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Appeal No. 2501237 DSNY v. Basam M. Barghash December 18, 2025

APPEAL DECISION

The appeal of Respondent, a mobile food vending unit (MFVU) owner, is **denied**.

Respondent appeals from a recommended master decision by Judicial Hearing Officer (JHO) J. Giaccio, dated September 19, 2025, sustaining a violation of § 17-307(b)(1) of the Administrative Code of the City of New York (Code) for vending from a MFVU without a valid permit; a violation of Code § 17-307(a)(1) for vending food without a food vendor license; and a violation of § 3.15(a) of the New York City Health Code (HC) for interfering with or obstructing Petitioner's personnel in carrying out an inspection.[1] 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:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
49248722R (22R)	Code § 17-307(b)(1)	In Violation	Affirmed – In Violation	$1,000
49248723Z (23Z)	Code § 17-307(a)(1)	In Violation	Affirmed – In Violation	$1,000
49248724K (24K)	HC § 3.15(a)	In Violation	Affirmed – In Violation	$1,000

BACKGROUND

In the summonses the issuing officer (IO) affirmed observing on September 15, 2025, in front of 9201 Third Ave. in Brooklyn:

22R	At T/P/O above named person is selling food in a public space from a pushcart, vehicle or stand without a permit. Observed selling Cooked Food. The following items were confiscated: one or more items under 25D5V3987
23Z	At T/P/O above named person is engaged in the selling of food in a public space without a license. Observed selling Cooked-food. Food permit number expired license 07/31/2024. One or more items under 25D5V3987 were confiscated.
24K	At T/P/O above named person interfered or obstructed DSNY Dept. personnel in carrying out an inspection, survey or examination for the Dept.

At the consolidated telephonic hearing, held on September 19, 2025, the representative for Petitioner, the Department of Sanitation (DSNY), generally relied on the IO's affirmed statements in the summonses. Respondent moved to dismiss all three summons and asserted as follows. As to summons 22R, he had not been vending food. He arrived at the place of occurrence after he learned that the IO had appeared, since he did not want his truck to be impounded. The truck did not have a permit from the Department of Health and Mental Hygiene (DOHMH) and the people vending from the truck were not his employees as they were working for themselves. As to summons 23Z, he had not been vending at the time of inspection. He had a valid mobile food vendor (MFV) license that was issued on July 30, 2024, and will expire on July 30, 2026. In support, he submitted a copy of an MFV license that was issued on September 16, 2025, with an expiration date of July 30, 2026. Upon the JHO pointing out that the license had a September 16, 2025, issue date, Respondent explained that another IO had previously

[1] Found in Title 24 of the Rules of the City of New York (RCNY).

confiscated his valid MFV license requiring him to obtain a duplicate one. When DOHMH issues a duplicate license, they use the date the replacement was printed rather than the date it was originally issued. DOHMH doesn't issue licenses for less than two years and the one he submitted is only for the time remaining on his original term. As to summons 24K, he had not interfered or obstructed the IOs from performing their duties. He had fully cooperated and showed all his paper work when asked. However, the IO failed to follow proper procedure and never identified himself other than stating he was from the Mayor's Office. The IO threatened him and kept saying that he was in big trouble but did not issue a summons. Since he did not want to be harassed, he told the officers that they should meet him at the police station. When he drove to the station, the officers pulled him over, issued many tickets, and the police came to the scene. In support, he submitted many photographs of the truck, the surrounding area, and the IO; and a video of the occurrence.

Petitioner's representative replied as follows. As to summonses 22R and, 23Z since Respondent owned the truck, he was responsible for it being used to sell food without a permit or license. Also as to summons 23Z, Respondent gave his partner a different expired license, not the one submitted at the hearing. He did not contest that Respondent was not vending. Petitioner submitted a photograph of the expired MFV license presented to his partner. As to summons 24K, when he arrived his partner and Respondent were already exchanging heated words. Respondent was in his truck refusing to leave it. Even though they asked him to stay while they conducted their inspection, he drove off. They followed him and executed a stop. Respondent was more cooperative after the police appeared. His partner issued the summonses after the stop. He was wearing his raid jacket, which clearly identifies who he was, and his badge was out. Although his partner was in plain clothes, his identification badge was also visible.

In the decision sustaining the violations, the JHO found the following. As to summons 22R, she credited both the IO's affirmations and Respondent's testimony. However, since Respondent owned the truck, he was responsible for it being used to vend without a permit. As to summons 23Z, she discredited Respondent's testimony and evidence and found that he had not shown that he had a license to vend that was in effect on the cited date because the license submitted at the hearing was issued the day after the violation. As to summons 24K, the JHO credited the IO's statements on the summons and his partner's testimony that Respondent obstructed DSNY personnel from carrying out their duties by his driving away when the officers had asked him to stay.

On appeal, Respondent repeats and elaborates on his hearing assertions and argues as follows. As to summons 22R, owning a vehicle is not operating under Code § 17-307(b)(1). Liability cannot be extended to a non-present owner without proof of personal participation of supervision.[2] Petitioner did not prove that he was vending. As to summons 23Z, he presented a valid MFV that had not expired and was not a new issuance. The officer did not verify his license status with DOHMH, which is required before issuing a violation under Code

[2] Respondent cited to *People v. Scott*, 26 N.Y.3rd 813 (2016), and *Matter of Grullon v. City of New York*, Sup. Ct. N.Y. County (2017) in support. Respondent may have intended to cite to *Grullon v. City of New Haven*, 720 F.3d 133 (2013). He also cited to *People v Lupinacci*, 191 A.D.2d 589 (2nd Dep't 1993), and *Matter of Block v. Ambach*, 73 N.Y.2d 323 (1989). However, none of those citations are relevant as they relate to criminal and constitutional issues.

§ 17-312(b). As to summons 24K, he repeats that he cooperated with the IO and provided all the requested credentials. However, since the IO refused to identify himself, and threatened and harassed him, he went to the police station. Obstruction requires a willful act, while his actions were based on fear and confusion. He also argues that as the criminal charges were dropped, these should be as well since he should not be subject to double jeopardy. For the first time on appeal, he presents a copy of a receipt from DOHMH for a full term renewal application dated November 13, 2024, and a Certificate of Disposition indicating that a charge of N.Y.S. Penal Law § 240.20 was dismissed on September 15, 2025. Per § 6-19(f)(2) of 48 RCNY, the Board will not consider any evidence including factual assertions, not presented to the JHO.[3]

Petitioner did not answer the appeal.

ISSUES ON APPEAL

The issues on appeal are (1) whether it is a defense to a Code § 17-307(b)(1) charge that Respondent, the owner of a truck that did not have a food vending permit, was not vending at the time of violation; (2) whether Respondent was a proper party to the Code § 17–307(a)(1) charge and whether he established that he had a valid MFV license on the date of violation; and (3) whether Respondent refuted or established a defense to obstructing the DSNY officers from carrying out their duties.

APPLICABLE LAW

Code § 17–307(a)(1) provides that "[i]t shall be unlawful for any individual to act as a food vendor without having first obtained a license therefor from the commissioner in accordance with the provisions of this subchapter."

Code § 17-307(b)(1)(a) provides that "[i]t shall be unlawful to vend food from any vehicle or pushcart in a public space without having first obtained a permit for such vehicle or pushcart from the commissioner in accordance with the provisions of this subchapter."

Code § 17-325(c)(1) provides in pertinent part:

> In addition to the penalties prescribed by subdivision a of this section, any person who violates, *or any person aiding another to violate*, the provisions of subdivision a, b, or c of section 17-307 of this subchapter shall be liable for a civil penalty of not less than one hundred fifty dollars nor more than one thousand dollars…. [Emphasis added.]

Code § 17–325.1, entitled "Failure to display and produce license or permit; presumptive evidence of unlicensed or unpermitted activity" provides in pertinent part:

> a. In any civil or criminal action or proceeding, failure by a food vendor who is required to be licensed pursuant to the provisions of this chapter to display and exhibit upon demand a food vendor's license in accordance with the provisions of this chapter to any police officer, public health sanitarian or other authorized officer or employee of the

[3] The Board notes that it has repeatedly held that a receipt for a license renewal application does not establish that a respondent had a valid license. *See, e.g. NYC v. Newton D. Buten*, Appeal No. 1501056 (December 17, 2015).

> department or other city agency shall be presumptive evidence that such food vendor is not duly licensed.

HC § 3.15(a) provides that "[n]o person shall interfere with or obstruct Department personnel in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or Board."

ANALYSIS

For the following reasons, the Board affirms the JHO's master decision.

On this record, the Board first finds that it is not a defense to a Code § 17-307(b)(1) charge that Respondent was not vending at the time of violation. Code § 17-307(b)(1)(a) requires that any vehicle must have a permit before it may be used to vend food. The section of law applies to the MFVU, not to the individual who is vending from it. *See DWCP v. Alaa Eizok*, Appeal No. 2201398 (February 23, 2023). It was undisputed that Respondent's food truck was used to vend food at the time of violation and the truck did not have a permit to vend. As the truck owner, Respondent is therefore directly responsible for allowing anyone to vend from his truck without the vehicle having a permit. *See DOHMH v. Wajid Shah*, Appeal No. 2400912 (August 29, 2024); *Cf DOHMH v. Lucia Ottley*, Appeal No. 1801640 (February 21, 2019) (vendor liable in addition to the cart owner).

Second, the Board finds Respondent was a proper party to the Code § 17–307(a)(1) charge. Per Code § 17–307(a)(1), "[i]t shall be unlawful for any individual to act as a food vendor without having first obtained a license" from DOHMH. Contrary to Respondent's assertions, a violation of Code § 17-307(a)(1) is not restricted to the person who was actually vending at the truck at the time of violation. Per HC § 89.11(g), "[p]ermittees and licensees shall not allow a person who does not hold a currently valid MFV license issued by the Commissioner to operate such permittees' or licensees' MFVU." Indeed, Code § 17-325(c) provides that per day penalties may be imposed on "any person aiding another" in the unlicensed vending prohibited by Code § 17-307(a). As Respondent did not claim that his truck was used to vend without his permission, he had allowed or aided another to vend without a license. Moreover, Respondent failed to show that he had a valid MFV license on the date of violation. Respondent argued that his license was valid from July 30, 2024, through July 30, 2026, and he should not be penalized because his duplicate had an issued date of September 16, 2025. Contrary to Respondent's assertion on appeal, no Code or Rule requires an IO to verify the status of his license before issuing a summons.[4] In fact, per Code § 17-325.1 the failure to display and produce a license or permit is presumptive evidence of unlicensed or unpermitted activity. It was thus Respondent's burden to bring sufficient evidence to show that he had a valid permit on the date of violation. The JHO did not credit that he had a valid license based on the license he presented at the hearing bearing an issue date of one day after the date of violation. Generally the Board defers to a JHO's credibility findings unless they are against the weight of the evidence presented. *See NYC v. Michele Radolovic*, Appeal No. 44124 (January 18, 2007). The Board sees no reason to disturb that finding as Respondent did not present a copy of his application for a duplicate

[4] Respondent cited to Code § 17–312(b). However, that statute does not have a subsection (b), is entitled, "Notification of change" and only provides that "[t]he commissioner shall be notified of any change in the information provided on an application for a license or a permit within ten days of such change."

license, the documentation required to obtain a duplicate per HC § 89.11(c), or a notice from DOHMH indicating that his license had been in effect on the date of violation. Respondent is therefore in violation. *See NYC v. Khalid Elrawi*, Appeal No. 1100916 (January 26, 2012) (Respondent in violation where he had applied for his license before date of violation and received it two days afterwards).

Finally, the Board finds that Respondent failed to refute or establish a defense to obstructing the DSNY officers' inspection. HC § 3.15(a) provides that "[n]o person shall interfere with or obstruct Department personnel in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or Board." Contrary to Respondent's argument on appeal, there is no intent required to prove a violation of this statute; it is not a criminal charge. Here, it was undisputed that Respondent and the IO exchanged hostile words and Respondent drove away from duly authorized officers who were conducting an inspection and had requested Respondent to remain at the site. Furthermore, Respondent drove away in the very truck without a vending permit that was subject to the officers' inspection. Feelings of trepidation and confusion do not establish a defense. Given these circumstances, the Board sees no reason on this record to disturb the JHO's credibility finding. *See Michele Radolovic*, 44124. While the Board does not have the authority to consider constitutional issues, it notes that the Double Jeopardy Clause of the Fifth Amendment applies only to criminal proceedings and is inapplicable to civil administrative proceedings. *See DSNY v. Morales, Jose M*, Appeal No. 2500327 (April 24, 2025); *DOHMH v. Neighbors & Neighborhood, LLC*, Appeal No. 24735-18F0 (April 26, 2019); *NYC v. Manuel Castillo*, Appeal No. 1301006 (November 21, 2013). That criminal charges arising from this incident were dropped is not a valid basis for dismissal.

Accordingly, the Board affirms the JHO's master decision sustaining a violation of Code § 17-307(b)(1), a violation of Code § 17–307(a)(1), and a violation of HC § 3.15(a), and imposing total civil penalties of $3,000 ($1,000 x 3).

By: OATH Appeals Division