



BenchNOTES Newsletter

October 2023

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

Termination of employment recommended for administrative manager.

ALJ Julia H. Lee recommended termination of employment for an administrative manager who assaulted a co-worker by striking him in the head with a metal pipe. ***Dep't of Housing Preservation & Development v. Smith***, OATH Index No. 1986/23 (Aug. 31, 2023).

[Read more about ***Dep't of Housing Preservation & Development v. Smith***.](#)

Vehicle Seizure

ALJ ordered retention of car.

ALJ Michael D. Turilli ordered the retention of a vehicle seized by the police as an alleged instrumentality of crime. ***Police Dep't v. Niambele***, OATH Index No. 651/24, mem. dec. (Sept. 20, 2023).

[Read more about ***Police Dep't v. Niambele*** and other Vehicle Seizure cases.](#)

Contracts

Contractor's claim for additional compensation denied.

The Contract Dispute Resolution Board, chaired by ALJ Jonathan Fogel, dismissed a contractor's claim for additional compensation for costs it incurred during the COVID-19 pandemic. ***Skanska Koch Inc. v. Dep't of Transportation***, OATH Index No. 328/22, mem. dec. (Sept. 15, 2023)

[Read more about ***Skanska Koch Inc. v. Dep't of Transportation***.](#)

Procedure

Motion for summary judgment dismissed.

ALJ Kevin F. Casey denied respondents' summary judgment motion challenging the constitutionality of a New York City Human Rights Law ("NYCHRL") provision, which prohibits landlords from discriminating against recipients of government-issued housing vouchers.

Comm'n Human Rights ex rel. Watson, et al. & Fair Housing Justice Center, Inc. v. PPC Residential, LLC, Parkchester Preservation Management LLC & Parkchester Preservation Company LP, et al., OATH Index Nos. 2245/19, 2246/19, mem. dec. (Sept. 11, 2023).

[Read more about](#) ***Comm'n Human Rights ex rel. Watson, et al. & Fair Housing Justice Center, Inc. v. PPC Residential, LLC, Parkchester Preservation Management LLC & Parkchester Preservation Company LP, et al.***

Appeals from the Hearings Division

An appeal decision reversed a hearing decision sustaining a violation against a building owner for failure to comply with the Commissioner's order. The Commissioner's order had directed the owner to remove a violation for a defective retaining wall and submit an engineer's report within 48 hours. The violation for the defective wall was subsequently dismissed, but petitioner issued another violation for failure to comply with the Commissioner's order because owner failed to submit an engineer's report. The appeal decision dismissed the violation, finding that the summons did not provide adequate notice because it was unclear whether respondent was being charged with failure to correct the violation for the defective wall, failure to submit the engineer's report within 48 hours, or failure to submit the engineer's report by the summons date. ***DOB v. Carella-Fitzpatrick, Alyssa M***, Appeal No. 2300973 (September 28, 2023).

An appeal decision reversed a hearing decision dismissing a violation against an armored truck transport company for idling a motor vehicle engine for longer than three minutes. The hearing officer had dismissed the case, finding the cited vehicle was exempt from the idling restriction because the armored vehicle was performing its "essential mission" or "process" of delivering and picking up currency. The appeal decision reversed, finding the exemption did not apply to transportation of goods unless the cargo is temperature sensitive. ***DEP v. Garda CL Atlantic, Inc.***, Appeal No. 2300832 (September 28, 2023).

An appeal decision reversed a hearing decision dismissing a violation against the owner of a vehicle for allowing her vehicle to be used in picking up a passenger by street hail without prearrangement from a base. The hearing officer found the issuing officer did not have a clear basis for stating respondent permitted illegal street hail activity due to the officer's failure to allege he interacted with respondent. The appeal decision reversed the dismissal, finding a prima facie case is established with allegations that the driver picked up a non-prearranged street hail and that the owner allowed the pick-up. The issuing officer is not required to allege communications about the owner's permission with either the owner or the driver. Further, the decision found that respondent failed to rebut the allegation that she permitted the driver to use her car. ***TLC v. Luz Parra***, Appeal No. 73800930A (September 1, 2023).

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