

# Presenting a Defense Based on Sovereign or Diplomatic Immunity

A Primer for Diplomats



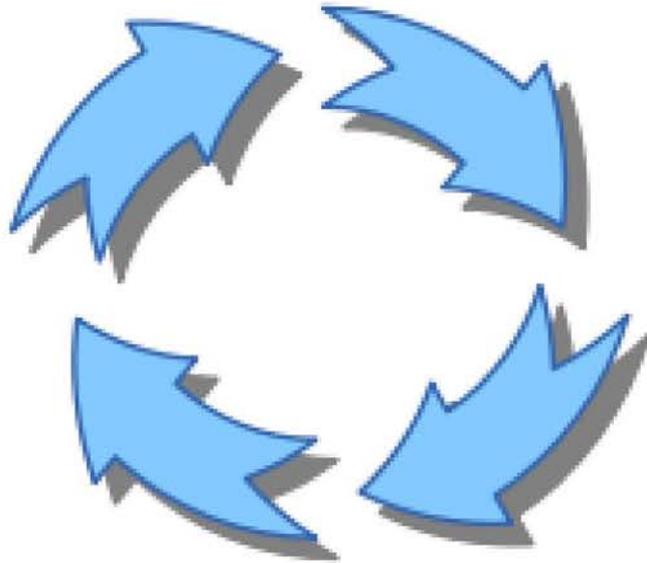
Summer 2016

# The Law

- Currently § 48 RCNY 3-96
- After August 6, 2016 will be 48 RCNY 6-27
- Section allows a respondent to present a defense based on sovereign or diplomatic immunity

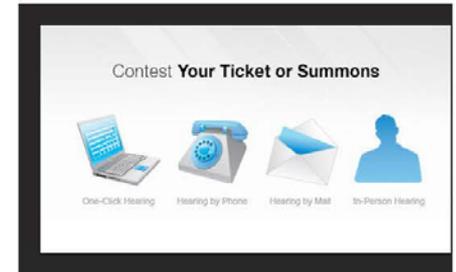


# The Process



# You Must Respond

- To claim immunity, you must respond to the summons
- This can be done in one of four ways:
- In person at a hearing
- By mail
- Online
- By phone
- Not all options are available for all summonses
- See OATH's website to determine if you can appear by mail, online or by phone



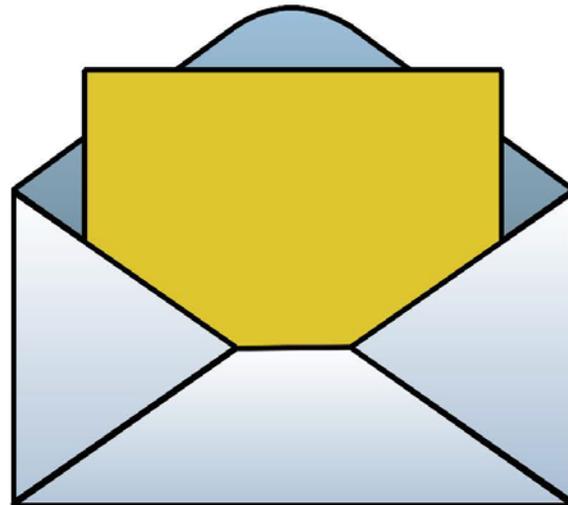
# At a Hearing

- You may present/assert your claim of immunity in person orally or in writing
- But you may only do so if a representative of the enforcement agency is present at the hearing
- Or if you consent to an adjournment of the hearing
- If English is not your first language, OATH will provide free translation services



# By Mail

- Submit a writing that asserts you have diplomatic immunity
- This must be received no later than seven business days before the date stated on the summons



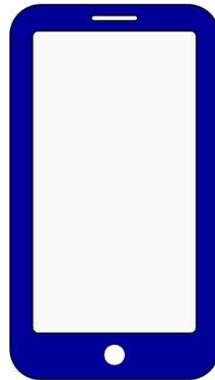
# Online

- If the summons is the type that can be adjudicated online, you may claim immunity by presenting your defense through OATH's website
- This called a "One-Click Hearing"
- You will be required to complete a simple, online form
- The form allows you to type a defense and attach up to three electronic files to support your case



# By Phone

- You must request a hearing by Phone *before* the scheduled hearing date on the summons
- You can send OATH a request for a Hearing by Phone by using a simple online form
- Or you can call (212) 436-0777 to schedule your Hearing by Phone



# The Hearing Officer's Order

- Adjourns the hearing for 30 to 60 days
- States the details of the violations alleged
- Gives notice to the Mayor's Office for International Affairs (referred to as "liaison" in the rule) that the respondent has presented this defense
- The order must be served on the parties and the Mayor's Office

 <b>OATH</b> CITY OF NEW YORK	<b>OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS</b> <i>Hearings Division</i>
Environmental Control Board Hearings	
<b>HEARING LOCATION:</b> 66 John Street 10th Floor New York, NY 10038 (844) 628-4692	 1312922614884C0445
<u>Method of Appearance</u> Live Hearing	<b>DECISION AND ORDER</b> Violation #: 035063181Y (1 NOV) Hearing Date: July 23, 2015
To: Lang Peng Chang 64-35 213th St Oakland Garden, NY 11364	City of New York v. Z, X & C CORP.
Total Civil Penalty: \$2,400.00	

# Negotiations

- The Mayor's Office works with the respondent and the enforcement agency to achieve compliance
- During this time, either party may request an extension of time
- The hearing officer has the discretion to grant or deny the request
- If the request is accompanied by a written submission from the Mayor's Office indicating more time is necessary, the hearing officer **MUST** grant the request

# The Hearing

- A hearing is held following the adjournment
- The hearing officer must decide whether or not the respondent is entitled to immunity



# Entitled to Immunity

- If the hearing officer determines the respondent is entitled to immunity the hearing officer dismisses the summons without deciding whether the respondent is liable



# Not Entitled to Immunity

- If the hearing officer rejects the immunity defense, a full hearing is conducted



# Right to Appeal

- Both parties have the right to appeal the immunity decision

