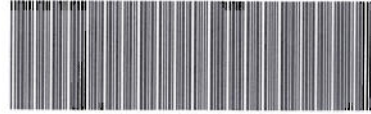




OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

HEARING LOCATION:
OATH Hearings Division
66 John Street
10th Floor
New York, NY 10038
(844) 628-4692



147191051648550A978

Method of Appearance
Live Hearing

DECISION

Summons #: 0197608850 et al. (2 Summonses)
Hearing Date: July 10, 2018

To: The Legal Aid Society
199 Water Street
6th floor
New York, NY 10038

City of New York v. YILI LIU

Total Civil Penalty: \$0.00

2 Summons(es) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

SUMMONS: 0197608850

PLACE OF OCCURRENCE: GREENWICH STREET / CHAMBERS ST MANHATTAN

DATE OF OCCURRENCE: 03/30/2018

ISSUING OFFICER/AGENCY: ALVAREZ 948613 846

INFRACTION CODE: ADQ2

CHARGE: 19-176.2(B) OPERATION OF MOTORIZED SCOOTER WITHIN THE CITY OF NEW YORK

DISPOSITION: DISMISSED CIVIL PENALTY IMPOSED: \$0.00

SUMMONS: 0198074984

PLACE OF OCCURRENCE: GREENWICH STREET / CHAMBERS ST MANHATTAN

DATE OF OCCURRENCE: 04/12/2018

ISSUING OFFICER/AGENCY: ALVAREZ 948613 056

INFRACTION CODE: ADQ2

CHARGE: 19-176.2(B) OPERATION OF MOTORIZED SCOOTER WITHIN THE CITY OF NEW YORK

DISPOSITION: DISMISSED CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

SUMMONS: 0197608850 CHARGE: 19-176.2(B) OPERATION OF MOTORIZED SCOOTER WITHIN THE CITY OF NEW YORK
SUMMONS: 0198074984 CHARGE: 19-176.2(B) OPERATION OF MOTORIZED SCOOTER WITHIN THE CITY OF NEW YORK

Petitioner NYPD appeared by its issuing officer Gabriel Alvarez on summons 198074984, and petitioner NYC Department of Parks and Recreation (Parks) appeared by its issuing officer Reshma Krishnadat on summons 197608850. Respondent Yili Liu appeared personally, and was represented by his attorney Steven Wasserman of The Legal Aid Society. The hearing was assisted by a Mandarin interpreter for respondent by telephone through Language Line.

Both officers provided credible testimony, and both conceded that they did not inquire of the respondent at the time the summons was issued whether he was operating the motorized scooter on behalf of a business. Mr. Wasserman stated that respondent did not dispute the factual allegations that he was riding a motorized scooter on a NYC street, but he moved to dismiss both summonses on the ground that AC 10-157(k) places liability for violation of AC 19-176.2(b) solely on the business if the operator of a motor scooter is operating that scooter for the business at the time the summons is issued.

In support of respondent's position Mr. Wasserman submitted into evidence a written Motion to Dismiss, a mayoral announcement dated 10/19/2017, and an affidavit from respondent attesting that he was employed by Soho Sushi at the time the summonses were issued.

I agree with Mr. Wasserman. AC 10-157(k) provides that "A business using a bicycle for commercial purposes shall be liable for any violation of AC 19-176.2(b) committed by any person operating a motorized scooter on behalf of such business."

I find that AC 10-157(k) does NOT establish a dual liability situation with the business and the operator being jointly liable, as I find that use of the phrase "for any violation" effectively means that ALL violations of AC 19-176.2(b) under the circumstances described therein, which is operation of a motorized scooter on behalf of a business, must be issued to the operator's business. This interpretation is consistent with that of the city's chief executive, Mayor Bill de Blasio, who, according to the mayoral announcement, stated "Those at the top of the food chain need to be held accountable," and "...we're going after businesses that look the other way and leave their workers to shoulder the fine."

As there is no dispute that respondent was operating the motorized scooter on behalf of his employer Soho Sushi at the time the summonses were issued, and as petitioners issued the summonses to respondent motorized scooter operator instead of his employer Soho Sushi as required by AC 10-157(k), I find that the summonses were issued to an improper party and Mr. Wasserman's motion is granted.

Accordingly, both summonses are dismissed.