



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Bradley Green Esq - COHEN HOCHMAN & ALLEN 75 MAIDEN LANE SUITE 802 NEW YORK, NY 10038	Summons# : 039094794Y et al. (2 summonses) DEPT OF BUILDINGS, -against- CHANNEL TRUCK REPAIR CORP. ANTHONY AULETTA Hearing Date : 5/10/2024 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount : 0.00	Community Service(Hr): Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039094794Y	Dismissed	09/13/2023	18-17 CROSSBAY BOULEVARD, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B203	28-118.3.2	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039094800L	Dismissed	09/13/2023	18-17 CROSS BAY BOULEVARD, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B383	ZR 25-41	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

Bradley Green, Esq. appeared for Respondent, "Channel Truck Repair Corp. Anthony Auletta" with owner Anthony Auletta. Henrietta Asiedu Baidoo appeared for Petitioner DOB with IO Duke #3172.

Summons #039094794Y alleges that on 9/13/23 at 18-17 Cross Bay Boulevard, Queens, NY, Respondent occupied the premises contrary to DOB records. The DOB records indicate the premises to be a plumbing and heating office. Premises now occupied and used as an auto body repair shop in violation of NYCAC section 28-118.3.2, Class 2.

Summons #039094800L alleges that on 9/13/23 at 18-17 Cross Bay Boulevard, Queens, the Respondent was in violation of parking regulation in a residential district. IO observed multiple cars stored on lot for illegal auto body repair shop in violation of ZR 25-41, Class 3.

The IO provided his photographs (See Pet. Ex.) taken on the date of occurrence and testified that he went to inspect the cited location based on a complaint. There was no Certificate of Occupancy on file, so he relied on records available on DOB BIS to establish legal occupancy. The records showed that in 2016 a Letter of No Objection was filed for an auto repair shop which was denied. In 2018 a Letter of No Objection was approved for a plumbing office (See Pet. Ex.- Actions). No other documentation regarding the lot was reviewed. As the premises was only approved for a plumbing office the multiple cars that were parked on the lot without license plates/registration constituted illegal parking in violation of the zoning regulations. Petitioner provided an appeal (#2301618) to support the notion that a Letter of No Objection application can be used to establish legal occupancy. I will note that in that appeal the Petitioner established its prima facie case based on the IO's affirmed observations and the Letter of No Objection application which included a Certificate of Occupancy and floor plan, which is not the case here.

Mr. Green moved for dismissal arguing that both the use/occupancy and zoning of the lot was legal and appropriate. Respondent testified that he has owned the lot for over 20 years (and four other surrounding lots). Since Respondents ownership the site has always been used an auto repair shop and prior to that it was rented out to park trucks. Respondent testified that his attorney (who has since passed away) advised him that it was fine to operate his business there. In support, Mr. Green provided documents from a title search that was ordered/obtained by Respondents former attorney. The title search provided a Certificate of Occupancy search which indicates that the approved usage in 1947 was for a one story non-fireproof building, office, gas station, auto repairs and greasing, a copy of the actual Certificate of Occupancy from 1938 confirming the same, and the title search cover letter dated 2016 for block 15323, lot 57, 18-11/18-17 Cross Bay Boulevard, Queens, NY (See Res. Ex.). I will note that the documents appear to be screenshots from an email and are difficult to read. Mr. Green also provided an appeal (#2301231) to support the notion that an HPD online record, the Property Profile Overview and the deed cover page were not sufficient to establish legal occupancy.

Respondent further testified that he was never involved in the submission of any application for a Letter of No Objection and as far as he knows neither was his attorney as he never gave his approval for any such application. The surrounding area is both residential and commercial with bar/restaurant, vacant lot, and a boat repair shop across the street.


Mr. Green also argued regarding zoning that the use of the lot predates the 1961 ZR and therefore the lot is grandfathered in.

Petitioner reiterated that a Letter of No Objection can establish use/legal occupancy and that as there was no Certificate of Occupancy available to review the Letter of No Objection application and subsequent disapproval for an auto repair shop

coupled with the Letter of No Objection approval for a plumbing office is dispositive in establishing occupancy.

While a Letter of No Objection in certain instances, coupled with other DOB documents, and can establish legal occupancy, here Respondent credibly testified that the lot has been used as a commercial property for over 20 years and is taxed and classified as a garage/gas station by the Department of Finance (G1) according to DOB BIS records (Property Profile Overview). In addition, Mr. Green provided a copy of the Certificate of Occupancy indicating that the approved usage includes auto repairs. If the approved usage is for an auto body repair shop it follows that the lot would also be appropriate for vehicle storage. Further, the Property Profile Overview indicates that the lot is zones in a commercial district- CR1 (special district due to flooding), not a residential district that would prohibit "dead storage."

I do not find Petitioner has met their burden in proving the charges by a preponderance of the evidence. I find that Respondent has rebutted the charges with credible testimony and documentary evidence including Petitioners own Department records. Accordingly, the summonses are dismissed.

	
05/14/2024	05/14/2024
Lara Bianchi, Hearing Officer	Date

IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to www.nyc.gov/citypay/oath

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

CAN I DO COMMUNITY SERVICE?

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

COMPLETION OF COMMUNITY SERVICE

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/Pro Se Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

How to Contact the Help Center to Schedule Community Service:

- Manhattan: (212) 436-0845 CSmanhattan@oath.nyc.gov
- Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
- Queens: (718) 393-6044 CSqueens@oath.nyc.gov
- Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
- Staten Island: (718) 876-2314 CSstatenisland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

NON-DISCLOSURE FOR SUMMONSES ELIGIBLE FOR COMMUNITY SERVICE

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at www.nyc.gov/oath/appeal. Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **may need** to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

APPEAL BY ENFORCEMENT AGENCY

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,
visit OATH's website www.nyc.gov/oath
or call 1-844-OATH-NYC

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Esta decisión en inglés es jurídicamente vinculante. No obstante, podemos enviársela por correo electrónico en el idioma que prefiera, con fines informativos. Por favor, envíe un mensaje a DecisionRequest@oath.nyc.gov o llame al (212) 436-0845 para solicitar la decisión en otro idioma. Incluya la siguiente información:

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- el nombre de la persona demandada
- el idioma solicitado para la traducción

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- 傳票號碼
- 應答人姓名
- 請求翻譯的語言

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- 소환 번호
- 답변자 이름
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- رقم (أرقام) الأمر بالمتول / الاستدعاء
- اسم المدعى عليه
- اللغة المطلوبة من أجل الترجمة

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Niniejsza decyzja w j. angielskim jest prawnie wiążąca. Decyzja może jednak zostać przesłana pocztą elektroniczną w wybranym języku w celach informacyjnych. Prosimy o kontakt pod adresem e-mail DecisionRequest@oath.nyc.gov lub numerem telefonu (212) 436-0845, aby otrzymać decyzję w innej wersji językowej. We wiadomości e-mail prosimy podać:

- Numer(y) wezwania
- Imię i nazwisko respondenta
- Żądany język tłumaczenia

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