



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Appeals Division

9 Bond Street, 6th Floor
Brooklyn, NY 11201
Tel: (212) 436-0624

Appeal No. 2501130

DOB v. Kern 211 LLC 211
West 56 Associates

October 30, 2025

APPEAL DECISION

The appeal of Petitioner, Department of Buildings (DOB), is denied.

Petitioner appeals from a recommended decision by Judicial Hearing Officer (JHO) M. Gallagher, dated September 9, 2025, dismissing a Class 2 violation of § 3301.9 of the New York City Building Code (BC), for posting an unlawful sign on a protective structure. Having fully reviewed the record, the Board finds that the JHO’s decision is supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Table with 5 columns: Summons, Law Charged, Hearing Determination, Appeal Determination, Penalty. Row 1: 39135210J, BC § 3301.9, Dismissed, Affirmed – Dismissed, \$0

In the summons, the issuing officer (IO) affirmed observing, on January 10, 2025, at 211 West 56th Street, Manhattan, as follows:

Flexible red mesh fabric business signs, approx. 15 sq. ft, gold lettering that reads “pret a manger” is extending below shed parapet which is prohibited. Remove unlawful signs.

At a telephonic hearing held on September 4, 2025, the attorney for Petitioner submitted photographs taken by the IO at the time of the inspection. The IO testified and reaffirmed the statements in the summons. Respondent’s attorney moved to dismiss the summons and argued that, per BC § 3301.9, Respondent was an improper party. As contractors held permits that were active on the date of the violation, they were the parties responsible for the maintenance of the cited sign. In support, Respondent’s representative submitted the following: an alteration permit for the cited premises, active on the date of violation, issued to a general contractor; a sidewalk shed permit, active on the date of violation, issued to a general contractor; a photo of the cited protective structure without the cited sign; a printout of BC § 3301.9; and the Board’s decision in DOB v. Stellar Industries Inc., Appeal No. 2400941 (August 29, 2024). In rebuttal, Petitioner’s attorney argued that Respondent, as the building owner, is the proper party responsible for the business sign.

In the decision dismissing the summons, the JHO credited the statement in the summons and the IO’s testimony. The JHO also credited Respondent’s evidence. The JHO found that per BC § 3301.9, it was the responsibility of the general contractor, as the permit holder, to ensure compliance with BC §§ 3301.9.1 through 3301.9.8.

On appeal, Petitioner argues as follows. Per BC § 3301.9 when there is no active construction work the owner is responsible for ensuring that signage is properly posted on a sidewalk shed. While Respondent submitted a permit that was valid on the date of offense, no active work was taking place at the premises. Therefore, Respondent, as building owner, was responsible for the prohibited signage, citing DOB v. BPE Realty Owner, LLC, Appeal No. 1800125 (April 5, 2018). Respondent did not answer the appeal.

For the following reasons, the Board affirms the JHO’s decision. The Board finds that Respondent was improperly named. BC § 3301.9 states that “[i]t is the responsibility of the

1 The BC is found in found in Title 28 of the Administrative Code (Code) of the City of New York.

2 Cited in the alternative as “BC 3307.1.1 (2008 Code)” and BC 3307.4.6 (2014 Code).”

permit holder for the underlying construction or demolition work, or where there are no active permits, the building owner, to ensure such signs are posted and maintained at the site in accordance with Sections 3301.9.1 through 3301.9.8....” Here, Respondent submitted an alteration permit, issued to a general contractor, for the underlying alteration work at the cited premises, that was active on the date of violation. Consequently, per BC § 3301.9, “the permit holder for the underlying construction work,” and not Respondent, was responsible for ensuring that the cited sign was posted and maintained at the site in accordance with BC § 3301.9.6. *Cf. DOB v. 105 Chamber St. Assocs. WayfinderPM*, Appeal No. 2500219 (April 24, 2025) (“As there were no active permits for any underlying construction or demolition work, [building owner] was responsible for ensuring that the cited sign was posted and maintained lawfully.”); *DOB v. Midtown West 47 St. LLC*, Appeal No. 2301913 (February 29, 2024) (building owner properly named where respondent offered no evidence that any demolition or alteration permit had been issued to a general contractor).

Petitioner’s reliance on *BPE Realty Owner*, 1800125, is misplaced. That decision found the building owner was responsible for a defect in a sidewalk shed even though the cited work was performed by an electrical contractor under a DOB permit in effect on the date of violation. But *BPE Realty Owner* was overruled in *DOB v. Friedland W 14 Owner LLC*, Appeal No. 2400450 (April 25, 2024). There the building owner was also charged with sidewalk shed defects. The Board held that even without evidence of active work on the date of violation, if the general contractor’s permit was active, the general contractor, not the owner, was responsible for the sidewalk shed’s maintenance. Moreover, BC § 3301.9, the subsection charged here, does not concern sidewalk shed maintenance but sidewalk shed signs. BC § 3301.9 sets out a different order of responsibility from BC § 3307.6.5.3, which determined responsibility for the maintenance defects charged in *BPE Realty Owner* and *Friedland W 14 Owner LLC*.³ BC § 3301.9 expressly bases the order (or “hierarchy”) of responsibility on whether or not there active permits, unlike BC § 3307.6.5.3. *See DOB v. Overlook Terrace Management Co.*, Appeal No. 2400416 (May 30, 2024).

Accordingly, the Board affirms the JHO’s decision and dismisses the summons.

By: OATH Appeals Division

³ BC § 3307.6.5.3 provides that “[s]idewalk sheds shall be maintained and used by the general contractor, or where there is no general contractor, the contractor causing the work to be performed, or where there is no active work, the building owner.”