



**OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**  
Appeals Division

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**Appeal No. 2501334**

**DOB v. K & V Rlty Corp**

**December 18, 2025**

**APPEAL DECISION**

The appeal of Respondent, crane operator, is **granted**.

Respondent appeals from a recommended decision by Judicial Hearing Officer (JHO) C. Cheng, dated September 2, 2025, sustaining a Class 2 violation of § 28-302.5 of Administrative Code of the City of New York (Code) for failure to file an amended report acceptable to the Department indicating correction of unsafe conditions. Having fully reviewed the record, the Board finds that the JHO’s decision is not supported by the law and a preponderance of the evidence.

Therefore, the Board finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
37026073R	Code § 28-302.5	In Violation	Reversed – Dismissed	\$0

**BACKGROUND**

In the summons, the issuing officer (IO) affirmed on January 16, 2024, at 341 E. 108<sup>th</sup> Street, Manhattan, “failure to file acceptable amended cycle 6, 7B, and 8B report indicating correction of unsafe conditions described in initial facades report required by Code § 28-302.5 for control #812193.” The IO indicated that Petitioner, the Department of Buildings (DOB), was seeking the Aggravated I penalty for a recurring condition and listed a prior summons.

At the telephonic hearing held on September 2, 2025, Petitioner’s attorney relied on the IO’s affirmed statement on the summons and submitted a DOB record showing that the prior summons had not been corrected. Respondent’s representative asserted that the cited building was six stories in height and therefore exempt from the requirements of the Façade Inspection Safety Program. In support, Respondent’s representative submitted a Department of Housing Preservation and Development (HPD) registration summary showing the building had six stories; an application for façade repairs approved in 2016 stating that the building had six stories; and Google Street View images of the building captured in August 2024 and September 2021. Respondent’s representative maintained that the cycle 6, 7B, and 8B façade reports had been filed in error. Petitioner’s attorney asserted that because Respondent had filed the cited unsafe façade reports, it was required to file amended reports. She argued that even if Respondent had filed the cited unsafe façade reports in error, it could not “unilaterally exit” FISP.

In his decision sustaining the charge, the JHO agreed with Petitioner’s attorney’s arguments.

On appeal, Respondent’s representative reiterates his hearing arguments.

Petitioner did not answer the appeal.

**ISSUE ON APPEAL**

The issue on appeal is whether Respondent was exempt from filing amended cycle 6, cycle 7B, and cycle 8B reports.

**APPLICABLE LAW**

Code § 28-302.1 provides, in pertinent part:

A building's exterior walls and appurtenances thereof shall be maintained in a safe condition. All building greater than six stories shall comply with the maintenance requirements of [Article 302 of Title 28 of the Code].

Pursuant to Code § 28-302.2, a periodic examination of the exterior walls and appurtenances of a building with more than six stories must be conducted by a design professional. Pursuant to Code § 28-302.4, the design professional is required to file a report of critical examination with DOB certifying the results of such examination as either "safe," "unsafe" or "safe with a repair and maintenance program."

Code § 28-302.5 provides, in pertinent part:

Upon the notification to the department of an unsafe condition, the owner, the owner's agent or the person in charge shall immediately commence such repairs, reinforcements or other measures as may be required to secure public safety and to make the building's exterior walls or appurtenances thereof conform to the provisions of this code.

1. All unsafe conditions shall be corrected within 90 days of filing the critical examination report.

2. The owner shall engage a registered design professional to reinspect the premises and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the building have been corrected.

**ANALYSIS**

For the following reasons, the Board reverses the JHO's decision.

On this record, the Board finds that Respondent was exempt from filing amended cycle 6, 7B, and 8B reports. The HPD registration summary, alteration application, and photographs offered by Respondent's representative show that the building was not greater than six stories. Petitioner offered nothing to show that the building was greater than six stories, instead arguing that since Respondent had filed the cited unsafe façade reports, it could not "unilaterally exit" FISP, which included the requirement to file amended reports. However, Petitioner cited no legal support for this position. The Board finds Respondent's evidence was sufficient to establish that its building was not subject to the maintenance requirements contained in Code § 28-302.2 *et seq.* These requirements include filing an amended report showing that unsafe conditions previously reported to DOB had been corrected in accordance with Code § 28-302.5. *See NYC v. 9-15 Adrian Associates, LLC*, Appeal No. 1200897 (November 29, 2012); *NYC v. Harrjoy Realty Inc.*, Appeal No. 1200909 (November 29, 2012).

Accordingly, the Board reverses the JHO's decision sustaining a Class 2 violation of Code § 28-302.5 and dismisses this charge.

*By: OATH Appeals Division*