BenchNOTES Newsletter

July 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

Featured Agency Decision

$10,000 fine imposed.

The Conflicts of Interest Board adopted ALJ Julia H. Lee's recommendation to impose a $10,000 fine for a NYCHA building maintenance supervisor who worked a second job during city work hours.

Conflicts of Interest Bd. v. Montgomery, OATH Index No. 0208/24 (Apr. 4, 2024), *adopted*, COIB Case No. 2022-585 (June 18, 2024).

Read more about ***Conflicts of Interest Bd. v. Montgomery***.

Personnel

50-day suspension recommended.

ALJ Joycelyn McGeachy-Kuls recommended a 50-day suspension for a correction officer who engaged in misconduct by using profanity during an altercation, activating two personal body alarms, and leaving her post without relief.

Dep't of Correction v. E.B., OATH Index No. 1879/24 (June 21, 2024).

Read more about ***Dep't of Correction v. E.B.*** and other Personnel cases.

Real Property

Granting of application for certificate of no harassment recommended.

ALJ Michael D. Turilli recommended granting an application for a certificate of no harassment for a pilot program building.

Dep't of Housing Preservation & Development v. Joseph, OATH Index No. 1550/24 (June 14, 2024).

Read more about ***Dep't of Housing Preservation & Development v. Joseph***.

Appeals from the Hearings Division

An appeals decision reversed part of a hearing decision that sustained a Health Code violation against a food establishment for cold food held out of temperature. The summons was issued after the issuing officer observed lettuce and kale held in a refrigerated display unit at temperatures of 50 and 48°F, respectively, in excess of the 41°F required by the Health Code. Respondent asserted the salad ingredients had been removed from cold storage 20 minutes prior to the inspection, and that it complied with the Health Code by discarding any unused ingredients in the display unit after four hours. The hearing officer did not credit respondent's explanation. The appeals decision reversed, finding that the Health Code required potentially hazardous cold foods to be stored at or below 41°F, but an exception to this requirement is when time alone is used as a public health control. Under this exception, after food is removed from cold temperature control at or below 41°F, it may be kept for a maximum of six hours, provided that at four hours the food has not reached or exceeded an internal temperature of 70°F. The food cannot be returned to temperature control at any time with the intent to extend its use. The appeals decision credited respondent's explanation that it used temperature as the sole public health control, that its choice to keep the salad ingredients cooler than room temperature was not intended to extend their use, and that the ingredients were used or discarded after four hours. ***DOHMH v. Just Salad 315 Pas LLC***, Appeal No. 04729-23F1 (June 28, 2024).

An appeals decision modified a hearing decision that revoked respondent's tobacco retail dealer license after sustaining a second-offense violation for selling a tobacco product to a person under 21 years of age. At the hearing, respondent applied for a waiver of license revocation. Respondent's manager testified that the employees responsible for selling to minors had been fired and that training protocols were in place to ensure compliance with DCWP rules. The judicial hearing officer denied respondent's application for a waiver because respondent did not obtain a NYS Department of Health tobacco sales training certificate until after the summons was issued. The appeal decision found that the hearing officer failed to properly consider respondent's waiver defense and that, based on respondent's evidence of extensive precautionary measures to prevent future violations, respondent was entitled to a waiver of

license revocation. ***DCWP v. Brownsville Deli & Grocery Inc.***, Appeal No. 23T04449 (June 25, 2024).

An appeals decision reversed a hearing decision dismissing a violation against the owner of a for-hire vehicle for failing to comply with a TLC Notice of Violation ("NOV"). In the summons, the issuing officer affirmed that respondent had failed to comply with an NOV directing him to clean the vehicle's interior and obtain a Condition Corrected Receipt ("CCR"). At the hearing, respondent testified that on January 30, 2024, he received an NOV after his car failed an inspection because its interior was not clean. On February 5, 2024, the car passed inspection and he was given a passing inspection report, but not a CCR. Respondent argued that his car would not have passed inspection if it was not clean. The judicial hearing officer credited this argument and dismissed the violation, finding that obtaining the CCR was a mere formality. The appeals decision reversed, finding that the February 5 inspection was a periodic vehicle inspection regarding emissions standards and safety, and, as corroborated by the February 5 inspection report, the vehicle's cleanliness was not considered. Therefore, obtaining a CCR was not a mere formality after the vehicle passed inspection. ***TLC v. Muhammad Ali***, Appeal No. FN0026797 (June 6, 2024).