



# BenchNOTES Newsletter

May 2024

## OATH News

Job opportunities at OATH: OATH regularly posts employment opportunities on the NYC Jobs portal and on its website. [View current openings.](#)

## Trials Division

### Personnel

#### Five-day suspension recommended.

ALJ Jonathan Fogel recommended a five-day suspension for a project manager who used improper language in an email to her supervisors.

*Dep't of Environmental Protection v. Layman*, OATH Index No. 2096/23 (Apr. 12, 2024).

[Read more about \*Dep't of Environmental Protection v. Layman\*.](#)

## Licensing

#### Dismissal of fitness proceeding recommended.

ALJ Kevin F. Casey recommended dismissing a fitness proceeding against a TLC driver who tested positive for oxycodone, finding that the driver had unknowingly ingested a controlled substance.

*Taxi & Limousine Comm'n v. Guzman*, OATH Index No. 2385/24 (Apr. 8, 2024), *adopted*, Comm'r Dec. (Apr. 9, 2024).

[Read more about \*Taxi & Limousine Comm'n v. Guzman\*.](#)

## Real Property

## Denial of protected occupancy application recommended.

ALJ Michael D. Turilli recommended denying the protected occupancy application of a tenant residing in a building covered under the Loft Law, finding that the applicant's unit was deregulated by a former tenant's sale of improvements.

*[Matter of Angelo](#)*, OATH Index No. 881/24 (Apr. 23, 2024).

[Read more about \*Matter of Angelo\*.](#)

## Vehicle Seizure

### Police Department may retain a seized vehicle.

ALJ Kara J. Miller determined that the Police Department may retain a vehicle seized as an alleged instrumentality of crime.

*[Police Dep't v. Langlaise](#)*, OATH Index No. 2668/24, mem. dec. (Apr. 17, 2024).

[Read more about \*Police Dep't v. Langlaise\*.](#)

## Procedure

### NYC Transit Authority permitted to intervene in prevailing wage case.

ALJ Kevin F. Casey granted the New York City Transit Authority's ("NYCTA") motion to intervene as a respondent in a prevailing wage case brought by the Office of the Comptroller.

*[Office of the Comptroller v. Fleetwash, Inc. & Anthony DiGiovanni](#)*, OATH Index No. 2377/24 (Apr. 4, 2024).

[Read more about \*Office of the Comptroller v. Fleetwash, Inc. & Anthony DiGiovanni\*.](#)

## Appeals from the Hearings Division

An appeals decision affirmed a hearing decision sustaining charges against a food service establishment for presence of a live animal and harborage conditions conducive to rodents, insects, or other pests. The issuing officer issued Health Code violations after observing a gray cat in the establishment's rear seating area and an approximately one-inch gap at the floor/wall junction. At the hearing, respondent's representative testified that the cat was an emotional support animal for his wife, who was temporarily covering for another worker that day, and the one-inch gap was caused by ongoing renovations and has since been sealed. The judicial hearing officer sustained the charges, finding that respondent did not establish a defense. The appeals decision affirmed, finding that there was no evidence the cat was a trained service animal and that sealing the one-inch gap after the issuance of a summons is not a defense to the violation. *[DOHMH v. JM 43, Inc. dba Fillmore Delicatessen](#)*, Appeal No. 01398-24F0 (Apr. 23, 2024).

An appeals decision affirmed a hearing decision where part of the decision dismissing a Building Code violation for failing to maintain or display required documents had been appealed. The issuing officer had observed a worker tied to a window partition and in danger of a 15-foot fall. The issuing officer requested to see manufacturer specifications stating the window is able to withstand 5,000 pounds of pressure from a worker fall, and when none were provided, a violation was issued. The judicial hearing officer dismissed the charge, finding that the construction work was permitted in 2021 and therefore fell under the 2014 Building Code, which had no requirement to keep manufacturer specifications on site. The appeals decision affirmed, finding that the 2014 Building Code was applicable and did not require manufacturer specifications to be kept on site and available upon request. ***DOB v. Skyward Developers Inc.***, Appeal No. 2400202 (Apr. 25, 2024).

An appeals decision affirmed a hearing decision sustaining a violation against a licensed tobacco retail dealer for selling tobacco products to a person less than 21 years of age. The summons stated that the issuing officer observed respondent's employee sell a pack of Newport cigarettes to a person less than 21 years of age during his inspection from 2:17 p.m. to 2:27 p.m. The judicial hearing officer sustained the charge, rejecting respondent's argument that the summons was facially defective because computerized records show that the cigarettes were actually sold at 2:08 p.m. The appeals decision affirmed, finding that the incorrect inspection time on the summons was harmless error and that petitioner's evidence was not refuted by the respondent. ***DCWP v. Bolla Operating Corp. dba Kings Victory C-Store***, Appeal No. 22T08222 (Apr. 19, 2024).

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