

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

CHRISTOPHER W. DANIELS,

Respondent.

DEFAULT DECISION AND ORDER

Violation No.: LL005287404

License No.: 1288432

Date: October 25, 2011

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

A hearing was scheduled for October 19, 2011. The respondent did not appear.

ORDER

The charges in the Notice of Hearing are **dismissed without prejudice** because the Department did not show that it served the Notice of Hearing upon the respondent, e.g., by mailing it to his last known address.

This constitutes the Decision and Order of the Department.

**Mitchell B. Nisonoff
Administrative Law Judge**

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

-----X
DEPARTMENT OF CONSUMER AFFAIRS,

NOTICE OF HEARING

LL # 5287404

Complainant,

-against-

CHRISTOPHER W. DANIELS,
1655 Flatbush Ave., Apt. A1701
Brooklyn, N.Y. 11210

License # 1288432

(Process Server Individual)

Licensee/Respondent.
-----X

ALSO SEND TO: 1491 Fulton Street, Apt. 2, Brooklyn, N.Y. 11216

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 October 19, 2011 at 8:30 a.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, Nicholas J. Minella, Esq., as and for its complaint upon information and belief alleges the following:

LICENSE STATUS

1. Respondent, Christopher Daniels, has held an Individual Process Server license issued by the Department since on or about June 2008.
2. A process server license is renewable in two-year intervals.
3. Respondent's last process server license expired on March 2010.
4. Respondent's application for a renewal license, to commence on March 2010 and expire on February 28, 2012 has been held in pending status until the conclusion of the Department's investigation of her process server business practices.
5. The Department has issued to Respondent temporary permission to operate until November 7, 2011.

FACTS

Respondent Served with Subpoena

6. On or about June 11, 2010 the Department issued to Respondent a subpoena *duces tecum* at Respondent's address, on file with the Department.
7. On or about August 17, 2010 the Department re-issued to Respondent another subpoena *duces tecum* at Respondent's new address, which to date has not been updated in the Department's records.

8. The subpoena called for certain of Respondent's books and records, including production of process serving logbooks that Respondent is required to maintain for a period of two years from date of service pursuant to 6 RCNY 2-233.
9. The subpoena called for Respondent's appearance and for certain of Respondent's books and records, including production of process serving logbooks that Respondent is required to maintain for a period of two years from date of service pursuant to 6 RCNY 2-233.

FAILURE TO COMPLY WITH REPORTING REQUIREMENTS

Failure to Report Traverse Hearings

10. The Respondent failed to report to the Department the time, date, court, name of judge, index number, title and finding of a traverse hearing where service by him was contested in writing within ten days of the disposition of such hearing.
11. In the last three (3) years, Respondent's service of process was contested on at least two (2) occasions.
12. Although mandated by law to do so, Respondent failed to report to the Department traverse hearings in the following matters:
 - a. *Edward Xu v.* [REDACTED] Index. No. 60804/2009, Civil Court, Kings County, before the Hon. John Lansden on May 5, 2009 (traverse sustained); and
 - b. *Flaggwort Realty Co., LLC v.* [REDACTED] Index No. 72737/2009, Civil Court, Kings County, before the Hon. John Lansden on July 30, 2009 (traverse sustained).

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

13. In response to the subpoena deuces , Respondent produced, in pertinent part, one (1) logbook containing entries for process he served during an unknown period.;

14. Respondent's logbooks covered the following time period:

a. March 23, 2009 to August 5, 2009.

15. Records for the following extended periods of time were missing without explanation:

a. September 1, 2009 to August 30, 2010.

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

16. In response to the subpoena, the Respondent produced one (1) logbooks.

17. Respondent's logbooks are not properly bound or paginated for the following reasons:

a. Booklets are separate sheets of paper assembled with an after-market tape binding; and

b. Booklets are not paginated.

Improper Corrections in Records of Process Served

18. Respondent failed to make corrections in his logbooks by drawing a straight line through the original entry and instead obscures the entry he seeks to change.

19. Respondent's failures to make proper corrections, include, but are not limited to, the following entries in his logs:

- a. April 1, 2009 at 7:18 a.m.;
- b. April 1, 2009 at 12:30 p.m.;
- c. April 23, 2009 at 8:00 p.m.;
- d. April 24, 2009 at 6:30 a.m.;
- e. April 27, 2009 at 4:30 a.m.;
- f. April 29, 2009 at 7:33 a.m.;
- g. May 1, 2009 at 9:50 a.m.;
- h. May 4, 2009 at 11:40 p.m.;
- i. May 28, 2009 at 11:20 p.m.; and
- j. July 15, 2009 at 9:30 a.m.

Failure to Record the Date and Time That Service was Effectuated

20. Respondent failed to consistently record in the logbooks the date and time that service of process was effectuated.

21. Respondent's failures to record the date and time that service of process was effectuated include the following entries in his logs:

- a. April 13, 2009 at approximately 1:40 ([REDACTED]);
- b. April 17, 2009 ([REDACTED]);
- c. June 1, 2009 ([REDACTED]);
- d. June 3, 2009 ([REDACTED]);
- e. June 3, 2009 ([REDACTED]); and
- f. June 8, 2009 ([REDACTED]).

Failure to Record of the Nature of the Papers Served

22. Respondent failed to set forth in the logbooks the nature of the papers Respondent served.

23. Respondent's failures to record the nature of the papers served include the following entries in his logs:

- a. April 1, 2009 at 1:40 p.m.;
- b. April 19, 2009;
- c. May 21, 2009 at 11:50 a.m.;
- d. June 1, 2009 ([REDACTED]);
- e. June 10, 2009 at 2:28 p.m.;
- f. June 28, 2009 at 9:00 p.m.; and

- g. August 4, 2009 at 1:55 p.m.

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

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

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

- a. March 25, 2009 at 12:28 p.m.;
- b. March 25, 2009 at 1:00 p.m.;
- c. March 25, 2009 at 1:10 p.m.;
- d. March 25, 2009 at 1:40 p.m.;
- e. March 25, 2009 at 1:45 p.m.;
- f. March 25, 2009 at 1:55 p.m.;
- g. March 25, 2009 at 2:30 p.m.;
- h. March 25, 2009 at 3:15 p.m.;
- i. March 25, 2009 at 9:00 p.m.; and
- j. March 25, 2009 at 9:30 p.m.

Failure to Record the Index Number of the Action

26. Respondent failed to consistently set forth in his/her logbooks the index number of the action for which he effectuated service.

27. Respondent's failures to record the index number of the action in which he effectuated service include, but are not limited to, the following entries in his logs:

- a. March 23, 2009 at 11:00 a.m.;
- b. March 23, 2009 at 11:00 a.m.;
- c. March 23, 2009 at 9:10 p.m.;
- d. March 23, 2009 at 9:45 p.m.;
- e. March 23, 2009 at 9:58 p.m.;
- f. March 24, 2009 at 8:00 p.m.;

- g. March 25, 2009 at 10:00 a.m.;
- h. March 25, 2009 at 10:55 a.m.;
- i. March 25, 2009 at 12:25 p.m.; and
- j. March 25, 2009 at 1:00 p.m.

Failure to Record the Date An Affidavit of Service Was Filed With a Court

28. Respondent failed to record in his/her logbooks the date on which proof of service was filed with a court in those instances in which an affidavit of services was required to be filed by law.

29. Respondent's failures to record the date on which proof of service was filed with a court include, but are not limited to, the following entries in his logs:

- a. March 23, 2009 at 11:00 a.m.;
- b. March 23, 2009 at 11:00 a.m.;
- c. March 23, 2009 at 9:10 p.m.;
- d. March 23, 2009 at 9:45 p.m.;
- e. March 23, 2009 at 9:58 p.m.;
- f. March 25, 2009 at 10:00 a.m.;
- g. March 25, 2009 at 1:00 p.m.;
- h. March 25, 2009 at 3:15 p.m.;
- i. March 26, 2009 at 6:55 a.m.; and
- j. March 26, 2009 at 9:00 a.m.

Failure to Record the Description of the Area Adjacent to the Door

30. Respondent failed to record in his/her logbooks the description of the area adjacent to the door, including the color and composition of the hallway walls, color and composition of the hallway floor or doorstep and location of premises in relation to stairs, elevator or entranceway where service was affixed, although required by law to do so.

31. Respondent's failures to describe the area adjacent to the door where required by law include, but are not limited to, the following entries in his logs:

- a. March 23, 2009 at 11:00 a.m.;
- b. March 25, 2009 at 10:00 a.m.;
- c. March 25, 2009 at 1:00 p.m.;
- d. March 26, 2009 at 6:55 a.m.;
- e. March 26, 2009 at 9:00 a.m.;
- f. March 31, 2009 at 12:20 p.m.;
- g. March 31, 2009 at 1:05 p.m.;
- h. March 31, 2009 at 2:25 p.m.;
- i. March 31, 2009 at 3:40 p.m.; and
- j. April 2, 2009 at 2:00 p.m.

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

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

33. 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. August 1, 2009;
- b. August 3, 2009 at 12:30 p.m.;
- c. August 3, 2009 at 12:50 p.m.;
- d. August 3, 2009 at 1:15 p.m.;
- e. August 3, 2009 at 2:05 p.m.;
- f. August 4, 2009 at 1:55 p.m.;
- g. August 4, 2009 at 5:55 p.m.;
- h. August 5, 2009 at 3:50 p.m.;
- i. August 5, 2009 at 4:04 p.m.; and
- j. August 5, 2009 at 4:335 p.m.

Failure to Record the Postal Receipt Numbers of Registered or Certified Mail

34. Under section 735(1) of the RPAPL, where service of process is by delivery to a person of suitable age and discretion or by conspicuous place service, service is not complete unless the legal papers are also delivered no later than a day later by regular and registered or certified mail.

35. The receipt numbers must be recorded in the process server's log pursuant to 6 RCNY § 2-233(b)(4).

36. Respondent failed to record in his logbooks the postal receipt number of the registered or certified mail when he alleged service of the Notice of Petition and Petition by delivery to a person of suitable age and discretion or by conspicuous place service.

37. Respondent's failures to record the postal receipt numbers include, but are not limited to, the following entries in his logs:

- a. March 23, 2009 at 11:00 a.m.;
- b. March 25, 2009 at 10:00 a.m.;
- c. March 25, 2009 at 1:00 p.m.;
- d. March 26, 2009 at 6:55 a.m.;
- e. March 26, 2009 at 9:00 a.m.;
- f. March 31, 2009 at 12:20 p.m.;
- g. March 31, 2009 at 1:05 p.m.;
- h. March 31, 2009 at 2:25 p.m.;
- i. March 31, 2009 at 3:40 p.m.; and
- j. April 2, 2009 at 2:00 p.m.

FAILURE TO SERVE PROCESS IN ACCORDANCE WITH LAW

Failure to Complete Service of Process by Mail

38. Respondent failed to deliver service of process by first class mail after effecting service by substituted service or service by "nail and mail."

39. Respondent's failures to deliver service of process by first class mail after effecting service by substituted service or service by "nail and mail." include, but are not limited to, the following entries in his logs:

- a. March 23, 2009 at 11:00 a.m.;

- b. March 25, 2009 at 10:00 a.m.;
- c. March 25, 2009 at 1:00 p.m.;
- d. March 26, 2009 at 6:55 a.m.;
- e. March 26, 2009 at 9:00 a.m.;
- f. March 31, 2009 at 12:20 p.m.;
- g. March 31, 2009 at 1:05 p.m.;
- h. March 31, 2009 at 2:25 p.m.;
- i. March 31, 2009 at 3:40 p.m.; and
- j. April 2, 2009 at 2:00 p.m.

CHARGES

FAILURE TO COMPLY WITH REPORTING REQUIREMENTS

Failure to Report Traverse Hearings

Counts #1 - #2

1. The allegations of paragraphs #10 - #12 above are incorporated by reference as though fully realleged herein.

2. The Respondent failed to report to the Department in writing within ten days of the time/date/court/name of judge/index number/title and finding of a traverse hearing where service by him/her was contested in violation of the Rules of City of New York, Title 6, § 2-236.

Failure To Report A Change Of Address

Count #3

3. The allegations of paragraphs #6 - #7 above are incorporated by reference as though fully realleged herein.

4. Respondent failed to notify the Department of it change of address by personal service or registered or certified mail in violation of § 20-112 of the Code.

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

Count #4

5. The allegations of paragraphs #13 - #15 above are incorporated by reference as though fully realleged herein.

6. Respondent failed to keep records required to be kept under §2-233 (a) for two years from the date of service in violation of the Rules of City of New York, Title 6, § 2-233(a)(6).

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

Counts #5

7. The allegations of paragraphs #16 - #17 above are incorporated by reference as though fully realleged herein.

8. 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).

Unlawful Corrections in Records of Process Served

Counts #6 - #15

9. The allegations of paragraphs #18 - #19 above are incorporated by reference as though fully realleged herein.

10. Respondent failed to maintain a bound volume or log free of impermissible erasures, obliterating or redactions, etc. in violation of the Rules of City of New York, Title 6, § 2-233(b)(6).

Failure to Record the Date and Time That Service was Effectuated

Counts #16 - #21

11. The allegations of paragraphs **#20 - #21** above are incorporated by reference as though fully realleged herein.

12. Respondent failed to maintain records showing the date and approximate time service was effected in violation of the Rules of City of New York, Title 6, § 2-233(a)(2)(iii).

Failure to Record of the Nature of the Papers Served

Counts #22 - #28

13. The allegations of paragraphs **#22 - #23** above are incorporated by reference as though fully realleged herein.

14. Respondent failed to maintain records showing the nature of the papers served, in violation of the Rules of City of New York, Title 6, § 2-233(a)(2)(v).

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

Counts #29 - #38

15. The allegations of paragraphs **#24 - #25** above are incorporated by reference as though fully realleged herein.

16. Respondent failed to maintain records showing the court in which the action was commenced/the index number of the action in violation of the Rules of City of New York, Title 6, § 2-233(a)(2)(vi).

Failure to Record the Index Number of the Action

Counts #39 - #48

17. The allegations of paragraphs #26 - #27 above are incorporated by reference as though fully realleged herein.

18. Respondent failed to maintain records showing the index number of the action in violation of the Rules of City of New York, Title 6, § 2-233(a)(2)(vii).

Failure to Record the Date An Affidavit of Service Was Filed With a Court

Counts #49 - #58

19. The allegations of paragraphs #28 - #29 above are incorporated by reference as though fully realleged herein.

20. Respondent failed to maintain records showing the dates that affidavits of service were filed with a court, in violation of the Rules of City of New York, Title 6, § 2-233(a)(5).

Failure to Record the Description of the Area Adjacent to the Door

Counts #59 - #68

21. The allegations of paragraphs #30 - #31 above are incorporated by reference as though fully realleged herein.

22. Respondent failed to maintain records describing the area adjacent to the door to which he /she affixed the service, after effecting service pursuant to CPLR § 308 (4) or RPAPL § 735 (1), in violation of the Rules of City of New York, Title 6, § 2-233(b)(1).

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

Counts #69 - #78

23. The allegations of paragraphs #32 - #33 above are incorporated by reference as though fully realleged herein.

24. 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).

Failure to Record the Postal Receipt Numbers of Registered or Certified Mail

Counts #79 - #88

25. The allegations of paragraphs #34 - #37 above are incorporated by reference as though fully realleged herein.

26. Respondent failed to include the postal receipt number of registered or certified mail after service pursuant to RPAPL § 735 (1), in violation of the Rules of City of New York, Title 6, § 2-233(b)(4).

FAILURE TO SERVE PROCESS IN ACCORDANCE WITH LAW

Failure To Complete Service of Process by Mail

Counts #89 - #98

27. The allegations of paragraphs #38 - #39 above are incorporated by reference as though fully realleged herein.

28. Respondent failed to deliver service of process by first class mail after effecting service by substituted service or service by “nail and mail,” in violation of city, state or federal laws relating to service of process and in violation of the Rules of City of New York, Title 6, § 2-234.

LACK OF FITNESS

29. The allegations of paragraphs #1 - #39 above are incorporated by reference as though fully realleged herein.

30. 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 no less than two (2) years; 2) imposing maximum fines on Respondent for each and every charge set forth herein; and 3) granting such other relief as is deemed just and proper.

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 on the scheduled hearing date, a default decision will be issued in which you will be found guilty of the charges and 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);** by fax to 212-361-7766; or by mail to: DCA Administrative 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 nminella@dca.nyc.gov; by fax to (212) 487-4390; or by mail to Nicholas J. Minella, DCA Legal Division, 42 Broadway, 9th Floor, New York, NY 10004.

SETTLEMENTS: If you wish to discuss a possible settlement of the charges in this Notice of Hearing, contact Nicholas J. Minella at (212) 487-3961 at least 5 business days prior to the hearing date.

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.

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

Dated: September 29, 2011
New York, New York

For: **Jonathan Mintz**
Commissioner



By: _____
Nicholas J. Minella
Staff Counsel
Legal Division



CERTIFICATE OF MAILING

I, Deborah Belton-Malcolm, do hereby declare that on September 27, 2011, I mailed the attached Notice of Hearing LL **5287404** by placing the Notice of Hearing in an envelope addressed to:

Mr. Christopher Daniels
1491 Fulton Street, Apt. 2
Brooklyn, NY 11216

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