



## OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

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## BenchNOTES

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#### **Does the CPLR apply in OATH cases?**

Last month we discussed which procedural rules apply, OATH's rules or the rules of the agency that referred the case to OATH.

We noted that while OATH's practice rules usually apply, if the referring agency has a procedural rule addressing the matter at issue, then the referring agency's rule governs.

This month we review a related question: when, if ever, does the Civil Practice Law and Rules (CPLR) apply at an OATH hearing?

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#### **Dismissal recommended for custodian who mismanaged school funds.**

ALJ Tynia Richard found a custodial engineer persistently mismanaged a school custodial account by overpaying himself \$8,493 in salary, failing to properly record payments, and making late payments.

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Because custodians are responsible for managing significant public funds with limited oversight, it is imperative that they have the skills to properly administer and account for them.

Finding respondent lacked those skills, ALJ Richard recommended termination. *Dep't of Education v. Honan*, OATH Index No. 2231/07 (Mar. 14, 2008).

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## Licensing

### License revocation for taxi driver who assaulted passenger.

ALJ Ingrid Addison found a taxi driver became irate when his passenger tried to pay by credit card. After the passenger exited the taxi, the driver got out of the cab, grabbed her bag and struck her repeatedly when she tried to retrieve it.

Commission rules prohibit drivers from refusing to accept payment by credit or debit cards and provide guidance to drivers in the event that equipment used to accept payment is not working.

Resorting to the use of force is strictly prohibited. License revocation and fines totaling \$2,850 were recommended. *Taxi & Limousine Comm'n v. Dolley*, OATH Index No. 1567/08 (Mar. 24, 2008).

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## Real Property

### Approved structural repair work in SRO did not amount to harassment of tenants.

An SRO building owner filed an application for certification of no harassment as required before engaging in proposed construction work.

After investigation, HPD made a preliminary determination that harassment of SRO tenants had occurred within the past three years and it set the matter for an OATH hearing.

ALJ Alessandra Zorigniotti recommended that the owner's application be granted, finding that disruption to tenant services was caused by necessary construction work (joist replacement) which was done pursuant to a permit.

In addition, the owner provided the SRO tenants with the option to temporarily relocate to comparable units next door during the construction. *Dep't of Housing Preservation & Development v. Scharf*, OATH Index No. 2062/07 (Mar. 31, 2008).

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## Vehicle Retention

### Releasing modified van to repeat counterfeiter poses risk to public safety.

ALJ Kevin Casey ruled that the Police Department was entitled to retain a van that was seized in connection with the owner's arrest for trademark counterfeiting.

The owner had rear passenger seats removed and replaced with shelves, which were used to display counterfeit designer handbags to potential customers.

Given the owner's extensive history of similar unlawful conduct, there was a substantial risk that the owner would continue to use the van for illegal purposes if it was released to him. *Police Dep't v. Zhang*, OATH Index No. 1791/08, mem. dec. (Mar. 26, 2008).

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