

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JARNAIL SINGH,

Petitioner,

- against -

VERIFIED ANSWER

Index No. 159603/2022

NYC OFFICE ADMINISTRATIVE TRIALS AND
HEARINGS, NYC DEPT. OF BUILDINGS, NYC
DEPT. OF FINANCE, and THE CITY OF NEW
YORK,

Respondents.

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Respondents NYC OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (“OATH”), NYC DEPT. OF BUILDINGS (“DOB”), NYC DEPT. OF FINANCE (“DOF”), and THE CITY OF NEW YORK, by their attorney, HON. SYLVIA O. HINDS-RADIX, Corporation Counsel of the City of New York, for their answer to the Verified Petition respectfully allege the following upon information and belief:

1. Deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “1” of the petition, except admit that publicly available information contained online on DOF’s Automated City Register Information System shows that Petitioner is the owner of properties located at 268 Targee Street and 270 Targee Street in Staten Island, NY (collectively, the “subject properties”).

2. Deny the allegations set forth in paragraph “2” of the petition, except admit that DOF mailed a letter to Petitioner on or about July 25, 2022 regarding judgments entered for the violations at the subject properties as set forth in DOB summonses.

3. Deny the allegations set forth in paragraph “3” of the petition, except admit that Petitioner purports to proceed as set forth therein, and respectfully refer the Court to administrative record annexed hereto for a complete and accurate statement of the history of the DOB summonses at issue in this proceeding.

4. Deny the allegations set forth in paragraphs “4” of the petition.

5. Deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “4.A.” of the petition, except admit that violations at the subject properties that are related to the DOB summonses have been corrected.

6. Deny the allegations set forth in paragraph “5” of the petition.

7. Deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “6” of the petition regarding what Petitioner has been advised and deny the remaining allegations.

8. Deny the allegations set forth in paragraph “7” of the petition, except deny knowledge or information sufficient to form a belief as to the allegations regarding Petitioner’s language skills and need for a translator.

9. Deny that the allegations set forth in paragraphs “8,” “8.a.” and “8.b” of the petition, except admit that Petitioner’s attorney filed a request for a new hearings on the DOB summonses and OATH denied that request, and respectfully refer the Court to administrative record annexed hereto for a complete and accurate statement of the history of the DOB summonses at issue in this proceeding.

10. Deny that the allegations set forth in paragraph “9” of the petition.

11. Deny that the allegations set forth in paragraphs “10” and “11” of the petition, except admit that Petitioner purports to proceed as set forth therein.

12. Deny that the allegations set forth in paragraphs “12,” “12.A” and “12.b” and “12.C” of the petition.

13. Deny that the allegations set forth in paragraphs “13” through “15” of the petition, except admit that Petitioner purports to proceed as set forth therein.

STATUTORY FRAMEWORK

OATH and Its Functions

14. Chapter 45-A of the City Charter, Section 1049 establishes the New York City Office of Administrative Trials and Hearings (“OATH”). Section 1049-a of the City Charter establishes Environmental Control Board (“ECB”) as part of OATH.¹ ECB, or the Board, consists of 13 members, including the commissioners of six city agencies—the commissioner of environmental protection, the commissioner of sanitation, the commissioner of buildings, the commissioner of health and mental hygiene, the police commissioner, and the fire commissioner. City Charter § 1049-a. ECB is chaired by the chief administrative law judge of OATH. *Id.* In addition, pursuant to the City Charter, the Board consists of six persons to be appointed by the mayor who are not otherwise employed by the city with broad general experience in several areas, including water pollution control, air pollution control, noise pollution control, real estate, business experience, and a member of the general public. *Id.*

15. City Charter § 1049-a(c) authorizes ECB to enforce provisions of the City Charter and Administrative Code, and any rules and regulations made thereunder, that relate to: the cleanliness of the streets; the disposal of waste; the water supply; the prevention of air, water and noise pollution; the regulation of street peddling; the prevention of fire; the construction,

¹ Effective August 7, 2016, 48 RCNY § 6-02 brought ECB under the auspices of the OATH Hearings Division, the tribunal charged with adjudicating summonses formerly returnable at ECB.

maintenance, use, safety, and inspection of buildings or structures; the release of hazardous substances; the use and regulation of property under the jurisdiction of the department of parks and recreation; the construction and maintenance of public roads; the use and regulation of property under the jurisdiction of the department of small business services; the defacement of property; and landmarks and historic districts under the jurisdiction of the landmarks preservation commission. See City Charter § 1049-a(c)(1)(a)-(n).

16. City Charter § 1049-a(d)(1)(b) states that a notice of violation² (“summons”) or copy thereof when filled in and served shall be prima facie evidence of the facts contained therein. The methods for service of summonses utilized by the various issuing agencies are set forth in the City Charter. City Charter § 1049-a(d)(2) sets forth the methods of service permissible for each type of violation; they vary based upon the issuing agency, type of offense, and the status of the respondent named on the summons.

17. Under City Charter § 1049-a(d)(2)(a), the Department of Buildings is one of the agencies allowed to affix and mail service for the service of summonses. City Charter § 1049-a(d)(2)(a)(ii) provides, in pertinent part that “service of a notice of violation of any provision of the charter or administrative code, the enforcement of which is the responsibility of the commissioner of sanitation, the commissioner of buildings or the commissioner of the fire department and over which the environmental control board has jurisdiction, may be made by affixing such notice in a conspicuous place to the premises where the violation occurred[.]”

18. City Charter § 1049-a(d)(2)(b) specifies in relevant part that:

² Effective August 7, 2016, Title 48 of the Rules of the City of New York, which prescribes the rules of procedure for administrative proceedings at OATH, was amended in part to improve clarity. As part of these amendments, notices of violation (NOVs) are now known as “summonses.”

Such notice may only be affixed or delivered pursuant to items (i) and (ii) of subparagraph (a) of this paragraph where a reasonable attempt has been made to deliver such notice to a person in such premises upon whom service may be made as provided for by article three of the civil practice law and rules or article three of the business corporation law...

19. City Charter § 1049-a(d)(2)(b) further provides that, where a notice is affixed in a conspicuous place to the premises, DOB must also mail a copy to the owner at the address of the premises” and that:

[I]f the respondent is neither the owner nor the managing agent nor the occupying tenant of such premises, then a copy of the notice shall also be mailed to the respondent at such respondent’s last known residence or business address, and, if the respondent is the owner or agent of the building with respect to which such notice was issued and the identity of and an address for such person is contained in any of the files specified in items (i), (ii) and (iii) of this subparagraph, a copy of the notice shall also be mailed:

(i) to the person registered with the department of housing preservation and development as the owner or agent of the premises, at the address filed with such department in compliance with article two of subchapter four of chapter two of title twenty-seven of the administrative code; or

(ii) to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

(iii) to the person described as owner or agent of the premises, at the address for such person contained in the files of the agency which issued such notice of violation compiled and maintained for the

purpose of the enforcement of the provisions of the charter or administrative code or other law over which such agency has jurisdiction.

20. The City Charter authorizes ECB to conduct proceedings to adjudicate violations of the laws, rules and regulations that it enforces, and to enter default judgments when a respondent fails to appear for a scheduled proceeding. See City Charter § 1049-a(d).

21. Title 48 RCNY § 6-09(b) provides, in pertinent part, as follows:

§ 6-09 Appearances.

* * *

(b) A Respondent may appear for a hearing by:

(1) Appearing in person at the place, date and time scheduled for the hearing; or

(2) Sending an authorized representative to appear on behalf of such person at the place, date and time scheduled for the hearing who is:

(i) an attorney admitted to practice law in New York State, or

(ii) a representative registered to appear before the Tribunal pursuant to 48 RCNY § 6-23, or

(iii) any other person, subject to the provisions of 48 RCNY § 6-23; or

(3) Appearing pursuant to 48 RCNY § 6-10, when the opportunity to appear remotely is offered by the Tribunal, unless the summons specifies that a Respondent must appear in person at a hearing.

OATH Rules Pertaining to Defaults

22. Pursuant to Title 48 RCNY § 6-02, ECB is part of the OATH Hearings Division.

23. In accordance with Title 48 RCNY § 6-20, OATH is authorized to issue a default in the event that a respondent fails to submit a timely response or otherwise appear at OATH for a hearing. Title 48 RCNY § 6-20 states, in pertinent part, as follows:

(b) Upon such default, without further notice to the Respondent and without a hearing being held, all facts alleged in the summons will be deemed admitted, the Respondent will be found in violation and the penalties authorized by applicable laws, rules and regulations will be applied.

* * *

(d) The Tribunal will notify the Respondent of the issuance of a default decision by mailing a copy of the decision or by providing a copy to the Respondent or the Respondent's representative who appears personally at the Tribunal and requests a copy.

24. Further, City Charter § 1049-a(d)(1)(d) states, in pertinent part, as follows:

Where a respondent has failed to plead within the time allowed by the rules of the board or has failed to appear on a designated hearing date or a subsequent hearing date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing a penalty in the maximum amount prescribed under law for the violation charged.

25. Upon a default determination, OATH imposes the default penalty, as set forth in the penalty schedules promulgated by OATH, codified in Title 48 of the RCNY.

The Vacate Default Rule

26. Pursuant to Title 48 RCNY § 6-21, the rule pertaining to the procedures for vacating a default decision, a respondent has the opportunity to make a request for a new

hearing. A request for a new hearing submitted after 75 days of the default is not automatically granted.³ Title 48 RCNY § 6-21(c) states, in pertinent part, as follows:

A request for a new hearing after default that is submitted after seventy-five (75) days of the date of the mailing or hand delivery date of the default decision must be filed within one (1) year of the date of the default decision and be accompanied by a statement setting forth a reasonable excuse for the Respondent's failure to appear and any documents to support the request. The Hearing Officer will determine whether a new hearing will be granted.

27. Title 48 RCNY § 6-21(d) sets forth what OATH will consider when determining whether a respondent has shown a reasonable excuse for failing to appear at a hearing. Title 48 RCNY § 6-21(d) states, in pertinent part, as follows:

(d) *Reasons for Failing to Appear.* In determining whether a Respondent has shown a reasonable excuse for failing to appear at a hearing, the Hearing Officer will consider:

(1) Whether the summons was properly served pursuant to applicable law.

* * *

28. Title 48 RCNY § 6-21(f) permits OATH to grant a new hearing in exceptional circumstances. It provides:

Except as otherwise stated in 48 RCNY § 5-03, the Chief Administrative Law Judge or his or her designee will have the discretion, in exceptional circumstances and in order to avoid injustice, to consider a Respondent's first request for a new hearing after default made more than one (1) year from the date of the default decision.

³ In 2022, OATH amended its rules to change the deadline for requesting a new hearing after default from 60 days to 75 days. This rule change took effect on July 9, 2022.

29. A denial of a motion to vacate a default is the agency's final determination and is not subject to review or appeal at OATH. Judicial review of the denial may be sought pursuant to Article 78 of the CPLR. See 48 RCNY § 6-21(i).

Docketing and Enforcing OATH Judgments

30. City Charter § 1049-a(d)(1)(g) provides that a final ECB order "imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the board which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions; provided, however, that no such judgment shall be entered which exceeds the sum of twenty-five thousand dollars for each respondent."

31. Before a judgment based on a default decision may be entered, OATH must notify "the respondent by first class mail in such form as the board may direct: (i) of the default decision and order and the penalty imposed; (ii) that a judgment will be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state of New York; and (iii) that entry of such judgment may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to the rules of the board within thirty days of the mailing of such notice." City Charter § 1049-a(d)(1)(h).

STATEMENT OF FACTS

32. Petitioner is the owner of the subject properties, namely, property located at 268 Targee Street and 270 Targee Street in Staten Island, NY. See Petition ¶ 1.

33. In accordance with local law,⁴ Petitioner had registered the subject properties with the New York City Housing Preservation and Development (“HPD”). At all relevant times, the ownership contact information for the subject properties, which Petitioner provided to HPD, was as follows:

Jarnail Singh 285 St. Marks Place Staten Island, NY 10301
Sing-A-Long Associates 285 St. Marks Place Staten Island, NY 10301
Gateway Arms Realty Corp. Robert Fitzsimmons, Managing Agent 285 St. Marks Place Staten Island, NY 10301

Copies of the publicly available registration information for the subject properties is annexed hereto as Exhibit A.

34. From at least September 2020 through present, DOF addressed quarterly property tax bills for the subject properties to Petitioner at 285 St. Marks Place, Staten Island, NY 10301. The property tax bills have been paid in full. Copies of relevant property tax bills for the subject properties are annexed hereto as Exhibit B.

⁴ Property owners of residential buildings are required by law to register annually with HPD if the property is a multiple dwelling or a private dwelling where neither the owner nor the owner's immediate family resides. See Admin. Code § 27-2097.

DOB Orders Petitioner to Correct Violations at the Subject Properties

35. In September 2020, DOB issued four summonses to the subject properties – Summons Nos. 39028253X, 39028252Y, 39028270H, 39028269K – setting forth Administrative Code violations relating to illegal dwelling units and undertaking work at the subject properties without a DOB work permit. The summonses also contained orders to correct the illegal conditions and certify correction with DOB (collectively, “Orders to Correct”).⁵ Copies of the Order to Correct are collectively annexed hereto as Exhibit C.

DOB Summonses Petitioner for Failing to Comply with the Orders to Correct

36. As set forth more fully below, between November 2020 and August 2021, DOB issued a total of 22 additional summonses to Petitioner due to his failure to comply (collectively, the “DOB Summonses”). See ¶¶ 36 – 59, *infra*.

November 2020 Summonses

37. In November 2020, DOB issued the following three summonses to the subject properties for failing to comply with the Orders to Correct (collectively, “November 2020 Summonses”):

Summons	Violation Address	Violation Description
35523243P	268 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028252Y
35523247M	270 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028270H
35523248Y	270 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028269K

The summonses contained a January 6, 2021 hearing date on which Petitioner could contest the charges. Copies of records relating to the November 2020 Summonses are annexed hereto as

⁵ Petitioner is not challenging these four summonses in this proceeding.

follows: Summons No. 35523243P (Exhibit D); Summons No. 35523247M (Exhibit E); and Summons No. 35523248Y (Exhibit F).

38. As set forth in the Affidavits of Service, after ringing the doorbell and knocking on the door but receiving no answer, DOB served the November 2020 Summonses on the subject properties by posting on the front door of the subject properties and mailing copies of the November 2020 Summonses. Specifically, DOB mailed copies of the November 2020 Summonses to Petitioner at the subject properties, as well to the following addresses:

Greenpoint Mortgage Funding 299 Park Avenue New York, NY 101701	Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301	Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301

See Exs. D – F.

39. Neither Petitioner nor a representative appeared for the January 6, 2021 hearings on the November 2020 Summonses. Accordingly, on January 13, 2021, OATH issued and mailed default decisions on the November 2020 Summonses to Petitioner at the subject properties, as well to the following addresses:

Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301
Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301

See id.

40. The default decisions stated that if Petitioner did not request a new hearing or pay a special reduced fine and correct the violations, the City will obtain a legal judgment and take money and property from Petitioner to pay a default fine. See id.

January 2021 Summonses

41. In January 2021, DOB issued the following four summonses to the subject properties for failing to comply with the Orders to Correct (collectively, the “January 2021 Summonses”):

Summons	Violation Address	Violation Description
35525956Y	268 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028253X
35525079L	268 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028252Y
35525081K	270 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028270H
35526900J	270 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028269K

The summonses contained March 2021 hearing dates on which Petitioner could contest the charges. Copies of records relating to the January 2021 Summonses are annexed hereto as follows: Summons No. 35525956Y (Exhibit G); Summons No. 35525079L (Exhibit H); Summons No. 35525081K (Exhibit I); Summons No. 35526900J (Exhibit J).

42. As set forth in the Affidavits of Service, after knocking on front door and ringing the doorbell but receiving no answer, DOB served the January 2021 Summonses on the subject properties by posting them on the front door of the respective subject properties and thereafter mailing copies. Specifically, DOB mailed copies of the January 2021 Summonses to Petitioner at the subject properties, as well to the following addresses:

Greenpoint Mortgage Funding 299 Park Avenue New York, NY 101701	Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301	Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301

See Exs. G to J.

43. Neither Petitioner nor a representative appeared for the March 2021 hearings on January 2021 Summonses. Accordingly, OATH thereafter issued and mailed default decisions on the January 2021 Summonses to Petitioner at the subject properties, as well to the following addresses:

Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301
Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301

See id.

44. The default decisions stated that if Petitioner did not request a new hearing or pay a special reduced fine and correct the violations, the City will obtain a legal judgment and take money and property from Petitioner to pay a default fine. See id.

March 2021 Summonses

45. In March 2021, DOB issued the following four summonses to the subject properties for failing to comply with the Orders to Correct (collectively, the “March 2021 Summonses”):

Summons	Violation Address	Violation Description
35521582K	268 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028253X
35521583M	268 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028252Y
35521584Y	270 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028269K
35521585X	270 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028270H

The summonses contained a May 5, 2021 hearing date on which Petitioner could contest the charges. Copies of records relating to the March 2021 Summonses are annexed hereto as follows: Summons No. 35521582K (Exhibit K); Summons No. 35521583M (Exhibit L); Summons No. 35521584Y (Exhibit M); Summons No. 35521585X (Exhibit N).

46. As set forth in the Affidavits of Service, after knocking on front door and ringing the doorbell but receiving no answer, DOB served the March 2021 Summonses on the subject properties by posting them on the front door of the respective subject properties and thereafter mailing copies of the summonses. Specifically, DOB mailed copies of the summonses to the following addresses:

Greenpoint Mortgage Funding 299 Park Avenue New York, NY 101701	Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301	Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301

See Exs. K to N.

47. Neither Petitioner nor a representative appeared for the May 5, 2021 hearing on March 2021 Summonses. Accordingly, on March 12, 2021, OATH issued and mailed default decisions on the March 2021 Summonses to Petitioner at the subject properties, as well to the following addresses:

Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301
Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301

See id.

48. The default decisions stated that if Petitioner did not request a new hearing or pay a special reduced fine and correct the violations, the City will obtain a legal judgment and take money and property from Petitioner to pay a default fine. See id.

April 2021 Summonses

49. In April 2021, DOB issued the following three summonses to the subject properties for failing to comply with the Orders to Correct (collectively, the “April 2021 Summonses”):

Summons	Violation Address	Violation Description
35530250Z	268 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028252Y
35529049Z	268 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028253X
35530251K	270 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028269K

The summonses contained a June 16, 2021 hearing date on which Petitioner could contest the charges. Copies of records relating to the April 2021 Summonses are annexed hereto as follows: Summons No. 35530250Z (Exhibit O); Summons No. 35529049Z (Exhibit P); and Summons No. 35530251K (Exhibit Q).

50. As set forth in the Affidavits of Service, after knocking on front door and ringing the doorbell but receiving no answer, DOB served the April 2021 Summonses on the

subject properties by posting them on the front door of the respective subject properties and thereafter mailing copies of the summonses. Specifically, DOB mailed copies of the April 2021 Summonses to Petitioner at the subject properties, as well to the following addresses:

Greenpoint Mortgage Funding 299 Park Avenue New York, NY 101701	Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301	Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301

See Exs. O to Q.

51. Neither Petitioner nor a representative appeared for the June 16, 2021 hearing on April 2021 Summonses. Accordingly, on June 23, 2021, OATH issued and mailed default decisions on the April 2021 Summonses to Petitioner at the subject properties, as well to the following addresses:

Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301
Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301

See id.

52. The default decisions stated that if Petitioner did not request a new hearing or pay a special reduced fine and correct the violations, the City will obtain a legal judgment and take money and property from Petitioner to pay a default fine. See id.

June 2021 Summonses

53. In June 2021, DOB issued the following summonses to the subject properties for failing to comply with the Orders to Correct (collectively, “June 2021 Summonses”):

Summons	Violation Address	Violation Description
35532947H	268 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028252Y
35532946X	268 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028253X
35532948J	270 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028269K
35532949L	270 Targee Street	Failure to comply with Commissioner's Order in Summons No. 39028270H

The summonses contained an August 4, 2021 hearing date on which Petitioner could contest the charges. Copies of records relating to the June 2021 Summonses are annexed hereto as follows: Summons No. 35532947H (Exhibit R); Summons No. 35532946X (Exhibit S); Summons No. 35532948J (Exhibit T); and Summons No. 35532949L (Exhibit U).

54. As set forth in the Affidavits of Service, after knocking on front door and ringing the doorbell but receiving no answer, DOB served the June 2021 Summonses on the subject properties by posting them on the front door of the respective subject properties and thereafter mailing copies of the summonses. Specifically, DOB mailed copies of the June 2021 Summonses to the following addresses:

Greenpoint Mortgage Funding 299 Park Avenue New York, NY 101701	Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301	Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301

See Exs. R to U.

55. Neither Petitioner nor a representative appeared for the August 4, 2021 hearing on June 2021 Summonses. Accordingly, on August 11, 2021, OATH issued and mailed default decisions on the June 2021 Summonses to Petitioner at the subject properties, as well to the following addresses:

Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301
Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301

See id.

56. The default decisions stated that if Petitioner did not request a new hearing or pay a special reduced fine and correct the violations, the City will obtain a legal judgment and take money and property from Petitioner to pay a default fine. See id.

August 2021 Summonses

57. In August 2021, DOB issued the following four summonses to the subject properties for failing to comply with the Orders to Correct (collectively, the “August 2021 Summonses”):

Summons	Violation Address	Violation Description
35535482K	268 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028252Y
35535479J	268 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028253X
35535481Z	270 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028269K
35535480R	270 Targee Street	Failure to comply with Commissioner’s Order in Summons No. 39028270H

The summonses contained an October 6, 2021 hearing date on which Petitioner could contest the charges. Copies of records relating to the August 2021 Summonses are annexed hereto as follows: Summons No. 35535482K (Exhibit V); Summons No. 35535479J (Exhibit W); Summons No. 35535481Z (Exhibit X); and Summons No. 35535480R (Exhibit Y).

58. As set forth in the Affidavits of Service, after speaking to an unknown female occupant who stated that she was not authorized to accept service and that there was no other person present who was authorized to accept service, DOB served the August 2021 Summonses on the subject properties by posting them on the front door of the respective subject properties and thereafter mailing copies of the summonses. Specifically, DOB mailed copies of the summonses to Petitioner at the subject properties, as well to the following addresses:

Greenpoint Mortgage Funding 299 Park Avenue New York, NY 101701	Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301	Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301

See Exs. V to Y.

59. Neither Petitioner nor a representative appeared for the October 6, 2021 hearing on August 2021 Summonses. Accordingly, on October 13, 2021, OATH issued and mailed default decisions on the August 2021 Summonses to Petitioner at the subject properties, as well to the following addresses:

Jarnail Singh Gateway Arms Realty 285 St. Marks Place, Suite 1 Staten Island, NY 10301
Jarnail Singh Gateway Arms Realty 285 St. Marks Place Staten Island, NY 10301
Robert Fitzsimmons 285 St. Marks Place Staten Island, NY 10301

See id.

60. The default decisions stated that if Petitioner did not request a new hearing or pay a special reduced fine and correct the violations, the City will obtain a legal judgment and take money and property from Petitioner to pay a default fine. See id.

DOF Notice of Action to Collect Debt from Petitioner

61. In a letter dated July 25, 2022, DOF notified Petitioner of the docketed judgments on the DOB Summonses and the steps Petitioner can take to avoid collection enforcement actions. The letter was addressed to Petitioner 285 St. Marks Place, Staten Island, NY 10301. A copy of the letter is annexed hereto as Exhibit Z.

Petitioner's Request for New Hearings

62. On August 10, 2022, Petitioner submitted his first request for new hearings on the DOB Summonses. A copy of the request is annexed hereto as Exhibit AA.

63. Petitioner stated that he first learned about the summonses in February 2022, and that his request for new hearings should be granted for the following reason:

The mailing address is incorrect, please check the attached driver license. The purpose of the reopen is to have Standard penalties not default penalties. Already hire the PE to the filing with the DOB to take care all of the violations, please grant the request to re-open the violations, thank you.

See id.

64. In orders dated August 12, 2022, OATH denied Petitioner's hearing requests because Petitioner did not establish a reasonable excuse for failing to appear at the hearings. OATH also stated that its records showed that the DOB Summonses were properly served. Copies of records relating to the orders are collectively annexed hereto as Exhibit AB.

65. In September 2022, Petitioner again requested a new hearing. A copy of the hearing request is annexed hereto as Exhibit AC.

66. OATH denied the second hearing request on the basis that it denied the Petitioner's first hearing request and that such previous denial constituted a final determination not subject to further review by OATH. A copy of an order is annexed hereto as Exhibit AD.

The Instant Article 78 Proceeding

67. By Notice of Petition, dated October 30, 2022 and Verified Petition, sworn to on December 17, 2018, Petitioner commenced the Article 78 proceeding seeking an order (a) granting an OATH hearing on the DOB Summonses; (b) vacating judgments entered on the DOB Summonses; and (c) such other relief as the Court deems proper. See Petition ¶¶ 13-15.

AS AND FOR A FIRST DEFENSE

68. OATH's determination denying Petitioner's requests for new hearings on the DOB Summonses was reasonable, rational, supported by evidence in the administrative record and consistent with applicable law.

69. The arbitrary and capricious standard is not a demanding one. Essentially, it requires that the final agency determination be reasonable and supported by the record taken as a whole. Reviewing courts are limited to an assessment of whether a rational basis exists for the final determination and their review ends when a rational basis has been found.

70. Administrative agencies are given wide discretion in determining the construction of statutes that they are charged with enforcing and the regulations they promulgate in performing their statutory duty.

71. Here, Petitioner's request for new hearings on the DOB Summonses was first submitted on August 10, 2022. See Ex. AA.

72. With respect to the August 2021 Summonses, Petitioner's hearing request was made after 75 days but within one year of the date of the default decisions. See Exs. V - Y. Thus, pursuant to Title 48 RCNY § 6-21(b), Petitioner must have set forth a reasonable excuse for its failure to appear at the hearings on these summonses.

73. With respect to the remaining summonses, namely, November 2020 Summonses, the January 2021 Summonses, the March 2021 Summonses, the April 2021

Summonses, and June 2021 Summonses, Petitioner's hearing request was made after one year of the date of the default decisions. See Exs. D – U. Thus, pursuant to Title 48 RCNY § 6-21(f), OATH may exercise its discretion and grant a new hearing on these summonses “in exceptional circumstances and in order to avoid injustice.”

74. OATH denied the Petitioner's new hearing requests because Petitioner did not establish a reasonable excuse for his failure to appear and because OATH records demonstrated that the DOB Summonses and notices were properly served. See Ex. AB.

75. With respect to service of process, in accordance with City Charter §1049-a(d)(2)(a) and CPLR § 308, service of process of the DOB Summonses was made by personal service through affixing the summonses to the door of the subject properties, after reasonably attempting to effectuate service on a person upon whom service may be made, and by mailing copies of the DOB Summonses to the addresses that Petitioner had on file with the City of New York. See Exs. D – Y. Petitioner's bare claim that he did not receive the DOB Summonses is insufficient to overcome a presumption that proper service occurred here. Therefore, service of the DOB Summonses was proper.

76. Moreover, Petitioner failed to provide a reasonable excuse – let alone exceptional circumstances – for his failure to appear. Indeed, the sole reason Petitioner provided for requesting new hearings was that DOB did not mail the summonses to the address listed on his New York State Driver License. See Ex. AA. Contrary to Petitioner's suggestion, Respondents are only required to mail the DOB Summonses to the subject properties and to the addresses associated with Petitioner and the subject properties that are on file with City agencies. See City Charter § 1049-a(2)(b). The record makes clear that Respondents did just that. See Exs. D - Y.

77. As OATH reasonably exercised its discretion to deny Petitioner's new hearing requests, the Court should not disturb the determinations.

AS AND FOR A SECOND DEFENSE

78. Petitioner's due process claims lack merit. See, e.g., Petition ¶¶ 10, 12.

79. Procedural due process requires only that Respondents provide Petitioner notice that is reasonably calculated to apprise him of the charges and an opportunity to be heard on those charges by presenting argument and evidence that supports his position.

80. Here, Petitioner was provided adequate notice and an opportunity to contest the charges set forth in the DOB Summonses. Respondents provided Petitioner notice in the manner prescribed by City Charter § 1049-a(d)(2), which consists of a single attempt to personally deliver a summons, coupled with affixing the summons to the property and mailing copies to the owner at the premises and other addresses on file with related City agencies. See Exs. D - Y. The Court of Appeals has held that this service procedure is in fact reasonably calculated to inform owners of violations relating to their properties and thus entirely consistent with due process.

81. Respondents also afforded Petitioner an opportunity to contest the charges set forth in the DOB Summonses at an administrative hearing at OATH, as each notice of hearing mailed to Petitioner makes plainly clear:

The hearing is your opportunity to answer and defend the allegations made in the summons. You should come fully prepared for the hearing. You have the right to bring witnesses and other evidence, including evidence of actions taken to correct any condition charged. All questions regarding the hearing should be directed to the OATH hearing location noted on the front of this notice. You may be able to have your case heard online, by phone or by mail ("Remote Adjudication"). To determine if you are eligible for Remote Adjudication visit the OATH website at www.nyc.gov/oath

See Exs. D -Y. See also 48 RCNY § 6-08 - § 6-16 (rules of practice relating to OATH hearings).

82. Although OATH administrative hearings were conducted remotely during the early phases of the COVID-19 pandemic, it in no way renders inadequate Petitioner's opportunity to be heard. This is particularly so here, where Petitioner never made any request to appear in person or with an attorney and never sought to obtain a translator. See 48 RCNY § 6-03 (providing for language assistance services at OATH hearings). Petitioner simply ignored the notice and the opportunity to be heard.

83. Second, Petitioner appears to suggest that judgments entered against him were somehow procedurally deficient. See Petition ¶ 14 (referring to "inadvertent JUDGMENTS internet/phone in Defaults/not in person"). Yet, as per City Charter § 1049-a(d)(1)(g), OATH decisions on the DOB Summonses constituted a judgment. Moreover, prior to entry of judgment, and in accordance with City Charter § 1049- a(d)(1)(h), OATH provided Petitioner notice of the default decisions and an opportunity to avoid entry of judgment, either by requesting a new hearing or correcting the violations and paying a special reduced fine. See Exs. D - Y. As with notice of the summonses, Petitioner again ignored this notice and opportunity to be heard.

84. Under these circumstances, Petitioner cannot establish an infringement of his procedural due process rights. Moreover, because Petitioner's substantive due process claim is premised on the same set of facts as his procedural due process claim (see Petition ¶ 10), the substantive due process claim likewise fails.

AS AND FOR A THIRD DEFENSE

85. Petitioner's request for an award of costs, attorney's fees, and disbursements should be denied. Such an award is not available to Petitioner in this Article 78 proceeding pursuant to CPLR § 8101.

WHEREFORE, Respondents respectfully request that the Petition be denied in its entirety, and this proceeding be dismissed, with such other relief as the court deems just and proper.

Dated: New York, New York
February 2, 2023

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/s/

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VERIFICATION

TIMOTHY R. JONES, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following to be true, under the penalty of perjury, pursuant to CPLR 2106:

I am Senior Counsel for the New York City Office of Administrative Trials and Hearings (“OATH”), and serve as a legal advisor to the OATH Hearings Division, which includes the Environmental Control Board (“ECB”). I have read the foregoing answer in the case of Jarnail Singh v. NYC Office of Administrative Trials and Hearings et al., New York County Index No., 159603/2022, and know the contents thereof to be true to my knowledge except as to any matter therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. The grounds to my belief as to all matters not therein stated upon knowledge are information obtained from the books and records of OATH and/or statements made to me by officers, agents, or employees of OATH, and the City of New York, and from statements, affidavits, or affirmations of other persons.

Dated: New York, New York
February 2, 2023

Timothy R. Jones /s/

Timothy R. Jones