

Location: 66 John Street, 10th Floor, New York, NY 10038 (212)361-1400

Method of Appearance: AT HEARING

Violation Number: 041541184K

Mailout: S(P)/T

City of New York vs.: PRINT-TECH COPY SERVICE & OFFICE S

Place of Occurrence: FO 824 AVE K

Issuing Officer: DOANLD

Borough: BROOKLYN

Agency: DOS - ENFORCEMENT AGENTS

Disposition: DISMISSED

Master: 821

Hearing Date: 5/21/2010

TO COHEN HOCHMAN & ALLEN
ALLEN, ESQ OTIS
80 MAIDEN LANE APT./NO.: SUITE 506/507
NEW YORK, NY 10038

A Notice of Violation was duly served, charging that on: 9/25/2007, at 05:29 PM, the Respondent violated the below infraction(s).

The Respondent appeared and entered the plea(s) indicated below, and a hearing was held before me on the above-cited date.

On the Record before me, I find: DISMISSAL: For the reasons stated below, the Notice of Violation is dismissed.

Infra. Code	Section/Description	Plea	Disposition	Reason	Penalty
AS30	10.119. ILLEGAL POSTING OF HANDBILL/NOTICE all listed NOV's	Deny	Dismissed	1	\$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

MASTER DECISION AND ORDER

NOVs: E41541184K and 820 others (listed)

City of New York v. Print-Tech Service and Office Supply, Inc.

Hearing date: 5/21/2010

Appearances: For petitioner: Kate Grunin, Esq., issuing officer Thomas, issuing officer Donald, Sgt. Soto, Department of Sanitation. For respondent: Otis Allen, Esc.

These NOV's accused respondent of illegal posting of handbills under section 10-119 of the New York City Administrative Code.

Petitioner's case:

The issuing officers testified that, respectively, they observed and removed 392 and 385 identical handbills from public structures in Brooklyn. Sgt. Soto testified that a third officer, Velez, observed and removed 44 identical handbills from public structures in Brooklyn. Petitioner presented one handbill, P ex 1.

Sgt. Soto testified that he searched a telephone number appearing in the bottom right hand corner of the cited handbill, 718-258-8588. The subscriber was Franklins Printing, Office Supply and Copy Service. P ex 2. He searched that entity in Lexis/Nexis and discovered an alternative name, that of the respondent. P ex 3. For reasons which he did not make clear at this hearing, he searched that alternative name in the New York State Department of State, Division of Corporations database and confirmed respondent's name as a registered domestic corporation at the address listed in the handbill. P ex 4.

He directed the three officers to write a total of 821 NOV's to respondent. These were mailed to respondent in one envelope. He produced the USPS certified mail receipt. P ex 5.

Respondent's case:

Respondent made a motion to dismiss the NOV's on the ground that petitioner did not prove service. Someone has overwritten "812" (NOV's served) on the USPS certified mail receipt. Sgt. Soto testified that petitioner wrote that number but he did not know whom specifically, or why.

Respondent's argued that petitioner could not show which of the 821 NOV's it issued, it served on respondent, assuming that the figure of 812 was accurate.

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Petitioner stated it did not have a list of what NOV's went into the envelope mailed to respondent.

Section 1049-a (b)(2)(a)(iv) of the New York City Charter states that service of an NOV alleging a violation of section 10-119 of the New York City Administrative Code may be made by certified mail, return receipt requested, to respondent's last known business address, and delivery restricted to respondent. Petitioner followed that process. On this record, I find that the figure 812 was a ministerial error and that petitioner did in fact serve 821 NOV's on respondent. I deny respondent's motion.

Respondent's defense:

Respondent presented a notarized letter from Steven Zuller, who describes himself as the owner of Franklin Printing, dated 5/18/10. He writes that respondent Print-Tech donated money to the educational sponsor of the advertised entertainment in the cited handbills, and in return received a listing as a sponsor. Respondent had nothing to do it the posting of the handbills.

Second, respondent presented a letter from Yeshiva Shavai Hevron, the event sponsor, dated 5/18/10. Moshe Stern writes that respondent was not responsible for advertising for the event (carnival) but solely donated money. A marketing company made all decisions regarding the advertising.

Findings of fact and conclusions of law

NYC Administrative Code § 10-119 provides, in pertinent part, that:

a. It shall be unlawful for any person to paste, post, paint, print, nail or attach or affix by any means whatsoever any handbill, poster, notice, sign, advertisement, sticker or other printed material upon any curb, gutter, flagstone, tree, lamppost, awning post, telegraph pole, telephone pole, public utility pole, public garbage bin, bus shelter, bridge, elevated train structure, highway fence, barrel, box, parking meter, mail box, traffic control device, traffic stanchion, traffic sign (including pole), tree box, tree pit protection device, bench, traffic barrier, hydrant, public pay telephone, any personal property maintained on a city street . . . or to direct, suffer or permit any servant, agent, employee or other person under his or her control to engage in such activity.

(b.) There shall be a rebuttable presumption that the person whose name, telephone number, or other identifying information appears on any handbill, poster, notice, sign or advertisement on any item or structure described in subdivision (a) of this section in any street violated this section by either (i) pasting, posting, painting, printing or nailing such handbill, poster, notice, sign or advertisement, or (ii) directing, suffering or permitting a servant, agent, employee or other individual under such person's control to engage in such activity.

I find the issuing officers testified credibly, and that the 821 NOV's, augmented by petitioner's documentary evidence, establish a case for respondent to answer, because respondent's address and telephone number are on the handbill.

However, I credit respondent's written submissions and I find that respondent has rebutted the presumption. I find that respondent has not violated this section by either (i) pasting, posting, painting, printing or nailing such handbill, poster, notice, sign or advertisement, or (ii) directing, suffering or permitting a servant, agent, employee or other individual under such person's control to engage in such activity.

Accordingly, for the reasons stated herein, these 821 NOV's are dismissed.

CIVIL PENALTY: I order the Respondent to pay a total of: \$0.00

In addition, I order the Respondent to perform the Compliance Order(s), if any, listed above.

Signature of Administrative Law Judge

JUN 28 2010

ALJ #: 649 ALJ Name MORRICK, CLIVE

Date Mailed: