



# BenchNOTES Newsletter

July 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](#).

**Chief Administrative Law Judge Order:** On June 20, 2023, Chief Administrative Law Judge Asim Rehman issued an administrative order regarding in-person and remote proceedings in the Trials Division, including the process for requesting an in-person appearance. See [administrative order dated June 20, 2023](#).

## Trials Division

### Personnel

#### **Termination of employment recommended for correction officer.**

ALJ Julia H. Lee recommended termination of employment for a correction officer found guilty of multiple time and leave violations and other charges.

[\*Dep't of Correction v. Crawford\*](#), OATH Index No. 1826/23 (June 23, 2023).

Read more about [\*Dep't of Correction v. Crawford\*](#).

### Licensing

#### **Dismissal of summary suspension proceeding recommended.**

ALJ Astrid B. Gloade recommended dismissing a summary suspension proceeding against a taxi driver whose TLC license expired approximately six weeks before his arrest.

***Taxi & Limousine Comm’n v. Hossain***, OATH Index No. 2726/23 (June 1, 2023), *modified*, Comm’r Dec. (June 21, 2023).

Read more about ***Taxi & Limousine Comm’n v. Hossain***.

## Health and Safety

### **Dog found to be dangerous.**

ALJ Julia Davis found respondent’s dog qualified as a dangerous dog under the Health Code and recommended Department of Health impose any control measures other than euthanasia.

***Dep’t of Health & Mental Hygiene v. Ryan***, OATH Index No. 1353/23 (June 2, 2023).

Read more about ***Dep’t of Health & Mental Hygiene v. Ryan***

## Contracts

### **Contractor’s claim for additional compensation denied.**

The Contract Dispute Resolution Board, chaired by ALJ Kara J. Miller, denied a contractor’s claim for payment of work it performed on three line items.

***Volmar Construction Inc. v. Dep’t of Environmental Protection***, OATH Index No. 1777/22, mem. dec. (June 23, 2023).

Read more about ***Volmar Construction Inc. v. Dep’t of Environmental Protection*** and other Contracts cases

## Appeals from the Hearings Division

An appeal decision reversed a hearings decision dismissing violations against a food store for refusing to allow consumers to pay for their purchases in cash. The business argued that they were not in violation because although they did not accept cash, they had a policy of providing complimentary meals to customers who tried to pay in cash. The appeal decision rejected this defense, finding the administrative code makes it unlawful for a food store to refuse cash payments, with no exceptions for a policy of offering complimentary meals in lieu of accepting cash. ***DCWP v. Beatnic***, Appeal No. 220183HR (June 30, 2023).

An appeal decision reversed a hearings decision dismissing violations for engaging in business as an electronic cigarette retail dealer without a license and selling electronic cigarettes to a person under 21 years old. The hearing officer dismissed the violations, finding that the electronic cigarettes were hemp-derived products and therefore governed by state cannabis law. The appeal decision reversed because the administrative code’s definition of an electronic cigarette was not limited to non-hemp products and state cannabis law did not preempt the

administrative code. ***DCWP v. Ming New York Holdings LLC***, Appeal No. 22T03435 (June 21, 2023).

An appeal decision reversed a hearings decision dismissing a violation against a driver for operating a vehicle-for-hire without a license from the Taxi and Limousine Commission. After seeing respondent drop off a passenger at the airport, an undercover officer waved at respondent. The driver acknowledged the officer's curbside hail and agreed to drive the officer in exchange for cash. The hearing officer dismissed the charge, finding the undercover officer did not have authority to stop the vehicle because there was insufficient reasonable suspicion that respondent engaged in unlicensed for-hire activity. The appeal decision reversed, finding that no reasonable suspicion was needed for the officer's curbside hail because respondent was not required to stop. ***TLC v. Esmir Nicole Borges***, Appeal No. 73131184A (June 15, 2023).

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