



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: 04210-25F1 et al. (1 Summons) DEPARTMENT OF HEALTH & MENTAL HYGIENE, -against- J M FLOWER CORP Hearing Date: 12/01/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$2,100.00			
SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
04210-25F1	Sustained	08/21/2025	906 2 AVENUE Manhattan

LINE ITEM	OATH CODE	VIOL CODE	CODE SECTION/RULE	CONDITION (SEVERITY)	RESULT	PENALTY
1	NA	02B	NYCHC 81.09(a)	4	Sustained	\$400.00
2	NA	02G	NYCHC 81.09(a)	2	Sustained	\$300.00
3	NA	04A	NYCHC 81.15(a)	5	Sustained	\$400.00
4	NA	04N	NYCHC 81.23(a)	4	Sustained	\$300.00
5	NA	06F	NYCHC 81.27(c)	2	Sustained	\$0.00
6	NA	08A	NYCHC 81.23(a)	3	Sustained	\$200.00
7	NA	10B	NYCHC 81.20(b)	1	Sustained	\$100.00
8	NA	10E	NYCHC 81.18(a)(3)	1	Sustained	\$200.00
9a	NA	10F	NYCHC 81.17(e)(3)	2	Sustained	\$100.00

9b	NA	10F	NYCHC 81.17(e)(3)	2	Sustained / Bundled with Line 9a	\$0.00
10	NA	19-06	Admin. Code 16-401(c) (1)	N	Sustained	\$100.00

Findings of Fact & Conclusions of Law

The hearing was held via telephone on 12/1 2025. The respondent appeared by attorney, Mr. Michael Nacmias. The petitioner did not appear.

The summons alleges multiple violations of the New York city Health Code.

Line Item 1: NYCHC 81.09(a). Mr. Nacmias argued the observed items could not have been in the pastry display case for 2 hours and 45 minutes as the bakery delivers the items at 8AM. The inspection occurred at 9:06AM.

I do not credit Mr. Nacmias' unsupported assertion. That assertion is directly contrary to what the worker named Kelly advised the inspector at the time of inspection.

I sustain the charge.

Line Item 2: NYCHC 81.09(a). Mr. Nacmias argued the elevated milk temperatures were the result of restocking after a morning delivery. This was a temporary fluctuation only and the refrigeration unit returned to normal operating temperatures thereafter.

While it is reasonable to infer temporary temperature fluctuation upon restocking, I find the respondent has not presented any evidence tending to support the argument that the temperature fluctuation was indeed temporary (i.e. proofs of returning to proper operating temperature after restocking was completed). I note the inspector was advised the bottles had been in the unit approximately three hours after restocking had been completed.

I sustain the charge.

Line Item 3: NYCHC 81.15(a). Mr. Nacmias argued The FPC holder, Mr. Ju Mi Kim was scheduled, but left briefly for an errand and returned 25 minutes later. Supervisor Kelly was monitoring the front counter but not acting as a designated FPC holder. In support, Mr. Nacmias submitted a sworn statement for Mr. Ju Mi Kim.

The regulation requires an FPC holder always be present. There is no exception allowing the FPC holder to leave for any period of time.

I sustain the charge.

Line Item 4: NYCH 81.23(a). Mr. Nacmias argued the fly activity was localized to a single drain in the back storage area. They were not flying through food in the food service area.

I find the respondent has not submitted any evidence tending to rebut the inspector's observations.

I sustain the charge.

Line Item 5: NYCHC 81.27(c). Mr. Nacmias argued the observed wiping cloths were in active use. There was a properly prepared sanitizing bucket present, and the cloths were being rotated through the system. The observation was a momentary situation only and not an absence of sanitizing procedures.

I do not credit Mr. Nacmias' unsupported assertion. He was not present at the time of inspection, and there is nothing in the record from anyone who may have been present at the inspection (i.e. FPC holder or food service worker).

I sustain the charge.

Line Item 6: NYCHC 81.23(a). Mr. Nacmias argued the slimy substance was not accumulated or the result of waste or poor sanitation. It was caused by fresh dishwashing runoff. The observed flies were one drain and immediately removed.

Without evidence to support Mr. Nacmias' assertion, I find the respondent has not rebutted the charge.

I sustain the charge.

Line Item 7: NYCHC 81.20(b). Mr. Nacmias argued the situation was corrected.

I find the respondent has not rebutted the charge. Correction after the inspection is not a defense to the charge.

I sustain the charge.

Line Item 8: NYCHC 81.18(a)(3). Mr. Nacmias argued the thermometer was in the bottom of the refrigeration unit. In support, he submitted photographs of the thermometer and the temperature log.

The photographs are dated 11/29/2025, well after the date of offense. I find they do not provide proof of a condition as it existed on the date of offense. I find the respondent has not rebutted the charge by a preponderance of credible evidence.

I sustain the charge.

Line Item 9a: NYCHC 81.17(e)(3). Mr. Nacmias argued the elevated temperature was caused by morning restocking. Shortly thereafter the unit returned to normal operating temperatures.

Without evidence to support Mr. Nacmias' assertion, I find the respondent has not rebutted the charge.

I sustain the charge.

Line Item 9b: NYCHC 81.17(e)(3). Mr. Nacmias argued the slimy substance was not accumulated waste or poor sanitation. It was caused by fresh dishwashing runoff.

Without evidence to support Mr. Nacmias' assertion, I find the respondent has not rebutted the charge.

I sustain the charge.

Line Item 10: NYCAC 16-401(c)(1). Mr. Nacmias argued the straws were already being moved as part of transitioning to a request-only system. They have now all been permanently removed from the counter.

Without evidence to support Mr. Nacmias' assertion, I find the respondent has not rebutted the charge.

I sustain the charge.



December 08, 2025

12/8/2025

Susan Huot, Judicial Hearing Officer

Date