



Appeal No. 2501422

DOHMH v. 443 Pulaski St LLC

February 26, 2026

**Appeal Decision**

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

Respondent appeals from a recommended decision by Judicial Hearing Officer (JHO) K. Lawner, dated October 30, 2025, sustaining a charge 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, for failing to keep premises free of pests. 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 Decision | Appeal Decision         | Penalty |
|-----------|----------------|------------------|-------------------------|---------|
| 803622885 | HC § 151.02(a) | In Violation     | Affirmed – In Violation | \$300   |

In the summons, the issuing officer affirmed on September 19, 2025, at 443 Pulaski Street, Brooklyn, that “fresh gnaw marks were found in trash cans at the front right garbage storage area, multiple instances of fresh rat dropping (excreta) and multiple active rat runways were found at the base of the ground floor window sill, front right of the multiple dwelling property.”

**Background**

At the telephone hearing held on October 29, 2025, the representative for Petitioner, the Department of Health and Mental Hygiene (DOHMH), submitted fifteen photographs which show the outside conditions of the cited premises and an Order from the Commissioner dated August 22, 2025, directing Respondent to abate the nuisance conditions from the cited premises and to remove all garbage, refuse, debris and other materials. Respondent’s attorney did not dispute the IO’s observations but, relying on *NYC v. Igal Winter*, Appeal No. 1101036 (December 15, 2011), asserted as an affirmative defense that Respondent had taken measures to eliminate the violating conditions. Respondent’s attorney submitted a sworn statement from the building superintendent stating an exterminator services the apartments, common areas, basement and court yard on a monthly basis and that any burrows found on the property are filled (with the last burrow being filled on 9/19/2025) and an outline for the cleaning routine for the cited premises. Respondent’s attorney also submitted a letter from the pest control company servicing the cited premises stating that the building had been receiving

Panel: 2/26/2026  
Atty: JS/1388

Date Mailed:

monthly exterminating services since 2003, in addition to invoices dated 4/15/25, 5/21/25, 6/17/25, 7/29/25 and 8/19/25.

In the decision, the JHO credited the IO's observations and found that Respondent's evidence was insufficient to establish an affirmative defense.

On appeal, Respondent's attorney asserts that the JHO erred in finding that Respondent had not taken adequate measures to prevent conditions conducive to rodent infestation and resubmits copies of the letters from the extermination company and the building superintendent.

Petitioner did not answer the appeal.

### **Issue on Appeal**

The issue on appeal is whether Respondent established a valid defense by showing that it took measures prior to the date of inspection necessary to prevent and control the harborage and free movement of pests.

### **Applicable Law**

HC § 151.02(a) provides:

All premises capable of attracting or supporting rodents, insects and other pests shall be kept free from rodents, insects and other pests, and from any conditions conducive to pests. The person in control of such premises shall take such measures as may be necessary to prevent and control the harborage and free movement of rodents, insects or other pests.

### **Analysis**

For the following reason, the Board affirms the JHO's decision.

On this record, the Board finds that Respondent failed to establish a valid defense by showing that it took measures prior to the date of inspection necessary to prevent and control the harborage and free movement of pests. At the hearing, Respondent's attorney did not deny the existence of the cited active rat signs at the time of inspection but submitted evidence of monthly extermination service and other measures taken before the date of inspection to prevent and control harborage and free movement of rats. While a respondent may generally establish a defense to a charge of active rat signs under HC § 151.02(a) "by showing that, before the offense, it was taking adequate measures to prevent and control pests, including monthly professional exterminating services, monthly inspections, setting bait traps, and

eliminating rat burrows,” see *DOHMH v. 168 Graham LLC*, Appeal No. 2201400 (February 23, 2021), the presence of conditions conducive to pests negates any preventive effect of such measures. See *DOHMH v. Moon Y Nam*, Appeal No. 2400199 (May 16, 2019). Here, the IO alleged that fresh gnaw marks were found in trash cans, and the IO’s photographs show trash cans patched with tape and at least one with a large, unpatched hole in the lid.<sup>1</sup> As conditions conducive to pests were present, Respondent’s evidence of pest control measures did not establish a defense.

Accordingly, the Board affirms the JHO’s decision finding Respondent in violation of HC § 151.02(a) and imposing a civil penalty of \$300.

*By: OATH Appeals Division*

---

<sup>1</sup> The Board notes that the inspection report attached to the Commissioner’s order stated that on August 13, 2025, rat gnaw marks were found in at least one area of the property, as well as uncovered garbage containers.