



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: 0199847331 et al. (1 Summons) NEW YORK CITY POLICE DEPT, -against- RICHARD M SMART Hearing Date: 08/18/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0199847331	Dismissed	08/22/2024	Flatlands/Rockaway Pky 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

A hearing was held by telephone on today's date. The Respondent's attorney Michael Nacmias appeared. The Petitioner did not appear. Respondent's attorney waived the right to an interpreter and to the issuing officer.

Respondent argues that the summons is defective as the affidavit of service page is blank. He further argued that the summons cannot establish a prima facie case as there is no allegation that the pedestrian had the right of way, no allegation that the respondent was driving a motor vehicle and no allegation that the pedestrian had the right of way or sustained a physical injury. The statement of PI did not establish that an actual physical injury was present as the description was conclusory and failed to meet the definition of a physical injury as stated in NYS Penal Law.

Code § 19-190(b) makes it unlawful for the driver of a motor vehicle to fail to yield to a pedestrian who has the right of way “and whose motor vehicle causes contact with a pedestrian . . . and thereby causes physical injury.” The Board has stated in NYPD v. Ajaz B. Kiani, Appeal No. 1801238 (June 18, 2020), that upon Respondent’s challenge to service, Petitioner failed to establish proper service where the purported proof of service on the reverse side of the summons was left blank and not signed and Petitioner did not appear at the hearing to supplement its proof of service. Accordingly, for the reasons stated the summons is defective on its face and it is dismissed.

	
08/18/2025	08/18/2025
Janet Albertson, Hearing Officer	Date