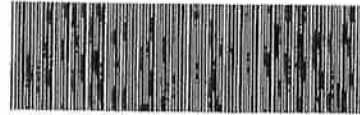




OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

HEARING LOCATION:
OATH Hearings Division
66 John Street
10th Floor
New York, NY 10038
(844) 628-4692



Method of Appearance
Live Hearing

DECISION
Summons #: [REDACTED]
Hearing Date: April 2017

To: [REDACTED]
[REDACTED]
[REDACTED]

City of New York v. [REDACTED]

Total Civil Penalty: \$0.00

I Summons(es) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

SUMMONS [REDACTED]
PLACE OF OCCURRENCE: 280 BROADWAY MANHATTAN
DATE OF OCCURRENCE: 11/14/2016
ISSUING OFFICER/AGENCY: 2308 DOB
INFRACTION CODE: B106
CHARGE: AC 27MISCAC28MISCBCMI
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

SUMMONS: [REDACTED]

Eric Daloo, Esq. appeared for Petitioner DOB with Assistant Chief Katsihitis, duly sworn.

[REDACTED] appeared for named Respondent [REDACTED]

[REDACTED] duly sworn also appeared.

Respondent is charged with 28-401.19(6) suspension or revocation of license or certificate of competence. Sub section 6 further states : Negligence, incompetence, lack of knowledge, or disregard of this code and related laws and rules;

Specifically, the details of violation state that ... between April 1, 2016 and Oct. 31, 2016 Respondent submitted 243 inspection requests to sign off plumbing work. During this 7 month period, approx 51 of these requests were denied, which accounts for 20.99% of all plumbing sign off requests submitted by respondent. This high rate of failure constitutes negligence, incompetence lack of knowledge and/or a disregard of related laws and rules.

Mr. Daloo offered Petitioner's 1, a list of 51 rejected requests. These requests are dated from 4/5/2016-06/25/2016.

Mr. Daloo moved to amend the statement of violation to reflect a 3 month, rather than 7 month period. [REDACTED] opposed the motion.

He submits that the person who wrote the violation was not present at the hearing and the violating details could not be amended.

Mr. Daloo contends the that the amendment is diminimis in that there were 51 requests denied, regardless of whether in a 3 or 7 month period.

The motion to amend is granted.

At the hearing officer's request, Assistant Chief Katsihitis explained approximately 12 of the request denials from Petitioner's 1.

Mr. Daloo submitted Petitioner's 2 without objection; 10 denial emails sent to Respondent in response to the sign off requests.

[REDACTED] moved to dismiss on jurisdictional grounds.

He submits that the hearings division of OATH lacks jurisdiction to hear this summons and that the proper venue is the Trials Division.

His argument is based upon the statutory designation for the section of law: Suspension or revocation of license or certificate of competence. (section of law scanned).

Mr. Daloo contends that the section cited further states that The commissioner shall have the power to suspend or revoke a license or certificate of competence and/or to impose a fine not to exceed twenty-five thousand dollars for each finding of violation, and/or to order any holder thereof to repair damage resulting from any act or omission as set forth in this chapter...

Mr. Daloo further contends that because this summons was filed here and because previous summons of this nature were heard here, the HEARINGS division has jurisdiction.

I disagree.

I find that this section of law is not a charging section.



I find that Respondent could not certify correction to the stated rejections.

I further find that the Hearings division of OATH does not have jurisdiction to hear this case.

[redacted] additionally moved to dismiss for failure to make out a prima facie case. No standard for negligence/competence, lack of knowledge or disregard of this code or related laws and rules was put forth by Petitioner.

On questioning by this hearing officer, Assistant Chief Katsihitis could not articulate a threshold of how many rejections or the numerical percentage of rejections that would give rise to a violation being issued. He could not articulate whether 1 rejection or 50 rejections would trigger a summons, or whether the percentage would need to be greater than any particular number. He conceded that a rejection would be issued if a line on the digital sign-off request was left blank or if there was any error in the digital submission, regardless of whether it was a "clerical" error.

Petitioner contends that any discrepancies in the filing requests are not "clerical" in the vernacular usage of the word.

I find that the motion to dismiss for failure to make out a prima case is meritorious.

[redacted] moved to dismiss on Constitutional grounds, specifically that the section charged is void for vagueness.

The motion is denied.

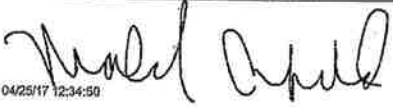
This hearing officer does not have Constitutional jurisdiction.

[redacted] testified credibly that he is a principal in [redacted] Inc established in [redacted]

He further testified that he has been a licensed plumber for [redacted] years, that he submits approximately [redacted] requests on average a month, and that 49 out of the 51 rejections cited by Petitioner were "clerical" errors. He further testified that all rejections in Petitioner's 1 have been signed off.

On cross examination he acknowledged that he signs all submissions as he is the master plumber but he is not the person who "clicks" the send key to transmit the submissions.

Based upon the foregoing, the instant summons is dismissed. I find that this summons does not belong in this forum. I also find that this summons does not make out a prima facie case.

TOTAL CIVIL PENALTY: \$0.00	
 <small>Tue Apr 2017 04/25/17 12:34:50</small>	<small>Control 2</small> APR 26 2017
<small>04/25/2017</small>	<small>Date</small>
Madelon Rosenfeld, Hearing Officer	

**PAYMENT DUE WITHIN TEN (10) DAYS
READ BACK OF THIS ORDER - PROTECT YOUR RIGHTS**

