



BenchNOTES Newsletter

June 2024

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 recommended.

ALJ Charlotte Davidson recommended termination of employment for an investigator who violated the Department's policies by using sick leave while out on annual leave to extend his vacations.

Dep't of Correction v. Salinas, OATH Index No. 1375/24 (May 17, 2024).

[Read more about *Dep't of Correction v. Salinas* and other Personnel cases.](#)

Licensing

Continued license suspension recommended.

ALJ Julia H. Lee recommended continuing the license suspension of a taxi driver arrested for grand larceny.

Taxi & Limousine Comm'n v. Abubakkar, OATH Index No. 3118/24 (May 24, 2024), *adopted*, Comm'r Dec. (May 29, 2024).

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

Real Property

Granting protected occupancy and access applications but denying rent adjustment and unreasonable interference applications recommended.

ALJ Julia Davis recommended granting a tenant's application for protected occupancy, denying her applications for a rent adjustment and unreasonable interference, and granting the owner's application for access to the unit.

Matter of Williamson, OATH Index Nos. 1753/22, 0796/22, 1347/22 & 2365/22 (May 23, 2024).

[Read more about ***Matter of Williamson*** and other Real Property cases.](#)

Appeals from the Hearings Division

An appeals decision reversed a hearing decision sustaining a violation for work without a permit. The violation was issued on January 29, 2024, after the issuing officer inspected respondent's property and observed a wooden deck which had been erected without a permit. At the hearing, respondent argued the proceeding should be dismissed because DOB had previously served her with a Request for Corrective Action ("RCA") on January 8, 2024, which had given her 60 days to correct the violation and the 60 days had not elapsed when the violation was issued. The judicial hearing officer sustained the charge, finding that the RCA was discretionary and did not prevent DOB from issuing a summons. The appeals decision reversed, finding the RCA was codified by law and the summons was issued prematurely because respondent was not given 60 days to correct the violating condition. ***DOB v. Olshwang, Naftali***, Appeal No. 2400613 (May 30, 2024).

An appeals decision reversed a hearing decision dismissing a third offense for idling a motor vehicle for longer than three minutes. The judicial hearing officer dismissed the summons, crediting respondent's representation that the cited truck's engine was being used to operate a processing device for loading pallets into the garbage truck. The appeals decision reversed because video evidence showed the truck was idling for over three minutes before any loading activity occurred, and the loading activity consisted of a worker throwing pallets into the truck's hopper which did not require the use of the truck's compactor. ***DEP v. Northeast Service***, Appeal No. 2400487 (May 30, 2024)

An appeals decision reversed part of a hearing decision that sustained a Health Code violation for an obstructed hand wash sink. In the summons, the issuing officer affirmed that the only designated hand wash sink in the sushi preparation/service area was obstructed with three packages of partially frozen broiled eel. At the hearing, respondent testified that the cited sink was not a hand wash sink but used solely for food preparation and that she had a photograph showing that the hand wash sign was missing in the sushi bar area. After this testimony, the hearing officer determined respondent required an interpreter and an interpreter was provided for the remainder of the hearing. The hearing officer subsequently sustained the charge and did not credit respondent's claim. On appeal, the respondent explained that there are two sinks in the sushi bar area, one for hand washing and the other for food preparation and submitted

corroborating photographic evidence. The appeals decision accepted respondent's new evidence, noting that respondent did not have the benefit of an interpreter for that portion of the hearing. Finding that respondent has refuted the charge, the appeals decision dismissed the violation. *DOHMH v. Ume NY Inc*, Appeal No. 05194-23F1 (May 29, 2024).

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