



BenchNOTES Newsletter

November 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

Cooperative dialogue to address potential accommodations of employee disability recommended.

ALJ Christine Stecura recommended an agency engage with its employee in a cooperative dialogue to discuss whether the employee's disability could be reasonably accommodated. ***Dep't of Social Services (Human Resources Admin.) v. Anonymous***, OATH Index No. 3242/23 (Oct. 6, 2023).

[Read more about ***Dep't of Social Services \(Human Resources Admin.\) v. Anonymous*** and other Personnel cases.](#)

Real Property

Rent reduction recommended.

ALJ Kevin F. Casey recommended reducing a Loft Law tenant's rent based on owner's legalization work which converted the tenant's apartment from a three-bedroom unit to a one-bedroom unit. ***Matter of Capone***, OATH Index No. 203/24 (Oct. 13, 2023).

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

Worker Protection

Penalties recommended for violation of Earned Sick and Safe Time Act.

ALJ Faye Lewis recommended penalties against an employer for numerous violations of the Earned Sick and Safe Time Act, including a total civil penalty of \$32,300, employee relief of \$27,894.24, and an additional \$27,608.58 in back pay, plus interest, to a fired employee. ***Dep't of***

Consumer and Worker Protection v. Champion Security Services, Inc., OATH Index No. 2293/21 (October 23, 2023).

[Read more about ***Dep't of Consumer and Worker Protection v. Champion Security Services, Inc.***](#)

Campaign Finance

Ineligibility for future public matching funds recommended.

ALJ Orlando Rodriguez recommended a former candidate for City Council be deemed ineligible for future public matching funds and forfeit any public funds previously received during his 2010 campaign for city council.

Campaign Finance Board. v. Baldeo, OATH Index No. 1166/23 (Oct. 31, 2023)

[Read more about ***Campaign Finance Board. v. Baldeo***](#)

Appeals from the Hearings Division

An appeal decision reversed a hearing decision sustaining a violation against a hotel for emitting noise from a sound reproduction device used for commercial or business advertising purposes. At the hearing, the respondent denied playing music for advertising purposes, and asserted exterior speakers mounted at a hotel's entrance were used to play soft music throughout the day to create an ambiance for customers in the outside area of its dining room and guests of the hotel. The appeal decision dismissed the violation, finding that an advertising purpose may not be established merely because music is heard on the street where it is being used for other purposes, such as creating ambiance for customers. ***Eric Eisenberg, CC v. Riu Plaza New York Times Square***, Appeal No. 2301013 (October 26, 2023).

An appeal decision reversed a hearing decision dismissing violations against a retail store for engaging in unlicensed electronic cigarette retail dealer activity and failing to post a sign prohibiting the sale of tobacco products to persons under the age of 21 years. The issuing officer had observed a vaporizer on display, for which the store's employee quoted a sales price, and the store did not display a sign prohibiting sale of tobacco products to persons under 21. At the hearing, respondent's owner testified the vaporizer was only kept for display purposes in response to customer inquiries on CBD inhalation methods, and customers seeking to purchase the vaporizer would have been directed to the vaporizer company's website. The owner also testified that there was no sign prohibiting e-cigarette sales to persons under 21 because the store did not sell e-cigarettes. The appeal decision reversed the hearing officer's dismissal of the charges, finding the relevant statute's definition of an electronic cigarette retail dealer included anyone who acts as "other agent" of the seller and respondent, by displaying the vaporizer and referring customers to seller's website, was acting as an agent for the seller. The appeal decision further found respondent failed to assert a valid defense for failing to post signs in a conspicuous place advising the minimum age requirements for purchasing electronic cigarettes. ***DCWP v. Artemis Apothecary LLC***, Appeal No. 22M00232 (October 18, 2023).

An appeal decision affirmed that part of a hearing decision dismissing violations against a process server for inaccurately recording the time he had served court papers in one case and for failing to record plaintiff's name in his GPS log in another case. At the hearing, respondent testified he used a third-party service to maintain GPS records, which he cannot modify. In the first case, he had initially served papers at 12:50 p.m., then re-served at 4:08 p.m. at his agency's request, but could not amend the GPS log to reflect the later time. The hearing officer credited this explanation and found respondent's GPS logs reflected both service times. Respondent also testified that in the second case, he was unaware that plaintiff's name was missing from the GPS log because this information is inputted by the third-party service, and he cannot see this information on his phone. Further, even if he was aware of the missing information, he could not amend the GPS log. The hearing officer found petitioner failed to show that respondent was responsible for any omissions in data provided by the third-party service. The appeal decision affirmed the dismissals, finding that the rule requiring accurate recording of plaintiff's name was applicable to the third-party service and not respondent. *DCWP v. Vincent J. Mannelta*, Appeal No. 220163HR (October 19, 2023).

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