

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

ANGELO M. RIVERA,

Respondent.

DEFAULT DECISION AND ORDER

Violation No.: LL5206411

License No.: 970466 (PS)

Date: February 17, 2011

The respondent is charged with the violations in the attached Notice of Hearing.

A hearing was scheduled for February 2, 2011. The respondent did not appear.

The respondent is found **guilty upon default**. The respondent is further found guilty of violating 6 RCNY Section 1-14 for failing to appear at a duly noticed hearing.

ORDER

The respondent is therefore **ordered to pay to the Department of Consumer Affairs a TOTAL FINE of \$44,000**, as follows:

6 RCNY Section 2-233(b)(5) [failure to keep records in chronological order] (\$1,000 per count, for 11 counts)	\$11,000
6 RCNY Section 2-233(b)(5) [failure to maintain entries in a properly bound and paginated volume or logbook] (\$1,000 per count, for 2 counts)	\$2,000
6 RCNY Section 2-233(a)(2)(ii) (\$1,000 per count, for 10 counts)	\$10,000
6 RCNY Section 2-233(a)(2)(vi) (\$1,000 per count, for 10 counts)	\$10,000
6 RCNY Section 2-233(b)(2) (\$1,000 per count, for 10 counts)	\$10,000

6 RCNY Section 6-42(c)	\$ 500
6 RCNY §1-14	\$ 500
TOTAL	\$44,000

The respondent's license is **REVOKED effective immediately**. The respondent is directed to surrender the license document to the Licensing Division immediately. Please NOTE that if the respondent continues to operate with a revoked license, the respondent is subject to CRIMINAL PROSECUTION and/or civil penalties of \$100 per day for each day of unlicensed activity, as well as the closing of the respondent's business and/or the removal of items sold, offered for sale, or utilized in the operation of such business, pursuant to the Administrative Code of the City of New York Sections 20-105 and 20-106 (the "Padlock Law").

Additionally, **the respondent is deemed unfit to hold any license issued by the Department of Consumer Affairs for a period of 5 years.**

This constitutes the Decision and Order of the Department of Consumer Affairs.

**M. Mirro
Administrative Law Judge**

Cc: Lori Barrett, Esq.

Mail payment of fine in the enclosed

envelope addressed to:

NYC Department of Consumer Affairs
Collections Division
42 Broadway, 9th Floor
New York, NY 10004

APPEAL INFORMATION

You have 15 days to file a **MOTION TO VACATE** this decision. Your motion **must** include ALL of the following: 1) A check or money order for \$25 payable to the Department of Consumer Affairs; 2) the reason for your failure to appear on the hearing date; *and* 3) a sworn statement outlining a meritorious defense to the charge(s) in the Notice of Hearing.

BY EMAIL: Send your motion to myappeal@dca.nyc.gov and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11th Floor, New York, NY 10038. Make sure to write the violation number(s) on your check or money order. **NOTE:** The determination on your motion to vacate may be sent to you by email if you choose to submit your motion to us by email.

BY REGULAR MAIL: Mail your motion and the appeal fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11th Floor, New York, NY 10038. You must also mail **a copy** of your motion to: Legal Compliance and Fitness Division, Department of Consumer Affairs, 42 Broadway, 9th Floor, New York, NY 10004. Make sure to include in your motion some indication or proof that you have sent a copy of the motion to DCA's Legal Compliance and Fitness Division.

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

-----X
DEPARTMENT OF CONSUMER AFFAIRS,

NOTICE OF HEARING

Complainant,

LL # 5206411

-against-

Angelo M. Rivera
24 Villa Nova Street
Staten Island, NY 10314

**License # 0970466
Process Server Individual**

Licensee/Respondent.
-----X

TO THE ABOVE NAMED LICENSEE:

In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Section 2203(e) of Chapter 64 of the Charter of the City of New York and Section 20-104 of the Administrative Code of the City of New York ("the Code"), **YOU ARE HEREBY ORDERED TO APPEAR FOR A HEARING AT THE ADJUDICATION DIVISION OF THE DEPARTMENT OF CONSUMER AFFAIRS, 11TH FLOOR, 66 JOHN STREET, BOROUGH OF MANHATTAN, NEW YORK, NEW YORK 10038 on February, DATE, at 1:30 p.m.** to: have charges against you heard concerning violations of the Code, found in Chapter 1 of the Code, beginning at Section 20-101 (known as the License Enforcement Law), Chapter 2 of the Code, Subchapter 23, beginning at Section 20-403 (known as the Process Servers Law), Title 6 of the Rules of the City of New York ("6 RCNY"), beginning at Section 1-01 (known as the License Enforcement Rules), Title 6 of the Rules of the City of New York, Chapter 2, Subchapter W, beginning at Section 2-231 (known as the Process Servers Rules);

AND SHOW CAUSE why your license to operate as an Individual Process Server should not be suspended or revoked, why monetary penalties should not be imposed on you and why you should not be prohibited, based on lack of fitness, from holding any license issued by the Department on the grounds specified herein.

Complainant, The City of New York Department of Consumer Affairs, by its attorney, Lori Barrett, Esq., as and for its complaint upon information and belief alleges the following:

LICENSE STATUS

1. Angelo M. Rivera (“Respondent”) has held an Individual Process Server license issued by the Department since on or about September 3, 1997.
2. A process server license is renewable in two-year intervals.
3. Respondent’s current process server license expires on February 28, 2012.

FACTS

Respondent Entered into Assurance of Discontinuance

4. On or about September 1, 2009, the Department filed a Notice of Hearing (LL 50130912) against Respondent for various violations of 6 RCNY 2-233 and General Business Law (“GBL”) 89-cc.
5. On or about October 19, 2009, the Department settled LL 50130912 with Respondent, who entered into an Assurance of Discontinuance (“AOD”).
6. The AOD requires that the Respondent submit to records reviews for a three-year period following the execution of the agreement.

FAILURE TO COMPLY WITH RECORD-KEEPING REQUIREMENTS

Failure to Keep Records Required To Be Kept Under §2-233 and or General Business Law § 89-cc for the Requisite Period of Time

7. On or about July 28, 2010, the Department sent Respondent a letter instructing him to bring his records to 42 Broadway, New York, NY for inspection on August 10, 2010.
8. Respondent was instructed to provide his logbooks, affidavits of service, and digital photos of service from January 1, 2010 to July 1, 2010. Respondent was also instructed to provide any information regarding traverse hearings he may have had in the last twelve months.
9. On or about September 8, 2010, after missing three appointments to provide his records to the Department, Respondent provided to the Department one duplicate of a logbook containing entries for process he served between January 2, 2010 and January 30, 2010 and stated that his other logbooks were inaccessible because they were in storage. Roughly a week later, Respondent provided the original version of the same logbook; however, he did not produce the other logbooks.
10. As of the date of this Notice of Hearing, Respondent did not provide logbooks for service from January 31, 2010 to July 1, 2010.
11. Respondent did not provide any affidavits of service or digital photographs.

Failure to Keep Records in Chronological Order

12. Respondent's logbook contains eleven blank spaces between entries dated January 26, 2010 and January 27, 2010.

13. Respondent failed to maintain a bound volume or logbook free of blank spaces between entries and thus, implicitly, failed to keep records in chronological order.
14. Title 6 RCNY § 2-233 (b) (5) requires Respondent to maintain records of service of process in a bound, paginated volume with entries made in chronological order.
15. Blank spaces and pages are not permitted as Respondent cannot show that entries in the logbook were entered chronologically.

Failure to Keep Record Service of Process in Properly Bound and or Paginated Volumes

16. Respondent's logbooks are not properly bound or paginated for the following reasons:
 - a. The logbook is comprised of separate sheets of paper assembled with glue and staples; and
 - b. Page numbers are handwritten on each page instead of properly paginated within the meaning of the law because the handwritten page numbers could have been written after the records were entered.

Failure to Record the Name of the Person Served

17. Respondent failed to consistently record in the logbooks the name of the person served.

18. Respondent's failures to record the name of the person served include, but are not limited to, the following entries in his logs:

- a. January 2, 2010, logbook page 1, *Nikolas Marolakis v.* [REDACTED], Index # 34500/09, Supreme Court (County of Queens);
- b. January 2, 2010, logbook page 1, *State of New York v.* [REDACTED], Index # S-03359/09, Supreme Court;
- c. January 2, 2010, logbook page 1, *Deborah Barclay Carter v.* [REDACTED], Index #FN/02-1261-01, Supreme Court;
- d. January 2, 2010, logbook page 1, *Nikolas Marolakis v.* [REDACTED], Index # 34500/09, Supreme Court (County of Queens);
- e. January 2, 2010, logbook page 1, *J.P. Morgan Chase Bank v.* [REDACTED] Index # 29621/09, Supreme Court;
- f. January 2, 2010, logbook page 1, *J.P. Morgan Chase Bank v.* [REDACTED], Index # 29802/09, Supreme Court;
- g. January 2, 2010, logbook page 1, *Coastal Bank v.* [REDACTED] Index # 09-7053-CA-B, Circuit Court;
- h. January 2, 2010, logbook page 1, *Long Subaru v.* [REDACTED], Supreme Court, Index # 2009645C001376;
- i. January 2, 2010, logbook page 1, *GMAC Inc. DBA Vault v.* [REDACTED] [REDACTED], Index # 09-307113, Supreme Court; and

j. January 2, 2010, logbook page 1, *GMAC Inc. DBA Vault v. [REDACTED]*,
Index # 129146/09, Civil Court.

Failure to Record the Name of the Court in Which the Action Was Commenced

19. Respondent failed to set forth in the logbooks the name of the court in which the action was commenced.

20. Respondent's failures to record the name of the court, including the location, in which the action was commenced include, but not limited to, the following entries in his logs:

a. January 2, 2010, logbook page 2, *State of New York v. [REDACTED]*, Index # S-03374/2009, Supreme Court (county not recorded);

b. January 4, 2010, logbook page 2, *Orlando Rivera v. [REDACTED]*,
Index # 1352304, Supreme Court (county not recorded);

c. January 4, 2010, logbook page 2, *Caron Financial Services*, Index # BURL004231/07, Supreme Court (county not recorded);

d. January 5, 2010, logbook page 2, *Linda Johnson v. [REDACTED]*, Index # 33367/09, Supreme Court (county not recorded);

e. January 5, 2010, logbook page 2, *State of New York v. [REDACTED]*, Index # S-03371/09, Supreme Court (county not recorded);

f. January 5, 2010, logbook page 2, *Arthur Kozlovsky v. [REDACTED]*, Index # 33366/09, Supreme Court (county not recorded);

g. January 6, 2010, logbook page 3, *Bernice Frank v. [REDACTED]*, Index # 118329/09, Supreme Court (county not recorded);

h. January 6, 2010, logbook page 3, *Linda Johnson v. [REDACTED]*, Index # 33367/09, Supreme Court (county not recorded);

i. January 6, 2010, logbook page 3, *Linda Johnson v. [REDACTED]*, Index # 33367/09, Supreme Court (county not recorded); and

j. January 6, 2010, logbook page 4, *Bernice Frank v. [REDACTED] A.*, Index # 118329/09, Supreme Court (county not recorded).

Failure to Record the Person or Firm from Which Process for Service Was Received

21. Respondent failed to record in his/her logbooks the name of the person or firm from which Respondent received the process for service.

22. Respondent's failures to record the name of the person or firm from which process was received include, but are not limited to, the following entries in his logs:

a. January 5, 2010, logbook page 2, *Marco Polo Builders v. [REDACTED]*, Index # 09-7138CAS;

b. January 6, 2010, logbook page 3, *National Compliance v. [REDACTED]*, Index # 321660036601;

c. January 8, 2010, logbook page 4, *Carolyn Tyrell Ivan v. [REDACTED]*, Index # CACE09026417;

- d. January 8, 2010, logbook page 4, *Carolyn Tyrell Ivan v. [REDACTED]*, Index # CACE09026417;
- e. January 8, 2010, logbook page 4, *Carolyn Tyrell Ivan v. [REDACTED]*, Index # CACE09026417;
- f. January 8, 2010, logbook page 4, *Carolyn Tyrell Ivan v. [REDACTED]*, Index # CACE09026417;
- g. January 8, 2010, logbook page 4, *Carolyn Tyrell Ivan v. [REDACTED]*, Index # CACE09026417;
- h. January 8, 2010, logbook page 4, *Carolyn Tyrell Ivan v. [REDACTED]*, Index # CACE09026417;
- i. January 8, 2010, logbook page 4, *Carolyn Tyrell Ivan v. Dr. [REDACTED]*, Index # CACE09026417; and
- j. January 13, 2010, logbook page 5, *Marco Polo Builders v. [REDACTED]*, Index # 09-7136CAB.

BREACH OF PRIOR ASSURANCE OF DISCONTINUANCE WITH DCA

23. Section II(A)(1) of the AOD provided that Respondent shall comply fully with all laws, rules, regulations and requirements of the federal, state and municipal authorities and this Agreement when serving process.
24. The charges in LL 50130912 were as follows:
- a.6 RCNY § 2-233(a)(5);
 - b.6 RCNY § 2-233(b)(1);

c.6 RCNY § 2-233(b)(3); and

d.6 RCNY § 2-233(b)(5).

25. Respondent is in breach of the AOD as he violated 6 RCNY section 2-233(b)(5) and other local laws.

26. In addition, Respondent violated section (II)(I)(41) of the AOD by failing to produce all requested records for the previous six months.

27. Respondent also violated section (II)(H)(36) by failing to attend training about the laws and regulations that relate to and govern the service of process in New York City that was provided by the Department.

CHARGES

FAILURE TO COMPLY WITH RECORD-KEEPING REQUIREMENTS

Failure to Keep Records in Chronological Order

Counts 1- 11

28. The allegations of paragraphs 12-15 above are incorporated by reference as though fully realleged herein.

29. Respondent failed keep records in chronological order within the meaning of and in violation of the Rules of City of New York, Title 6, § 2-233 (b) (5). [11 counts.]

Failure to Keep Record Service of Process in Properly Bound and or Paginated Volumes

Counts 12-13

30. The allegations of paragraph 16 above are incorporated by reference as though fully realleged herein.

31. Respondent failed to maintain entries in a properly bound and paginated volume or logbook in violation of the Rules of City of New York, Title 6, § 2-233 (b) (5). [2 counts.]

Failure to Record the Name of the Person Served

Counts 14-23

32. The allegations of paragraphs 17-18 above are incorporated by reference as though fully realleged herein.

33. Respondent failed to maintain records showing the name of the person served, in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (ii). [10 counts.]

Failure to Record the Name of the Court In Which The Action Was Commenced

Counts 24-33

34. The allegations of paragraphs 19-20 above are incorporated by reference as though fully realleged herein.

35. Respondent failed to maintain records showing the court in which the action was commenced in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (vi). [10 counts.]

Failure to Record the Person or Firm From Which Process for Service Was Received

Counts 34-43

36. The allegations of paragraphs 21-22 above are incorporated by reference as though fully realleged herein.
37. Respondent failed to maintain records of the person or law firm from whom he/she received the process to be served, in violation of the Rules of City of New York, Title 6, § 2-233 (b) (2). [10 counts.]

BREACH OF PRIOR ASSURANCE OF DISCONTINUANCE WITH DCA

Count 44

38. The allegations of paragraphs 23-27 above are incorporated by reference as though fully realleged herein.
40. The AOD between the Respondent and the Department has the force of a final order, pursuant to the Rules of City of New York, Title 6, § 6-42 (c).
41. Respondent failed to comply with the AOD, in violation of the Rules of City of New York, Title 6, § 6-42 (c).

LACK OF FITNESS

42. By virtue of the activities described above Respondent violated § 20-101 of the Code by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

WHEREFORE, the Department demands that an order issue: 1) finding Respondent unfit to hold future Department licenses for a period of five years; 2) imposing maximum fines on Respondent for each and every charge set forth herein, pursuant to section VI(60) of the AOD (allowing for maximum fines of \$1,000 per violation); and 3) granting such other relief as is deemed just and proper.

YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL

IF, AFTER THE HEARING ON THESE CHARGES, YOU ARE FOUND TO HAVE VIOLATED THE LICENSING LAWS OR REGULATIONS AS CHARGED HEREINABOVE, YOU MAY BE SUBJECT TO A FINE, YOUR LICENSE MAY BE REVOKED, AND/OR OTHER PENALTIES MAY BE IMPOSED, AS AUTHORIZED BY LAW.

IF YOU DO NOT APPEAR FOR THE HEARING AS ORDERED, A DECISION MAY BE RENDERED ON DEFAULT, YOU MAY BE SUBJECT TO A FINE AND LICENSE REVOCATION, AND AN ADDITIONAL PENALTY FOR FAILING TO APPEAR MAY BE IMPOSED.

THE DATE OF THIS HEARING WILL NOT BE CHANGED UNLESS A WRITTEN REQUEST FOR AN ADJOURNMENT IS RECEIVED BY THE DIRECTOR OF ADJUDICATION OF THE DEPARTMENT, A COPY OF THAT REQUEST IS DELIVERED TO THE COUNSEL'S OFFICE OF THE DEPARTMENT AND TO ALL OTHER OPPOSING PARTIES, IF ANY, AT LEAST THREE (3) BUSINESS DAYS PRIOR TO THE HEARING, AND UNLESS THE REQUEST IS APPROVED. THE REQUEST WILL BE APPROVED ONLY IF THERE IS PROOF OF THE NECESSITY FOR THE ADJOURNMENT. A HEARING MAY BE ADJOURNED IF REQUESTED FEWER THAN THREE (3) BUSINESS DAYS BEFORE THE HEARING ONLY UPON PROOF OF AN EMERGENCY AND AFTER EVERY OPPOSING PARTY HAS BEEN NOTIFIED.

IN ORDER TO DEFEND AGAINST THESE CHARGES, YOU MUST APPEAR EITHER PERSONALLY OR THROUGH AN AGENT FAMILIAR WITH THE CASE. IF AN AGENT APPEARS WITHOUT YOU, WHAT HE OR SHE SAYS WILL BE DEEMED YOUR OWN TESTIMONY.

IF YOU DO NOT SPEAK FLUENT ENGLISH, YOU MAY USE THE TRANSLATION SERVICES PROVIDED BY DCA.

A BOOKLET ENTITLED "ADMINISTRATIVE HEARING GUIDE" WHICH EXPLAINS THE HEARING REGULATIONS OF THE DEPARTMENT IS AVAILABLE ONLINE ON THE DCA WEBSITE www.nyc.gov/consumers, OR CAN BE OBTAINED FOR FREE BY CALLING 311, OR BY COMING TO THE DEPARTMENT IN PERSON.

Dated: January 7, 2011
New York, New York

For: Jonathan Mintz
Commissioner

By: Lori Barrett
Staff Counsel

Department of Consumer Affairs
Legal Services Division
42 Broadway, 9th Floor
New York, NY 10004
Phone: (212) 361-2274
LBarrett@dca.nyc.gov



CERTIFICATE OF MAILING

I, Deborah Belton-Malcolm, do hereby declare that on January 10, 2011, I mailed the attached **LL 5206411** by placing the Notice of Hearing in an envelope addressed to:

Angelo M. Rivera
24 Villa Nova Street
Staten Island, NY 10314

and placing the addressed envelopes in the Department's official outgoing mail box designated for the Legal Compliance & Fitness Division.

Deborah Belton-Malcolm
Signature

Deborah Belton Malcolm
Print

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

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THE DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

ANGELO M. RIVERA,

Respondent.

-----X

**DETERMINATION OF
MOTION TO VACATE**

**Violation Number:
LL005206411**

**License Number:
970466**

Date: February 17, 2012

The respondent moves to vacate the Decision dated February 17, 2011.

The respondent's motion to vacate is **denied**.

Title 6 of the Rules of the City of New York § 6-44(a) requires that the "motion *shall* contain a statement offering an excuse for the party's failure to appear at the designated hearing date *and* a sworn statement outlining a meritorious defense to the charges alleged in the notice of violation." [Emphasis added]. The respondent's claims that he informed the Department "of numerous logbooks that were lost/missing (via police reports and verbally)" and that he complied with the Department to the best of his ability fail to outline meritorious defenses.

Although the respondent presents an explanation for his failure to appear at the hearing¹, such explanation is not satisfactory. He does not establish the date of his purported address change with any documentation. He does not specifically identify the date when he allegedly went to the Department to notify it of his address change. He does not submit any documentation to support his claim that he actually did advise the Department of his address change. Lastly, Department records do not support his claim that he notified the Department of the address change prior to issuance of the Notice of Hearing.

Accordingly, the Decision **remains in effect**.

¹ The respondent claims that he changed his address in July 2010 and notified the Department in August 2010.

SO ORDERED:

David L. Wolfe
Appeals Judge

This is the final agency action in this matter. There will be no further agency action in this matter. Should the respondents wish to pursue the matter, they may attempt to do so pursuant to Article 78 of the Civil Practice Law and Rules. If the respondents decide to proceed, it may find it useful to consult with the Clerk of the New York State Supreme Court or its attorney. The Department of Consumer Affairs cannot render assistance to persons who are contemplating suit against it.