



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Appeals Division

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Appeal No. 2500905

DOHMH v. My 12 Gods LLC

November 20, 2025

APPEAL DECISION

The appeal of Respondent, premises owner, is **denied**.

Respondent appeals from two recommended decisions by Judicial Hearing Officer (JHO) S. Axtell, one dated June 13, 2025, each sustaining a violation of § 151.02(a) of the New York City Health Code (HC), found in Title 24 of the Rules of the City of New York (RCNY), on charging failure to eliminate conditions conducive to pests and the other for failure to keep premises free from pests. Having fully reviewed the record, the Board finds that the JHO’s decisions are supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
803247639 (639)	HC § 151.02(a)	In Violation	Affirmed – In Violation	\$300
803247648 (648)	HC § 151.02(a)	In Violation	Affirmed – In Violation	\$600

In the summonses, the issuing officer (IO) affirmed observing on October 31, 2024, with respect to 55 West 183rd Street, Bronx, a multiple dwelling located in an area known to be rodent infested, the following:

639 – harborage conditions encouraging the nesting of rats exists where a large volume of wooden, plastic, and household debris was stored along with high overgrown weeds found throughout the entire backyard. The IO notes a prior violation, 802954094, issued January 26, 2024.

648 – active rat signs exist where multiple instances of fresh rat droppings (excreta) were found through the backyard landscape area. The IO notes a prior violation, 802954103, issued January 26, 2024.

In an in-person hearing, held on June 12, 2025, no representative from Petitioner, Department of Health and Mental Hygiene (DOHMH), was present. Respondent’s authorized representative sought dismissal of the summonses asserting the following. He is responsible for the building. The IO gives Respondent the same summonses every month, even though there is no way the IO can view the backyard because the building is surrounded by a school to the left and other buildings to the right. The only way the IO can get access to view the backyard is by being let in through the front door and given access to the back door that opens to the backyard. At the time of the violations, the backyard was clean and free of active rat signs. An exterminator treats the premises monthly. He submitted several photographs of the school and other buildings surrounding Respondent’s yard and other photos, some purportedly depicting a clean yard with levelled dirt and no shrubbery or garbage and others depicting debris and rat holes in the neighboring yard. He surmised that the IO mistook the address of the building where he viewed harborage conditions and active rat signs. He also submitted bills from his exterminator, dated October 25, 2024, November 1, 2024, and November 24, 2024. Each one says no rat droppings were observed, old rat traps were replaced, and the exterior of the building was sprayed.

PNL: 11/20/2024
 ATTY: LC/0546

DATE MAILED:

Respondent contended that at the times the summonses were issued, the yard was clean and free of pests.

In the decision sustaining the violations, the JHO credited the summons allegations and found that the IO was able to view Respondent's backyard from some vantage point. She discredited Respondent's testimony and documentary evidence, concluding that Respondent failed to refute the charges or establish defenses to them. She noted proof of exterminator service is not a defense to a charge based on harborage conditions and that evidence of only one month of services did not establish the defense that adequate measures to prevent pests were being taken at the time the active rat signs were observed. The JHO imposed the civil penalty of \$300 for a first violation of HC § 151.02 for 639 as OATH records showed that the prior summons was dismissed; for 648 she imposed the penalty of \$600 for a second violation within two years, per HC § 7-05.

On appeal, Respondent reiterates his hearing assertions. For the first time on appeal, Respondent submits portions of a different decision encompassing the same charges but not showing when it was issued or to whom. Even if that partial decision shows Respondent was charged, per RCNY § 6-19(f)(2) of Title 48, the Board will not consider new evidence not presented to the JHO. Moreover, that another case involving similar conditions on a different date of offense was dismissed has no bearing on the Board's decision here, which is based on the hearing record of this case. *See NYC v. Marlene Leppin*, Appeal No. 1601050 (November 16, 2016).

ISSUE ON APPEAL

The issue on appeal is whether Respondent's evidence credibly refuted the charges or established defenses to them.

APPLICABLE LAW

HC § 151.02(a) requires that all premises "shall be kept free from rodents, insects and other pests" and that the person in control of a property shall "take such measures as may be necessary to prevent and control the harborage and free movement of rodents."

HC § 151.02(a) defines "conditions conducive to pests" as including "accumulation of refuse and other material in or on which pests may find shelter, hide or nest."

ANALYSIS

The Board finds that Respondent's evidence did not refute the charges or establish defenses to them. The IO's affirmed observations as described in both summonses, explicitly credited by the JHO, were sufficient to establish the violations. *See* 48 RCNY § 6-12(b) (a summons affirmed under penalty of perjury is prima facie evidence of the facts stated therein). Here, the JHO credited the allegations in the summonses and did not credit Respondent's evidence offered in defense. The Board generally defers to a JHO's credibility determinations, and on this record, it sees no basis for not doing so here. *See NYC v. Michele Radolovic*, Appeal No. 44124 (January 18, 2007). The burden of proof then shifted to Respondent to refute the charges or establish defenses. Respondent's representative denied both charges. He testified that on the date the violations were charged, there were no harborage conditions noted in summons 639 and no active rat signs in the backyard as alleged in 648. His only assertions to refute the charges were

that the IO could not have viewed the backyard of the premises, as it is entirely enclosed and not visible from the outside, and that the IO must have viewed conditions in the neighboring yard when issuing the summonses. As did the JHO, the Board does not credit that the IO could not have viewed the backyard.¹

As a defense, Respondent's representative also claimed its exterminator was servicing the premises monthly. Yet only one of the bills Respondent submitted showed services provided before the summons was issued. Moreover, a respondent cannot claim the measures to prevent pests were adequate on the date active rat signs were observed if at the same time harborage conditions are present, as here. "A respondent cannot claim to be taking adequate measures to control pests if conditions that encourage harborage of pests are allowed to exist on its premises." *DOHMH v. Sheridan One Company c/o Pelican Mgmt Inc*, Appeal No. 2500743 & 2500744 (July 31, 2025). The Board furthermore does not credit the exterminator's statement that "no pest droppings or rats droppings were found," repeated on each bill, as refuting the IO's observation of harborage conditions and active rat signs.

Accordingly, the Board affirms the JHO's decisions each finding a violation of HC § 151.02(a) and imposing the civil penalty of \$300 for 639 and \$600 for 648.

By: OATH Appeals Division

¹ The Board declines to address how the IO came to make his observations on June 14, 2026, as Petitioner's enforcement practices are not subject to the Board's review. See *NYC v. Sharmila Shakya*, Appeal No. 1800005 (March 8, 2018).