



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: 0219457188 et al. (1 Summons) DEPT OF FINANCE, -against- DELI MART 87 III CORP Hearing Date: 02/26/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$10,000.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0219457188	Sustained	11/04/2025	8711 5th Ave Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ABE1	AC 7-551(A)	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

Evan Gluck, Esq. appeared for Petitioner, NYC Sheriff's Office. Frank Tamberino, Esq. appeared for Respondent.

The summons alleges that Respondent violated AC 7-551(a) in that cannabis and cannabis marketed products were observed for sale without a valid retail license.

Mr. Gluck presented Petitioner's case stating that Respondent permitted the sale of cannabis products without a license.

Mr. Gluck submitted the following into evidence: Certification of Service; Exhibit 1 OATH Summons; Exhibit 2 Sheriff's Order

to Cease & Seizure Notice; Exhibit 3 Seizure Receipt; Exhibit 4 Property Clerk Invoices; Exhibit 5 Photographs; Exhibit 6 NYS Office of Cannabis Management Directory of Licensed Adult-Use Cannabis Dispensaries; Exhibit 7 DCWP Summons; Exhibit 8 Table of Authorities; Exhibit 9 Petitioner's Memorandum of Law; Exhibit 10 Sheriff's Inspection Summary.

Mr. Tamberino denied the charge without offering a rebuttal and Petitioner recommended the minimum penalty of \$10,000.

Decision

I credit the statements in the summons and find that Respondent offered cannabis and cannabis marketed products for sale without a valid retail license. The summons is sustained.

Respondent requested the decision be notified to this email addresses ftamborino@nacmiaslaw.com.

OATH's decision regarding the SUMMONS is a final administrative determination and cannot be appealed at OATH or to the NYC Sheriff (See Administrative Code section 7-552(b)(2)).

David Pantaleoni

02/26/2026

02/26/2026

David Pantaleoni, Judicial Hearing Officer

Date



Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 25T00822 DEPARTMENT OF CONSUMER AND WORKER PROTECTION, -against- 5TH AVENUE CANDY & GROCERY, INC Hearing Date: 01/16/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount:	Restitution:
Suspension/Revocation/Sealing:	

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
25T00822	Recommended	03/25/2025	439 5TH AVE Brooklyn

This is a recommended decision and order. You will receive DCA's final decision on these New York State charges within the next 90 days. DCA may affirm, reverse or modify this decision or it may send the case back to OATH for an additional hearing.

YOU HAVE A RIGHT TO SUBMIT A WRITTEN ARGUMENT WHY DCA SHOULD OR SHOULD NOT FOLLOW THIS RECOMMENDED DECISION. You must submit your argument to DCA within thirty (30) days of the date of this recommended decision. You may submit your argument by email, regular mail or in person.

BY EMAIL: Send your written arguments to decisionreview@dca.nyc.gov. Make sure to include the Notice of Hearing number in the subject line of your email.

BY MAIL OR IN PERSON: Send or bring your written arguments to 42 Broadway, 8th Floor, Decision Review, New York, NY 10004. Make sure to include the Notice of Hearing number.

[illegible]

LINE ITEM	OATH CODE	CODE SECTION/RULE	OCCUR- RENCE	NO. OF COUNTS	RESULT	PENALTY	SUSPENSION/ REVOCATION/SEALING
2	NA	NY Pub Health § 1399-cc(2)	1	1	Recommended / Sustained		

Findings of Fact & Conclusions of Law

The summons was issued by the NYC Department of Consumer and Worker Protection for several tobacco sales violations.

Petitioner, DCWP, appeared by Inspector Rachid Aitoumghar.

Respondent appeared by Andre Autz, Esq.

Petitioner submitted into evidence; photographs, affidavit of minor and prior summons of 8/20/2020, without objection.

1) As to NYC Administrative Code Section 17-706(a) selling tobacco or tobacco products to a person under the age of 21 years;

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor.

The evidence in the record establishes the violation as written and the Petitioner has met its burden of proof.

As such, based on the record before me, the violation is sustained and the standard penalty is hereby imposed.

2) As to NY Public Health Section 1399-cc(2), sale of tobacco or tobacco products to a person under the age of 21 years.

Petitioner relied on the summons and the evidence in the record.

Respondent denied the violation arguing that the Petitioner did not produce a receipt of purchase into the record and because of that, has not met its burden of proof, and that the charge should be dismissed.

Andre Autz, Esq. also argued that the charge is duplicative to NYC Administrative Code Section 17-706(a), and thus should be dismissed.

NY Public Health Section 1399-cc(2) is a different section compared to NYC Administrative Code Section 17-706(a), and thus not duplicative.

I credit the sworn statement of the complainant who swears under penalties of perjury as to the sale of tobacco to a minor.

The evidence in the record establishes the violation as written and the Petitioner has met its burden of proof.

As such, based on the record before me, the violation is sustained and the standard penalty is hereby imposed of \$1,500.00 and two points on the NYS Registry.