

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

MEGA CONSULTING, LLC,

Respondent.

DECISION AND ORDER

Violation No.: LL005287481

License No.: 1347095

**Respondent's Address:
2377 East 18th Street
Brooklyn, NY 11229**

A hearing on the above-captioned matter was held on December 12, 2012.¹

Appearances: For the Department: Alvin A. Liu, Esq. For the Respondent: Mikhail Zazovskiy, corporate officer. Language Line Russian interpreter #8949.

The respondent is charged with violating the following:

1. Title 6 of the Rules of the City of New York ("6 RCNY") Section 2-234a(c) by failing to submit an affirmation that it has adopted a Compliance Plan within 60 days of the effective date of the Rule; and
2. 6 RCNY Section 2-234a(b) by failing to develop and implement a process server agency Compliance Plan.

Based on the evidence in the record, the following is **RECOMMENDED**:

Findings of Fact

The respondent was issued a license by the Department to operate a Process Server Agency ("PSA") on March 23, 2010. The license expired on February 28, 2012. The respondent was in operation during the period of time between issuance and expiration of the license. However, it never submitted to the Department an affirmation that it adopted a written Compliance Plan within sixty (60) days of the effective date of the the applicable rule, March 21, 2011.² It also failed to implement a process server agency Compliance Plan.

¹ The hearing record was held open until January 18, 2013 for the parties to submit additional evidence. To date, the respondent failed to offer any post-hearing submissions.

² See Affirmation of Notice of Adoption, marked as Department's exhibit 11.

Opinion

The Department established the violations by a preponderance of the credible evidence.

6 RCNY Section 2-234a(c) states: “A process serving agency in possession of a license issued by the Department on the effective date of this Rule shall submit an affirmation to the Department that it has adopted a written Compliance Plan within sixty (60) days of such effective date. After the effective day of this Rule, no license shall be issued or renewed until the process serving agency files with the Department an affirmation that it has adopted a Compliance Plan.”

6 RCNY Section 2-234a(b) states: “A process serving agency shall develop and implement policies and procedures set forth in a written Compliance Plan to ensure that an individual process server acts with integrity and honesty and complies with the recordkeeping requirements applicable to process servers.”

Mr. Zazovskiy did not dispute that the respondent obtained a license but never prepared or submitted a Compliance Plan. His argument, that he “thought the business would close by itself” because he never served process, does not set forth a valid defense to the violation.³ His additional claims that he was not aware of the rules or his noncompliance with such rules, similarly do not set forth valid defenses to the violation.⁴

The Department cites *Department of Consumer Affairs v. R.Q. Investigations Ltd.*, LL005287507 (April 6, 2012) in support of its contention that respondent’s failure to submit the required affirmation is “not mitigated by the Respondent’s claim that it never served process” (see Department’s exhibit 7, Post-Hearing Submission, p. 1). Furthermore, it is widely held that “licensees must comply with all laws and regulations pertaining to the licenses they currently hold.” *Id.* Last, the respondent’s claim that it is not aware of the “laws and rules governing its profession is not a meritorious defense.” *Id.* at 1-2, (citing *Department of Consumer Affairs v. Real A Plus Cars Inc.*, LL5151999 (March 24, 2008) and *Department of Consumer Affairs v. Rocket Laundry Inc.*, LL515707 (February 25, 2008)).

³ The respondent was granted leave to submit post-hearing evidence of dissolution but failed to do so.

⁴ Mr. Zazovskiy admitted that he receives Department correspondence via postal mail. He further stated that his wife maintains an e-mail, which is on file with the Department. His claim that such e-mail was misspelled on a prior correspondence is not a valid defense, as he admits that he received it by postal mail.

The Department further argues that official rules proposed and adopted by City agencies are duly published each weekday (excluding legal holidays) in the *City Record* pursuant to the rules set forth in the City Administrative Procedure Act ("CAPA"). As such, the subject rules were published in the *City Record* on February 18, 2011 and on the Department's "Know the Law" section of its website on March 21, 2011.⁵

It is undisputed that the respondent was licensed by the Department on March 21, 2011, the date in which the Compliance Plan rules became effective. Accordingly, the respondent is considered aware of, and must abide by, all applicable rules and regulations set forth by the Department.

In light of the foregoing, the charges shall be sustained.

RECOMMENDED DECISION AND ORDER:

The respondent is found **guilty** of violating the charges, and is hereby **ORDERED to PAY TO THE DEPARTMENT a TOTAL fine of \$1,000.**, as follows:

Charge 1: \$500

Charge 2: \$500

The respondent is **further ORDERED to adopt a written Compliance Plan in conformance with 6 RCNY Section 2-234a(b) and submit it, together with an affirmation in conformance with 6 RCNY Section 2-234a(c), to the Department within FIFTEEN (15) DAYS of the date of the order.**

This constitutes the recommendation of the Administrative Law Judge.

**E. DeFontes
Administrative Law Judge**

DECISION AND ORDER

The recommendation of the Administrative Law Judge is approved.

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

Date: 24 January 2013



**James M. Plotkin
Deputy Director of Adjudication**

⁵ See Department's exhibit 11.

cc: ALLALEYBINSKY@NETZERO.COM

Alvin A. Liu, Esq.
aliu@dca.nyc.gov

Mail payment 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 **30 days** to file an **APPEAL** of this decision. You must include with your appeal **all** of the following: (1) a check or money order payable to DCA for the sum of \$25; and (2) a check or money order payable to DCA for the amount of the fine imposed by the decision, or an application for a waiver of the requirement to pay the fine as a requisite for an appeal, based upon financial hardship. The application must be supported by evidence of financial hardship, including the most recent tax returns you have filed.

BY EMAIL: Send your appeal 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.) You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

BY REGULAR MAIL: Mail your appeal 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 appeal to: DCA, Legal Division, 42 Broadway, 9th Floor, New York, NY 10004. Make sure to include in your appeal some indication or proof that you have sent a copy of the appeal to DCA's Legal Division. You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

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

-----X
DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

MEGA CONSULTING LLC

2377 EAST 18 STREET

BROOKLYN, NY 11229

Licensee/Respondent.
-----X

NOTICE OF HEARING

Violation No. LL 005287481

License # 1347095

(Process Server Agency)

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 WEDNESDAY, JANUARY 4, 2012 AT 8:30 AM** 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), and Title 6 of the Rules of the City of New York, beginning at Section 2-231 (known as the Process Servers Rules);

AND SHOW CAUSE why your license to operate as a Process Server Agency (“PSA”) 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, Alvin A. Liu, Esq., as and for its complaint upon information and belief alleges the following:

APPLICABLE LAW

1. 6 RCNY Section 2-234a became effective on March 21, 2011.
2. Pursuant to 6 RCNY Section 2-234a(b), a Process Server Agency (“PSA”) licensed by the Department must develop and implement policies and procedures set forth in a written Compliance Plan to ensure that an individual process server acts with integrity and honesty and complies with the recordkeeping requirements applicable to process servers.
3. Pursuant to 6 RCNY Section 2-234a(c), every PSA licensed by the Department on the effective date of the rule was required to submit to the Department within sixty (60) days of the effective date of the rule (i.e., by May 20, 2011) an affirmation that it has adopted a written Compliance Plan.

FACTS

1. Respondent, MEGA CONSULTING LLC , holds a current PSA license issued by the Department and was licensed by the Department prior to March 21, 2011.
4. Respondent has not submitted to the Department an affirmation that it has adopted a written Compliance Plan.

5. Upon information and belief, Respondent has not developed and implemented policies and procedures set forth in a written Compliance Plan as required by 6 RCNY Section 2-234a(b).

CHARGES

FAILURE TO SUBMIT COMPLIANCE PLAN AFFIRMATION

Count #1

1. Respondent failed to submit an affirmation that it has adopted a Compliance Plan within 60 days of the effective date of the Rule, in violation of 6 RCNY § 2-234a(c).

FAILURE TO DEVELOP AND IMPLEMENT PSA COMPLIANCE PLAN

Count #2

2. Respondent has failed to develop and implement a PSA Compliance Plan in violation of the 6 RCNY § 2-234a(b).

WHEREFORE, the Department demands that an order issue: (1) imposing maximum fines on Respondent for each and every charge set forth herein; (2) directing Respondent to adopt a written Compliance Plan in conformance with 6 RCNY § 2-234a(b) and submit it, together with an affirmation in conformance with 6 RCNY § 2-234a(c), to the Department within fifteen (15) days of the date of the order; 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 aliu@dca.nyc.gov; by fax to (212) 487-4390; or by mail to Alvin A. Liu, Esq., 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.

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

Dated: November 2, 2011
New York, New York

For: **Jonathan Mintz**
Commissioner

By: *Alvin A. Liu*
Alvin A. Liu, Esq.
Staff Counsel
Legal Division