



**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

HEARING LOCATION:
Environmental Control Board
233 Schermerhorn Street
11th Floor
Brooklyn, NY 11201
(718) 875-7428



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Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 0176274570 (1 NOV)
Hearing Date: August 5, 2010

To: COHEN, HOCHMAN & ALLEN
80 MAIDEN LANE
SUITE 507
NEW YORK, NY 10038

City of New York v. SCHNELLBACHER-
SENDON GROUP LLC

Total Civil Penalty: \$0.00

I Notice(s) of Violation (NOV(s)) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

NOV: 0176274570
PLACE OF OCCURRENCE: 1925 QUENTIN RD E 19 ST & OCEAN AV BROOKLYN
DATE OF OCCURRENCE: 05/05/2010
ISSUING OFFICER/AGENCY: TYRONE WILLIAMS 000342 841
ECB CODE: AD17
CHARGE: A.C. 19-123 NO STREET PROTECTION UNDER COMMERCIAL REFUSE CONTAINER
DISPOSITION: DISMISSED CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 0176274570 CHARGE: A.C. 19-123 NO STREET PROTECTION UNDER COMMERCIAL REFUSE CONTAINER

Paul Volodarsky, Esq., counsel to Respondent, Schnellbacher-Sendon Group LLC appeared in response to the instant Notice of Violation (NOV). Petitioner, Department of Transportation Highways Division, appeared by its authorized representative, Doris Stewart. The NOV charges Respondent, under section 19-123 of the Administrative Code (AC) with failing to have street protection under a commercial refuse container.

In support of the charge, Ms. Stewart submitted into evidence a MOSAIC copy of a DOT permit issued to Respondent to place a container on the street at the cited location. She also submitted 2 photos depicting only the wheels of a container, but not the contents.

Initially, Mr. Volodarsky moved to dismiss on the grounds that the incorrect statute was cited, arguing that AC 19-123 refers only to commercial containers. The instant container was a construction container, he stated, and not a commercial container, as defined by statute. Thereafter, Ms. Stewart moved to amend the NOV to charge AC section 19-121(b)(6). Mr. Volodarsky opposed the amendment on the grounds that it was untimely, as it was made after his motion to dismiss.

The motion to amend is denied. The details of the NOV conform to the statute cited and allege that the subject container is a commercial container. There is no basis for an amendment.

On the merits, Mr. Volodarsky offered into evidence a Department of Buildings permit issued to Respondent for alteration, construction equipment, and scaffolding at the cited location as proof that the cited location was a construction site and that Respondent was engaged in construction there.

I credit the evidence submitted on behalf of Respondent and find that Respondent was engaged in construction activity at the cited location. AC section 2-14 defines a commercial refuse container as a container to be placed on the public roadways temporarily, the use of which is not related or connected to any use or activity for which a construction activity permit shall be obtained from the Department. I find that Petitioner has failed to prove that the observed container was such a commercial container, and in fact, Respondent has rebutted the charge by demonstrating that the container was a construction container. Accordingly, the instant NOV is dismissed.

TOTAL CIVIL PENALTY: \$0.00

Thu Aug 2010 08/05/10 14:27:45

Control 5

AUG 18 2010

08/05/2010

Beverly Kalman, Administrative Law Judge

Date

**PAYMENT DUE WITHIN TEN (10) DAYS
READ BACK OF THIS ORDER – PROTECT YOUR RIGHTS**