegation that Respondent was in the vehicle or that the pedestrian was in a sidewalk.

The Board has held that service is improper when the Issuing Officer fails to provide any information on the affidavit of service and petitioner offered no testimony or other evidence at the hearing as to how the summons was served. See NYC v. M & G General Construction, Appeal No. 1200063 (May 31, 2012); reaffirmed in NYPD v. Doe, Appeal No.1800218 (May 17, 2018).

I credit Mr. Nacmias' arguments and find that the summons is defective since there are zero factual allegations detailing the conduct in this case. While the summons itself states "Respondent admitted to fail [sic] to yield", Mr. Nacmias correctly avers that there is no allegation that Respondent was in a vehicle, that there was a pedestrian, or that pedestrian had the right of way. Moreover, I find that the Affidavit of Service is blank and there was no evidence presented to show that the respondent was properly served with the summons. See NYPD v. Barrett Cherelle, Appeal No. 2000420 (June 18, 2020).

Accordingly, the instant summons is dismissed.



05/06/2025

05/06/2025

Raymond Queliz, Hearing Officer

Date