



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: 0803163745 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- FROM AARON Hearing Date: 08/19/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$600.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0803163745	Sustained	08/23/2024	2306 2 Avenue Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AH4C	NYCHC 151.02(A)	Sustained	\$600.00

Findings of Fact & Conclusions of Law

I find Respondent FROM AARON in violation of the charge of New York City Health Code 151.02(a).

Respondent appeared through counsel at a telephone hearing held on August 19, 2025. Petitioner DOHMH was not present. Respondent's Counsel, Mr. Michael Nacmias, waived the presence of the issuing officer, the use of an interpreter, and the reading of the summons.

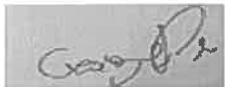
Petitioner DOHMH alleges in the summons that on August 23, 2024, at 1:28 pm, "respondent failed to eliminate condition conducive to rodent infestation in harborage in the form of pile of metal panels, wooden pallets, sandbags, paint bucket and misc. items observed along the wall of he lot." The summons cites this as the second violation, with the first violation issued with summons 803048932.

Respondent's Counsel argued that the summons improperly cites this as a second violation, because summons no. 803048932 cited a different provision of law, HC 151.02(b), and not HC 151.02(a). Respondent's Counsel also argued that Respondent here made efforts to control the issue with pest control services. Respondent's Counsel submitted as evidence 2 invoices and a letter from JB Pest Management Corp., regarding pest control treatment at the cited premises on August 7th, 2025, and August 14th, 2025. The letter and the two invoices are made part of the record as Exhibit A.

As to Respondent's Counsel's first argument, summons 803048932 cited Respondent for "unsanitary garbage conditions providing food for rodents" in violation of HC § 151.02 (b) which states, in pertinent part, that [a]ll garbage and other waste and recyclable materials shall be deposited in tightly covered, watertight receptacles made of a material type and grade that is resistant to rodents, insects and other pests until such time that garbage and waste materials are moved to an area for a scheduled pickup..." HC § 151.02 (a) requires a person in control of a premises to "take such measures as may be necessary to prevent and control the harborage and free movement of rodents, insects and other pests." HC §151.02(a) defines "conditions conducive to pests" as including "sources of food or shelter for rodents." Here, the summons cites respondent with failing to eliminate conditions conducive to pests and summons 803048932 cited Respondent for "unsanitary garbage conditions providing food for rodents" which falls squarely within the meaning of "conditions conducive to pests" as defined in HC §151.02(a). Therefore, Petitioner here properly cited this as a second violation, because the substantive facts giving rise to the violation are the same- conditions conducive to pests- even if the earlier summons cited HC § 151.02 (b) and not HC § 151.02 (a).

As to Respondent's Counsel's second argument, I credit the allegation in the summons and find that respondent failed to refute the allegation or raise a valid defense. HC § 151.02 (a) requires a person in control of a premises to "take such measures as may be necessary to prevent and control the harborage and free movement of rodents, insects and other pests." A defense to the charge of HC § 151.02 may be established by showing that, before the offense, it was taking adequate measures to prevent and control pests, including monthly professional exterminating services, monthly inspections, setting bait traps, and eliminating rat burrows. See *NYC v. Sherwood Salvan, Appeal No. 1600853 (September 22, 2016)*. Moreover, the Board has held that construction material, such as stacked bricks, may provide shelter for rodents, and therefore constitute a condition conducive to pests and harborage. See *DOHMH v. Mahoney Realty LLC, Appeal No. 2500451 (May 29, 2025)*. In this case, Respondent's Counsel submitted as evidence 2 invoices and a letter, see Exhibit A indicating that pest control services targeting rats at the premises were provided bi-weekly. However, Exhibit A fails to show treatment prior to the issuance of the instant summons. I find that the invoices, see Exhibit A, showing two treatments on August 7 and August 14 of 2025, and the letter that was also issued in August of 2025, are insufficient to show that adequate measures were taken here to prevent and control the harborage and free movement of rodents, prior to the issuance of the summons. See *DOHMH v. 170 Knickerbocker LLC, Appeal No. 2200679 (August 25, 2022)* (finding defense established where letter from exterminator demonstrated three months of service prior to issuance of summons).

Accordingly, the charge of New York City Health Code 151.02(a) is sustained, and the penalty for a second violation is imposed.



08/19/2025

08/19/2025

George Drakopoulos, Hearing Officer

Date