BenchNOTES Newsletter

April 2024

Trials Division

Personnel

Termination recommended.

ALJ Michael D. Turilli recommended termination of employment for a deputy sheriff who stole contraband from an evidence storage container.

Dep't of Finance v. Jimenez, OATH Index No. 3663/23 (Mar. 19, 2024).

Read more about ***Dep't of Finance v. Jimenez***.

Vehicle Seizure

Police Department may retain a seized vehicle.

ALJ Kevin F. Casey determined that the Police Department may retain a vehicle seized as an alleged instrumentality of crime.

Police Dep't v. Walker, OATH Index No. 2079/24, mem. dec. (Mar. 5, 2024).

Read more about ***Police Dep't v. Walker***.

Health Code

Suspension of food establishment license recommended.

ALJ Faye Lewis recommended suspending a food service establishment permit for six months due to Health Code violations, including selling beverages adulterated with Kava and Kratom.

Dep't of Health & Mental Hygiene v. Kavasutra 10th Street Inc., OATH Index No. 297/24 (Mar. 7, 2024).

Read more about ***Dep't of Health & Mental Hygiene v. Kavasutra 10th Street Inc.***.

Appeals from the Hearings Division

An appeals decision reversed on other grounds a hearing decision sustaining a charge for failure to comply with the terms and conditions of a Department of Transportation ("DOT") permit. Respondent was charged with obstructing a bike lane on Schermerhorn Street between Bond and Nevins Streets with a boom vehicle and failing to post required signs. The judicial hearing officer sustained the charge, rejecting respondent's argument that the truck belonged to an unrelated contractor and finding that, as the general contractor, respondent's explanation was not a defense. The appeals decision dismissed the summons, finding that it wrongly described the location of the violation. Petitioner's photographs show that the violation occurred on Schermerhorn Street between Bond and Hoyt Streets, a block unrelated to Respondent's DOT permit. ***DOT v. SSP Group, Inc.***, Appeal No. 2301431 (March 28, 2024).

An appeals decision modified the penalty imposed by a hearing decision sustaining a charge for failure to eliminate pests. In the summons, the issuing officer alleged observing fresh rat droppings and seven active rat burrows at respondent's property, and used an infraction code indicating a third-offense violation. At the hearing, respondent submitted a letter from its manager asserting twice-monthly treatments by an exterminating service, and argued in the alternative that the violation should be treated as a first offense. Petitioner did not appear at the hearing nor provide evidence of prior violations. The judicial hearing officer did not credit respondent's evidence and, crediting the sworn statements in the summons, imposed the penalty for a third-offense violation. The appeals decision sustained the charge but modified the penalty, finding that the violation should be treated as a first offense because the third-offense infraction code cited in the summons was insufficient evidence of prior violations. ***DOHMH v. 1245 Broadway Realty – Jay Gutman***, Appeal No. 2301728 (March 28, 2024).

An appeal decision affirmed on different grounds a hearing decision dismissing a violation of the New York City Zoning Resolution for a closed privately owned public space ("POPS"). The summons stated that the POPS was closed and padlocked with signs stating "men at work" but no construction activity or equipment was observed, and there was no permit in Department of Building's ("DOB") records for façade work. At the hearing, respondent alleged that façade work had been completed shortly before the date of inspection but that DOB had yet to approve a façade inspection report. Respondent asserted that by law, the POPS could not be reopened until DOB approved the façade inspection report. The judicial hearing officer credited respondent's defense and dismissed the charge. The appeal decision affirmed the hearing decision but on different grounds, finding that the summons did not provide adequate notice because it did not state the specific section of the law that was allegedly violated. The decision further noted that, contrary to the hearing officer's decision, it was not a defense that the POPS was closed while awaiting DOB approval of the inspection report, absent proof that such closing was authorized by the City Planning Commission. ***DOB v. Columbus/Amsterdam Associates***, Appeal No. 2400150 (March 28, 2024).