



**Appeal No. 24N03477 DCWP v. Moon Convenience & Deli Inc. March 26, 2026**

**Appeal Decision**

The appeal of Petitioner, Department of Consumer and Worker Protection (DCWP), is **granted**.

Petitioner appeals from that part of a recommended decision by Judicial Hearing Officer (JHO) S. Chetrit, dated January 23, 2026, dismissing a charged violation of § 20-822(a) of the Administrative Code of the City of New York (Code), for offering for sale expired over-the-counter medication. Having fully reviewed the record, the Tribunal finds the part of the JHO’s decision being appealed is not supported by the law and a preponderance of the evidence.

Summons	Law Charged	Hearing Decision	Appeal Decision	Penalty
24N03477	Code § 20-822(a)	Dismissed	Reversed – In Violation	\$250
	Code § 16-401(c)(2)	In Violation	Not Appealed	\$100

In the summons, the issuing officer (IO) affirmed observing on October 25, 2025, at 7402 New Utrecht Avenue, Brooklyn, that Respondent violated Code § 20-822(a) by offering for sale Motrin that “[e]xpired 05/2023.”

Before the beginning of the telephone hearing, held on January 15, 2026, the JHO notified Petitioner by email that the hearing was ready to proceed. By timely email, Petitioner requested an adjournment on the grounds that it did not have any inspectors available to appear. However, the JHO did not respond to Petitioner’s email or address Petitioner’s adjournment request, deemed Petitioner’s appearance waived, and proceeded with the hearing. Respondent was represented by its co-owner, who denied the charge. Respondent’s co-owner stated that he has a medical and pharmaceutical background, and was a chemical engineer. He testified that Respondent goes through the medication in the store two days before the end of each month, and expired medications are thrown away. He testified that he believed the expired Motrin came into the store from “another source,” and that during the inspection, the IO went outside the store, and came back in. When the JHO asked whether he was saying that the IO brought in his own medication, Respondent’s co-owner replied, “Yes, that’s why they’re not showing up.”

<b>KF/1239</b>	<b>Date Mailed:</b>
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In the decision dismissing the Code § 20-822(a) charge, the JHO credited Respondent's testimony that he "would not sell an expired package" and that "the IO brought the packet into the store himself." The JHO concluded that "no expired medications were offered for sale at the time of inspection."

On appeal, Petitioner contends the JHO ignored its emailed request for an adjournment, and the hearing should not have proceeded in its absence. On the merits, Petitioner asserts the JHO should not have accepted the "bald and self-serving" testimony of Respondent's co-owner over the IO's sworn-to statement in the summons, which testimony amounted to Respondent accusing the IO of perjury and "criminal activity--planting evidence." In its reply, Respondent purports to appeal from that part of the JHO's decision sustaining a Code § 16-401(c) charge, while asserting that Petitioner's appeal should be dismissed as untimely. On the merits, Respondent states that the JHO was authorized and "entitled to assess credibility" on the Code § 20-822(a) charge, in finding that Respondent rebutted the summons allegations.<sup>2</sup>

The Tribunal reverses the JHO's decision as to the Code § 20-822(a) charge and sustains the violation.

Preliminarily, the Tribunal finds Petitioner's appeal timely, having been filed on February 18, 2026, within 35 days of the date of the hearing decision. *See* § 6-19(a) of Title 48 of the Rules of the City of New York (RCNY). Concomitantly, the Tribunal rejects Respondent's attempt, in its reply, to appeal from that part of the JHO's decision sustaining the Code § 16-401(c) charge. In order to appeal from that part of the decision, Respondent was required to file its appeal within 35 days of the date of the hearing decision, not assert its disagreements in its answer, which was not filed within 35 days of the date of the decision.

Next, the Tribunal finds that the JHO erred in not granting Petitioner's adjournment request. As a general matter, a petitioner has the right to appear at a hearing to present evidence and to request an adjournment. *See* 48 RCNY §§ 6-11(d), 6-14(a). Per 48 RCNY § 6-09(c), a respondent's appearance is timely if made within three hours of the scheduled time on a scheduling notice. Once a respondent timely appears, a petitioner then has thirty minutes to timely appear. *See* 48 RCNY § 6-09(i). The Tribunal takes official notice of its records, including emails sent by the JHO and Petitioner. Those records confirm that following the vacatur of a default by Respondent, OATH scheduled the instant hearing for January 15, 2026, at 9:00 a.m., per notice sent to Respondent on December 10, 2025. Respondent, however, did not call in for

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<sup>2</sup> Respondent also claims it did not receive a copy of the JHO's decision until it received Petitioner's appeal. OATH's records indicate the decision was mailed to Respondent on January 24, 2026.

the hearing until 12:25 p.m., more than three hours after the scheduled start time. Therefore, Respondent's appearance was not timely. Following a 1:26 p.m. e-mail notice from the JHO that the hearing was ready to proceed, Petitioner responded by email at 1:47 p.m. that it did not have any inspectors available and that it was seeking an adjournment. The Tribunal finds that on the specific facts here, because Respondent failed to timely appear and Petitioner responded to the JHO within 30 minutes after being advised that the hearing was ready to proceed, the JHO should have granted Petitioner's request for an adjournment, even if such request was conveyed by email.

Nonetheless, the Tribunal finds that a remand is not required here, as the Tribunal finds that Respondent failed to credibly establish a defense to the Code § 20-822(a) charge. Code § 20-822(a) provides that "[i]t shall be unlawful to sell or offer for sale, any over-the counter medication, later than the date, if any, marked upon the label as indicative of the date beyond which the contents cannot be expected to be safe and effective." Per 48 RCNY § 6-12(b), the IO's affirmed statements on the summons constitute prima facie evidence of the facts stated therein. Here, the summons evidence established that Respondent was offering Motrin for sale with a May 2023 expiration date. The Tribunal finds that the testimony of Respondent's owner failed to rebut this prima facie evidence, and the JHO's conclusion reflects a misapplication of the appropriate standard of evidentiary review. The IO's summons statement constituted probative evidence in chief pursuant to 48 RCNY § 6-12(b), and it was not overcome by mere denials of wrongdoing, or uncorroborated claims of misconduct on the part of the IO. There were no witnesses or competent proof of any nature that the IO brought in expired Motrin from the outside and "planted" it on Respondent's shelves, and Respondent's scurrilous claims of illegality should not have been credited as a basis for "rebutting" the sworn statements in the summons.

With respect to penalty, 6 RCNY § 6-58, the Prohibition on the Sale of Expired Over-The-Counter-Medication Penalty Schedule, sets the penalty for a violation of Code § 20-822 as \$250.

Accordingly, the Tribunal reverses the JHO's decision dismissing the Code § 20-822(a) charge, and sustains said violation, imposing a civil penalty of \$250.

*By: OATH Appeals Division*