



THE CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD

Reference#: 90939 Page 1 of 1

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

Method of Appearance: AT HEARING

Mailout: S-PT/T

Violation Number: 041560916K

Place of Occurrence: 2914 AVENUE J

Borough: BROOKLYN

Disposition: DISMISSED

Hearing Date: 5/21/2010

City of New York vs.: NOSH EXPRESS INC.

Issuing Officer: THOMAS - 541204

Agency: DOS - ENFORCEMENT AGENTS

Master: 814

**TO COHEN HOCHMAN & ALLEN
OTIS ALLEN, ESQ.
80 MAIDEN LANE, SUITE 506/07
NEW YORK, NY 10038**

A Notice of Violation was duly served, charging that on: 9/26/2007, at 06:09 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 (814 NOV's @ \$75 per violation)	Deny	Dismissed	3	\$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

This decision and order covers multiple NOV's as set forth on the attached list.

Respondent appeared by Otis Allen, Esq. Petitioner appeared by Sgt. Soto, SEA Donald and SEA Thomas.

Respondent denied the violations and contended that service of process of the NOV's was improper.

Sgt. Soto testified that the NOV's were mailed via certified mail, return receipt requested, with delivery restricted to the respondent. Sgt. Soto was unable to produce the green return receipt card to prove that the NOV's were served certified mail, return receipt requested with delivery restricted to the respondent. Sgt. Soto testified that the green return receipt card was not in the file, and that it may not have been returned by the postal service.

Charter Section 1404(d)(2)(a)(iv), in effect at the time the NOV's were issued, provides that service of a notice of violation of any of the provisions of section 10-119 or 10-120 of the Administrative Code of the City of New York and over which the Environmental Control Board has jurisdiction, may be made by certified mail, return receipt requested, to the respondent's last known residence or business address, provided that delivery of such notice shall be restricted to the respondent. Service by certified mail shall be deemed complete upon mailing of the notice of violation unless the notice of violation is returned to the sender by the United States postal service for any reason other than refusal of delivery.

Inasmuch as petitioner was unable to produce the green return receipt card to prove that the NOV's were served certified mail, return receipt requested with delivery restricted to the respondent, I find that service of process did not conform to the requirements of Charter Section 1404(d)(2)(a)(iv). Accordingly, the Notices of Violation 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

5-21-10
Date
JUN 04 2010

ALJ #: 905 ALJ Name BONINA, ELIZABETH

Date Mailed: