

BenchNOTES Newsletter

September 2020

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OATH BenchNOTES Newsletter Expansion

Starting this month, the BenchNOTES newsletter is expanding to include news about new initiatives at OATH and notable decisions issued by the Hearings Division Appeals Unit, in addition to the Trials Division.

[Read more about OATH BenchNOTES newsletter expansion](#)

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<https://www1.nyc.gov/site/oath/about/oath-newsletter-sign-up.page>

OATH News

OATH and Office of Nightlife launch new MEND NYC mediation program: On August 14, Mayor Bill de Blasio announced the launch of MEND NYC, a new joint initiative of OATH and its Center for Creative Conflict Resolution and the Office of Nightlife. MEND NYC provides mediation to New Yorkers and hospitality businesses across the city who are in disputes over quality-of-life issues.

[Read more about MEND NYC](#)

COVID-19 Update

Pursuant to an order of the Chief Administrative Law Judge, all hearings, trials, and other OATH operations are being conducted by telephone, videoconferencing, online, or mail, and OATH will only allow in-person appearances in limited, pre-approved circumstances. Individuals may only enter OATH offices if the agency has approved your or your representative's request because there is a compelling need for an in-person proceeding and the proceeding can be conducted while providing sufficient social distancing and other public health protections to comply with state and local government public health guidelines. For more information, read [OATH's public flyer](#).

[Read more about Trials Division – COVID-19 Update](#)

Appeals Division decisions (appeals from the Hearings Division)

The Appeals Division sustained a hearing officer's imposition of recidivist penalties against a tobacco retail dealer for selling tobacco products to a person under 21 years of age. Respondent argued that prior violation (on which the recidivist charge was based) had been issued to a prior owner.

[Dep't of Consumer Affairs v. Zil Zal, Inc.](#), Appeal No. 80036796 (Aug. 11, 2020).

[Read more about Dep't of Consumer Affairs v. Zil Zal, Inc.](#)

Trials Division

Licensing

Taxi driver asserted an innocent ingestion defense.

In a Taxi and Limousine Commission license revocation case, the driver objected to petitioner's reliance on an affidavit from a testing laboratory and a chain of custody verification to establish that he tested positive for marijuana, without producing a witness to be cross-examined, and argued that his test sample equaled, but did not exceed, the federal cutoff for a positive test.

[Taxi & Limousine Comm'n v. Genco](#), OATH Index No. 2147/20 (Aug. 20, 2020), *adopted*, Comm'r Dec. (Aug. 21, 2020).

[Read more about Taxi & Limousine Comm'n v. Genco](#)

Practice and Procedure

Transcripts of audio recordings inadmissible where recordings are available.

Petitioner brought a registration revocation proceeding against respondent, a registered construction superintendent, alleging that on three separate occasions the respondent gave a Department of Buildings inspector money after an inspection.

[Dep't of Buildings v. Chaskelson](#), OATH Index No. 738/19, mem. dec. (Aug. 12, 2020).

[Read more about Dep't of Buildings v. Chaskelson](#)

Personnel

Bridge and Tunnel Officer committed misconduct.

A Triborough Bridge and Tunnel Authority officer was charged with engaging in threatening behavior towards a motorist, including displaying his service weapon, and making false statements, among other charges.

[Triborough Bridge & Tunnel Auth. v. Allston](#), OATH Index No. 2689/19 (Aug. 25, 2020), *adopted*, Pres. Dec. (Sept. 9, 2020).

[Read more about Triborough Bridge & Tunnel Auth. v. Allston](#)

Real Property

Owner improperly diminished parking services.

In an Interim Multiple Dwelling ("IMD") covered by the Loft Law, a group of loft tenants filed an application seeking a finding that the owner improperly diminished parking services that the previous owner agreed to provide.

[Matters of Tenants of 475 Kent Avenue](#), OATH Index No. 740/19 (Aug. 19, 2020).

[Read more about Matters of Tenants of 475 Kent Avenue](#)

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