



**Appeal No. 2301853    DEP v. Vikrant Contracting & Builders    February 29, 2024**

**APPEAL DECISION**

The appeal of Respondent, a contractor, is **granted**.

Respondent, appeals from a recommended decision by Judicial Hearing Officer (JHO) N. Pierre, dated October 11, 2023, sustaining a violation of § 24-220(c) of the Administrative Code of the City of New York (Code), for failing to conspicuously post a noise mitigation plan (NMP). Having fully reviewed the record, the Board finds that the JHO’s recommended decision is not supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
00600970H	Code § 24-220(c)	In Violation	Reversed – Dismissed	\$0

In the summons, the issuing officer (IO) affirmed observing on May 10, 2023, at 223 W. 112<sup>th</sup> St., in Manhattan:

Patrolled and observed the area and inspection revealed no workers on site and no work being done at the time of inspection. Further inspection revealed no NMP posted in violation of section 24-220(c) of the NYC Noise Code.

At the telephonic hearing, held on October 11, 2023, the representative for Petitioner, Department of Environmental Protection (DEP), generally relied on the affirmed statements in the summons and submitted the IO’s inspection report, and a photograph of Respondent’s Department of Buildings (DOB) work permit for a sidewalk shed at 218 W. 112<sup>th</sup> St. that had expired on April 14, 2023, before the date of occurrence. Petitioner’s representative argued that the NMP must be displayed on the exterior of the building per Code § 24-220(c) any time construction work is being done under a permit. She asserted that when an IO responds to a 311 complaint, the IO goes to the location of the complaint and takes a photograph of the work permit on the cited building, and 218 W. 112<sup>th</sup> St. is part of a range address from 218 through 224. She further argued that a shed requires an NMP whether or not workers are present doing work at the time of violation. Respondent’s representative argued and asserted as follows. The summons is defective because it cited an incorrect address. Respondent had no connection to the cited property, a two-family dwelling that had no active permits per the Department of Buildings (DOB) Business Information System (BIS). The building is not part of a range address, and is across the street and on a different lot from the building listed on the shed permit. On the merits, he argued that a sidewalk shed did not need an NMP since it is temporary construction equipment and not construction. In support, he submitted the BIS property profiles for both 218 and 223 W. 112<sup>th</sup> Streets.

In her decision sustaining the violation, the JHO credited the summons and found that Respondent had failed to provide a valid defense.

On appeal, Respondent’s representative repeats and elaborates on his hearing assertions and arguments. He further argues that Petitioner failed to show that any work was taking place at the

cited location that required an NMP. In support, he cited to *NYC v. Artyem Yusupov*, Appeal No. 1101115 (December 15, 2011), and *DEP v. Langan Engineering Consultant*, Appeal No. 2101670 (February 24, 2022).

The Board reverses the JHO's decision for the following reasons. Per § 6-08(c)(2) of Title 48 of the Rules of the City of New York, a summons must contain at a minimum "a clear and concise statement sufficient to inform the Respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation or the violations charged, including the date, time where applicable, and place when and where such facts were observed." The summons cites to 223 W. 112<sup>th</sup> St. as the place of occurrence. DOB's property profile describes that property as a two-family dwelling on block 1828, lot 25 that is not part of a range address. Petitioner's basis for the charge is a sidewalk shed permit for 218 W. 112<sup>th</sup> St. that per BIS records is described as an elevator apartment dwelling on block 1827, lot 42 and is part of range address: 218-224 W. 112<sup>th</sup> St. The Board finds that the cited place of occurrence, with an odd house number, on a different block and lot, is not part of the range address associated with Respondent's sidewalk shed permit. No evidence in the record shows that Respondent had a work permit or was conducting construction activities at 223 W. 112<sup>th</sup> St., the cited place of occurrence. Therefore, the Board finds that the place of occurrence was incorrectly cited on the summons. *See DOB v. Golden Gates Group*, Appeal No. 1901019 (August 19, 2019); *NYC v. Bedford Associates LLC*, Appeal No. 0900538 (May 27, 2010). Since the Board is dismissing the summons on the above basis, it declines to address Respondent's other arguments on appeal.<sup>1</sup>

Accordingly, the Board reverses the JHO's decision and dismisses the summons.

**By: OATH Appeals Division**

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<sup>1</sup> However, the Board notes that Respondent's reliance on *Artyem Yusupov*, 1101115, and *Langan Engineering Consultant*, 2101670 is misplaced as those two cases concerned violations of Code § 24-222 for doing work after hours without a variance where Petitioner must show construction work was happening at the time of violation. No such requirement exists for a violation of Code § 24-220(c). *See NYC v. Roy B Construction*, Appeal No. 1500883 (October 29, 2015); Code § 24-220(b).