

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

BRIAN J. WYATT

Respondent.

DEFAULT DECISION AND ORDER

Record No.: 9221-2014-ADJC

NOH No.: LL005333263

License No.: 1424786

Date: October 1, 2014

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

A hearing was scheduled for September 30, 2014. 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 in person at the Department to answer the Notice of Hearing.

ORDER

The respondent is therefore **ordered to pay to the Department of Consumer Affairs (DCA) a TOTAL FINE of \$4,500., which is immediately due and owing**, as follows:

6 RCNY Section 2-233 (\$500 per count, for 1 count)	\$500
6 RCNY Section 2-233a (\$500 per count, for 1 count)	\$500
6 RCNY Section 2-233b (\$500 per count, for 1 count)	\$500
6 RCNY Section 2-235 (\$500 per count, for 1 count)	\$500
6 RCNY Section 1-16(a) (\$500 per count, for 4 counts)	\$2,000
6 RCNY Section 1-14	\$500
TOTAL	\$4,500

The respondent's license is **REVOKED effective immediately**. The respondent is **directed to surrender the license document** immediately in person or by mail to DCA's Licensing Center which is located at 42 Broadway, New York, NY 10004.

If respondent operates while the license is revoked, the respondent will be subject to criminal prosecution and/or civil penalties of at least \$100 per day for each and every 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 Administrative Code Sections 20-105 and 20-106 (the "Padlock Law").

In addition, the respondent is found **unfit to hold any Department license**.

The respondent must comply with this Decision and Order within thirty (30) days, including payment of the fine. Payment with a check that is dishonored or a credit card transaction that is denied or reversed will not be considered compliance with this Decision and Order. The license(s) will not be reinstated until the respondent has served any suspension period ordered in this Decision and has paid ALL fines owed to the Department.

This constitutes the Decision and Order of the Department.

**N. Tumelty
Administrative Law Judge**

cc: liua@dca.nyc.gov

Brian J. Wyatt
150 Tapscott Street, Apt. 3B
Brooklyn, NY 11212

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 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 Division.

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

NOTICE OF HEARING

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DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

Violation No. LL 5333263

BRIAN J. WYATT
150 TAPSCOTT STREET, APT. 3B
BROOKLYN, NY 11212

License No. 1424786

Licensee/Respondent.

(Process Server Individual)

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In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Section 2203(f) 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 DEPARTMENT'S ADJUDICATION TRIBUNAL LOCATED AT 66 JOHN STREET, 11TH FLOOR, NEW YORK, NEW YORK 10004 AT 8:30 A.M. ON TUESDAY, SEPTEMBER 30, 2014** to have charges against you heard concerning violations of 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); and 6 RCNY, 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.

FACTS

1. Respondent, Brian J. Wyatt, is licensed by the Department as an individual process server under license number 1424786.
2. Respondent's current process server license will expire on February 28, 2016.
3. On April 24, 2014, the Department served on Respondent a subpoena *duces tecum* ordering Respondent to produce certain required records (the "Subpoena").
4. The Subpoena ordered Respondent to produce the following records:
 - a. For the period December 1, 2012 through February 28, 2014, Respondent's bound logbook(s);
 - b. For the period December 1, 2012 through February 28, 2014, copies of all electronic records that Respondent maintains pursuant to Title 6 of the Rules of the City of New York, Section 2-233a;
 - c. For the period December 1, 2012 through February 28, 2014, all affidavits of service signed by Respondent, prepared by Respondent, or filed by Respondent with a court concerning service of process that Respondent performed;
 - d. Documents sufficient to provide the Department with access to interactive electronic street maps that display the locations where Respondent's digital GPS records were recorded for the period December 1, 2012 through February 28, 2014;
 - e. For the period January 1, 2013 through the date that Respondent responds to the Subpoena, documents sufficient to identify all traverse hearings scheduled, whether or not held, concerning service of process by Respondent, and the result(s) of the hearing(s).
 - f. All documents, including communications, work orders/routing sheets, notes, affidavits of service, deposition transcripts and subpoenas, relating to court proceedings in which service of process performed by Respondent was contested (including traverse hearings held or scheduled outside of New York City) during the period January 1, 2013 through the date that Respondent responds to this subpoena.
5. The Subpoena directed Respondent to respond no later than a deadline of 12:00 p.m. on May 26, 2014.
6. As of the present date, Respondent has not produced any records in response to the Subpoena.

CHARGES

Charges 1-4: Failure to Comply With Subpoena

1. Respondent violated RCNY § 1-16(a) by failing to make available for inspection by the Department the logbook Respondent is required to maintain under 6 RCNY § 2-233. [1 count]
2. Respondent violated RCNY § 1-16(a) by failing to make available for inspection by the Department the electronic records Respondent is required to maintain under 6 RCNY § 2-233a. [1 count]
3. Respondent violated RCNY § 1-16(a) by failing to make available for inspection by the Department the affidavits of service Respondent is required to maintain under 6 RCNY § 2-235. [1 count]
4. Respondent violated RCNY § 1-16(a) by failing to make available for inspection by the Department the GPS records Respondent is required to maintain under 6 RCNY § 2-233b. [1 count]

Charges 5-8: Failure to Maintain Records

5. Respondent violated 6 RCNY § 2-233 by failing to maintain a logbook for the period of December 1, 2012 through February 28, 2014. [1 count]
6. Respondent violated 6 RCNY § 2-233a by failing to maintain electronic records for the period of December 1, 2012 through February 28, 2014. [1 count]
7. Respondent violated 6 RCNY § 2-233b by failing to create a GPS record for each service or attempted service during the period of December 1, 2013 through February 28, 2014. [1 count]

8. Respondent violated 6 RCNY § 2-235 by failing to maintain copies of signed affidavits of service for the period of December 1, 2012 through February 28, 2014.
- [1 count]

LACK OF FITNESS

9. 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) revoking Respondent's process server license; 2) finding Respondent unfit to hold any Department licenses; 3) imposing maximum fines on Respondent for each and every charge set forth herein; and 4) granting such other relief as is deemed just and proper.

Dated: July 17, 2014
New York, New York

For: Julie Menin
Commissioner

By Alvin A. Liu
Alvin A. Liu
Senior Staff Attorney
Legal Division

IMPORTANT INFORMATION FOR RESPONDENTS

You have been charged with violating Laws and Rules of the New York City Department of Consumer Affairs.

FAILURE TO APPEAR AT THE HEARING: If you do not appear at the DCA Adjudication Tribunal on the scheduled hearing date, you will be found guilty of the charges, you will be ordered to pay a fine, and your DCA license(s) may be revoked.

ADJOURNMENTS: Requests for adjournments must be received at least three (3) business days prior to the hearing date. **You may submit your request by e-mail to adjournmentrequests@dca.nyc.gov (preferred method)** or by mail to DCA Adjudication Tribunal, 66 John Street, 11th Floor, New York, NY 10038. Make sure to include the violation number in your request. In addition, you must send a copy of your request to process_server@dca.nyc.gov or by mail to Alvin A. Liu, DCA Legal Division, 42 Broadway, 9th Floor, New York, NY 10004.

REPRESENTATION: Although it is not required, you may choose to bring a lawyer or authorized representative to the hearing.

TRANSLATION SERVICES: DCA will provide translation services at the hearing for you and your witnesses. You may not use your own interpreter at the hearing.

REASONABLE ACCOMMODATION: If you have a disability and require a reasonable accommodation on the day of the hearing, you must send a request, with proof, before the hearing date to the Adjudication Tribunal at mycase@dca.nyc.gov or call 311 (212-NEW-YORK outside NYC) and ask for “Consumer Affairs Hearing - Reasonable Accommodation.”

SETTLEMENTS: If you wish to discuss a possible settlement of the charges in this Notice of Hearing, you may contact Alvin A. Liu at process_server@dca.nyc.gov at least five (5) business days prior to the hearing date.

For additional information, visit DCA’s website at www.nyc.gov/consumers or call 311.