



# BenchNOTES Newsletter

September 2023

## OATH News

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

**OATH seeking new Contract Dispute Resolution Board panelists:** The OATH Trials Division is seeking applications from qualified persons to serve on Contract Dispute Resolution Board panels. More details available [here](#).

## Trials Division

### Personnel

*Termination of employment recommended for community coordinator.*

ALJ Kara J. Miller recommended termination of employment for a community coordinator charged with violating a previously issued warning memo and making threats of harm or violence.

***Office of the Comptroller v. Anonymous***, OATH Index No. 1867/23 (Aug. 10, 2023).

[Read more about \*\*\*Office of the Comptroller v. Anonymous\*\*\* and other Personnel cases.](#)

### Vehicle Seizure

*ALJ ordered release of car.*

ALJ Julia H. Lee ordered the release of a vehicle seized by the police as an alleged instrumentality of crime.

***Police Dep't v. Garcia***, OATH Index No. 0214/24, mem. dec. (Aug. 8, 2023).

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

### Procedure

*Motion to be relieved as counsel granted.*

ALJ Susan J. Pogoda granted a motion by respondent's attorney to be relieved as counsel.

***Matter of Various Tenants of 5-7 Mercer Street***, OATH Index No. 2445/19, mem. dec. (August 9, 2023).

[Read more about \*\*\*Matter of Various Tenants of 5-7 Mercer Street\*\*\*.](#)

## Appeals from the Hearings Division

An appeal decision reversed part of a hearing decision which dismissed a violation against a building owner for failing to maintain a building in a safe and code-compliant manner because the building did not have automatic sprinklers. The appeal decision found that although the building code exempted one- and two- family dwellings from the sprinkler system requirement, the building did not fall under that exemption because it was being rented on Airbnb.com, and its transient occupancy was inconsistent with occupancy as a one-family dwelling. ***DOB v. 310 Beach 98th LLC***, Appeal No. 2300399 (August 31, 2023).

An appeal decision reversed a hearing decision sustaining a violation against a contractor for failing to safeguard the public and property from construction operations after an excavator hit a gas line. The appeals decision affirmed the hearing officer's finding that the issuing officer made a reasonable attempt at service. The issuing officer had spoken to the site safety coordinator and project manager, both of whom stated they were not authorized to accept service and that no one else was. However, the appeals division reversed on the merits, finding the contractor established an affirmative defense by showing that it had implemented all required safety measures and that its subcontractor was solely responsible for damaging the gas line. ***DOB v. Heartfelt Townhouse Build***, Appeal No. 2300524 (August 31, 2023).

An appeal decision modified a hearing decision which sustained a violation against a retail store for engaging in unlicensed electronic cigarette retail dealer activity. At the hearing, respondent's owner denied selling cigarettes at the store, testifying that an employee who had been hired two weeks earlier had sold the undercover issuing officer her own personal pack of cigarettes, and that the employee was fired on that same day. The hearing officer credited respondent's owner's testimony and imposed a base penalty of \$2,000 plus a per-day penalty of \$100 for one day. The appeal decision increased the per-day penalty to 14 days, finding there was a rebuttable presumption of continuous unlicensed activity for the two-week period that the employee worked at the store. Respondent failed to overcome this presumption because the owner's testimony that the sale was made by a rogue employee effectively acknowledged that respondent could not have known how long the employee had engaged in unlawful cigarette sales. ***DCWP v. Avenue D Mini Mart, Inc.***, Appeal No. 22N01125 (August 22, 2023).

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