

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

-----X **APPEAL DETERMINATION**
DEPARTMENT OF CONSUMER AFFAIRS,

Complainant

- against -

NASSER ATRASH,

Respondent.

Record Nos.:
246-2014-APPL
LL005307559-ADJC

NOH No.: LL005307559

License No.: 1295969

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The respondent appeals from the Decision dated January 28, 2014.

After due consideration of the arguments presented in the respondent's appeal, the Department's brief in opposition, and the respondent's sur-reply, the appeal is **denied**

The respondent's counsel argues that this Tribunal lacks jurisdiction to adjudicate the matter because New York Administrative Code ("Code") § 20-106 authorizes criminal penalties. However, this argument is without merit. Code § 20-104(e)(1) grants the Commissioner of the Department of Consumer Affairs the authority, upon due notice and a hearing to impose penalties for violations of any provision of chapter two of Title 20 of the Code, or any regulations and rules promulgated thereunder including the imposition of civil penalties and the suspension or revocation of any license issued by the Department.¹

The respondent next claims that unreliable hearsay was the only evidence presented by the Department to support the Judge's finding that he violated five counts of Title 6 of the Rules of the City of New York ("6 RCNY") § 2-234 by making false affirmations in an affidavit of service that a Summons and Complaint had been served. The respondent concedes that hearsay is admissible in administrative proceedings and may form the basis for an administrative determination.² However the respondent, citing *Matter of Hoch v. New York State Department of Health*, 1 A.D.3d 994, 768 N.Y.S.2d 53 (4th Dept 2003),

¹ Code § 20-403 requires any person employed, or performing, the services of a process server be licensed by the Department of Consumer Affairs while Code § 20-408 grants the commissioner the authority to promulgate rules and regulations pertaining to process servers.

² 6 RCNY § 6-35(a) states in part, "Relevant evidence shall be admitted without regard to the technical or formal rules or laws of evidence in effect in the courts of the State of New York Hearsay evidence is admissible."

argues that hearsay evidence, when not supported by corroborating evidence, is not substantial evidence necessary to establish a violation.³ However, the Court in *Hoch*, citing *Matter of Gray v. Adduci*, 73 N.Y.2d 741, 743 (1988), affirmed that hearsay evidence may alone be the basis of an administrative determination. In this case, the record establishes that the Judge considered all of the testimony, affidavits, and documentary evidence admitted in evidence by both parties and found that the respondent's testimony failed to rebut the Department's credible evidence.

The respondent correctly notes that seriously controverted hearsay evidence may fail to provide substantial evidence necessary to establish a violation. See *Matter of Ridge v. New York Liquor Authority*, 257 A.D.2d 251, 684 N.Y.S.2d 251 (2nd Dept 1999). However, in this case, a review of the entire record establishes that the Department submitted sufficient credible evidence to establish the five violations of 6 RCNY § 2-234. The record also demonstrates that the Judge considered all of the evidence presented, made appropriate rulings on the relevance and admissibility of evidence, and made specific credibility findings. For each of the five counts charged, the Judge found the evidence submitted by the Department was more credible than the respondent's rebuttal evidence. In light of the above, the Judge's determination shall not be disturbed. See *Matter of Mullane v. Brown*, 188 A.D.2d 323, 591 N.Y.S.2d 765 (1st Dept. 1992); citing *Matter of Pell v. Board of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y.2d 222 (1974) (determinations concerning the credibility of witnesses, the weight of the evidence and the choice between conflicting testimony are the province of the Administrative Law Judge).

Respondent's counsel next argues that the hearing did not "meet minimal constitutional standards" since the Department's evidence consisted of affidavits and she was denied the opportunity to cross-examine the affiants.⁴ However, the record establishes that respondent's counsel did cross-examine the Department's appearing witness. Furthermore, regarding the non-appearing affiants, it has been held that there is only a limited right to cross-examination of adverse witnesses in administrative proceedings. See *Friendly Convenience, Inc. v. New York City Dept. of Consumer Affairs*, 71 A.D.3d 577 (N.Y. App. Div. 2010), quoting *Matter of Gordon v. Brown*, 84 N.Y.2d 574, 578 (1994).

The respondent next claims that he should not be held accountable for failing to include in his affidavits of service the complete address of the process serving agency from whom he obtained the process of service because the affidavit forms

³ The respondent cites *Fugardi v. Angus*, 216 A.D.2d 85, 628 N.Y.S.2d 77 (1st Dept 1995) for the proposition that if "hearsay evidence is contradicted by actual testimony, it does not meet the requirement of substantial evidence." However, the Court in *Fugardi* makes no such statement but merely found the Petitioner offered no evidence to rebut the prima facie case.

⁴ Citing *Hecht v. Monaghan*, 307 N.Y. 461 (1954)

do not have fields in which to write that information.⁵ This claim is without merit. 6 RCNY § 2-234 requires strict compliance “with all laws, rules, regulations and requirements ... relating to the conduct of licensees and the service of process in the State of New York.” GBL § 89-ff states, in relevant part: “It shall be unlawful for a process server to fail to set forth on any affidavit of service or process signed by him . . .the name and address of any process serving agency from whom he obtained the process for service if any” (emphasis added). Although the respondent characterizes the missing information as “record keeping mishaps” that “had no effect on service” it has been held that “any attempt by [a process server] to suggest that his violation of the licensing agency’s rules was insignificant or a mere ‘technical’ infraction must be deemed unpersuasive in light of the clear regulatory mandate [of 6 RCNY § 2-234.]” *Barr v. Dept. of Consumer Affairs*, 70 N.Y.2d 821, 823 (1987).⁶ As a review of the affidavits in establish that the process serving agency’s street address is omitted, the Judge correctly sustained the violations.⁷

Next, regarding the finding that he violated 15 counts of 6 RCNY § 2-233 (a), the respondent claims the missing information “has no impact on the quality or propriety of service” and that mistakes are made. Whether the missing information had any effect on the “quality or propriety of service” is irrelevant, as the respondent was charged with failing to include required items of information in his GPS records. Further, a review of the record and the Decision establishes that the Judge found the respondent’s claim, that mistakes in recording information was the result of GPS failure, was not supported by credible evidence. This finding will not be disturbed on appeal.

Next the respondent claims, for the first time on appeal, that the finding that it violated ten counts of 6 RCNY § 2-233 (a)(2)(vi) should be dismissed because the Department has not provided process servers with a specific log book setting forth all the required information and that the cited omissions are ministerial in nature. These claims are also without merit. Although 6 RCNY § 2-233 does not require the use of any particular logbook format, it does require that all of the enumerated information set forth in the rule be clearly included in each service record.

The respondent’s next claim, that he “could legitimately believe” that, since the process serving agency reported each of the seven traverse hearings at issue,

⁵ The respondent’s assertion on appeal that “[t]here were no allegations or evidence that any affidavits were false or otherwise questionable” is irrelevant, as the respondent was charged with failing to include required items of information on his affidavits.

⁶ Given the holding in *Barr*, the respondent’s claim, that the instant matter is distinguishable since *Barr* involved “egregious failures,” is unpersuasive.

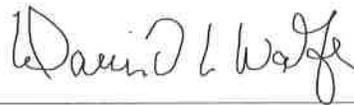
⁷ In light of the fact that the respondent was charged with violating 6 RCNY § 234, the rhetorical question as to whether the Department can enforce New York State General Business Law §89-ff constitutes mere speculation rather than a supported legal argument, and therefore shall not be considered.

he did not need to comply with the reporting requirements of 6 RCNY § 2-236 is without merit. 6 RCNY § 2-236 imposes separate reporting requirements on both the process server and the process serving agency. The respondent's further claim that he either faxed or emailed the required reports to the Department was fully considered by the Judge who properly sustained the violations in light of all of the credible testimony and evidence presented by both sides. See Smith v. New York State Dept. of Health, 66 A.D.3d 1144, 887 N.Y.S.2d 294 (3d Dept. 2009), quoting Matter of Kosich v. New York State Dept. of Health, 49 A.D.3d 980, 854 N.Y.S.2d 551 (3d Dept. 2008)(credibility determinations, as well as the weight to be accorded to evidence presented, are matters solely within the province of the administrative fact finder).

Finally, the respondent claims that the imposed fines are excessive and unconscionably burdensome, citing Griffith v. Aponte, 123 A.D.2d 260 (1st Dept. 1986) and Hecker v. Dept. of Consumer Affairs, 131 Misc.2d 280 (Sup.Ct., N.Y. City 1986). However, the respondent presented no evidence at the hearing to support a mitigated penalty and the Judge found there was no basis to impose a mitigated penalty. Further, as the Judge found that the respondent violated five counts of 6 RCNY 2-234 for falsely attesting to five services of process, revocation of the respondent's license is appropriate. In light of the above, the imposed penalty shall not be disturbed on appeal.

Accordingly, the Decision is **affirmed**.

SO ORDERED:



David L. Wolfe
Appeals Judge

Date: July 7, 2014

There will be no further agency action in this matter. Should the respondent wish to pursue the matter, it may attempt to do so pursuant to Article 78 of the Civil Practice Law and Rules. If the respondent decides 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.

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**
-----X
DEPARTMENT OF CONSUMER AFFAIRS,

DECISION AND ORDER

Complainant,

**Record No.: LL005307559-2013-
ADJC**

- against -

NOH No.: LL005307559

NASSER ATRASH,

License No.: 1295969

Respondent.

**Respondent's Address:
1460 Ovington Avenue
First Floor
Brooklyn, NY 11219**

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A hearing on the above-captioned matter was held on October 21, 2013 and January 6, 2014.

Appearances: For the Department: Alvin A. Liu, Esq.; [REDACTED], witness (October 21, 2013). For the Respondent: Nasser Atrash; Steven Keats, Esq. (October 21, 2013); Myra G. Sencer, Esq. (January 6, 2014); Jay Min, observing (January 6, 2014).

The Amended Notice of Hearing charged the respondent with violating¹:

1. Title 6 of the Rules of the City of New York ("6 RCNY") Section 2-234 by falsely affirming in an affidavit of service that a Summons and Complaint had been served. (1 count)
2. 6 RCNY Section 2-234 by falsely affirming in an affidavit of service that a Summons and Complaint had been served. (1 count)
3. 6 RCNY Section 2-234 by falsely affirming in an affidavit of service that a Summons and Complaint had been served. (1 count)
4. 6 RCNY Section 2-234 by falsely affirming in an affidavit of service that a Summons and Complaint had been served. (1 count)
5. 6 RCNY Section 2-234 by falsely affirming in an affidavit of service that a Summons and Complaint had been served. (1 count)
6. 6 RCNY Section 2-234 by failing to include the process serving agency's address on at least 10 affidavits of service that he signed.² (10 counts)

¹ The Notice of Hearing ("NOH") was amended four times and the final version is entitled "Fourth Amended Notice of Hearing" dated August 16, 2013.

7. 6 RCNY Section 2-233a (b) by failing to record the required information consisting of the court name, zip code and description of the door area in his 233a records.³ (15 counts)
8. 6 RCNY Section 2-233 (a)(2)(iv) by failing to include the complete address where service was attempted or effected in his logbook entries. (10 counts)
9. 6 RCNY Section 2-236(a) by failing to report to the Department the scheduling of 7 traverse hearings within ten (10) days of receiving notice that a court had scheduled the hearings. (7 counts)
10. 6 RCNY Section 2-236(c)(2) by failing, within one hundred (100) days after the scheduled date of 7 traverse hearings, to report to the Department either the final result of the hearings or that he made attempts to learn the final results of the traverse hearings but was unable to do so. (7 counts)
11. 6 RCNY Section 2-236(c)(1) by failing to attempt to learn the results of 7 traverse hearings in accordance with the procedures specified in 6 RCNY Section 2-236(c)(1). (7 counts)
12. Title 20 of the Administrative Code of the City of New York (“Administrative Code”) Section 20-101 by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

Based on the evidence in this case, I **RECOMMEND** the following:

Findings of Fact:

The respondent has been a licensed process server since August 20, 2008.

On March 24, 2009, respondent did not serve a party named [REDACTED] by substituted service but affirmed in an affidavit of service that he had. Respondent also affirmed that he had completed substitute

² The Notice of Hearing was orally amended at the hearing to include the charge of 6 RCNY Section 2-234.

³ At the hearing, the Department withdrew 4 counts with respect to the following entries: 5/4/2012 @8:30 (description of door and area adjacent); 5/29/2012@8:33 (description of door and area adjacent); 6/16/2012 @ 8:11 (3 entries-description of door and area adjacent); 6/25/2012 @ 10:19 (description of door and area adjacent); 6/25/2012 @11:27 (description of door and area adjacent). The original 19 counts were reduced to 15 counts.

service in the following four matters when he had not: Midland Funding LLC v. [REDACTED], Cavalry SPV I, LLC v. [REDACTED], [REDACTED]; Capital One Bank (USA), N.A. v. [REDACTED], and Capital One, N.A. v. [REDACTED].

The respondent failed to include the process serving agency's address on 10 affidavits of service that he signed. In 5 instances, the respondent failed to record the name of the court on his 233a records (on 6/18/2012 @ 8:19, 11:31 11:38 and 12:17; on 6/22/2012 @ 13:46). In 8 instances, the respondent failed to record the zip code in his 233a records (see the remaining counts in DCA#1 Charge 7).

The respondent failed to include in his logbook the complete address where service was attempted or effected for 10 entries.

The respondent failed to report to the Department the scheduling of 7 traverse hearings within ten days of receiving notice of the hearings in the following matters: Chetnik v. [REDACTED], [REDACTED] FIA Card Services, NA v. [REDACTED], [REDACTED] Kings County Supreme Court (" [REDACTED] "); Panzer v. [REDACTED], Kings County Supreme Court ("Panzer"); Media Morphosis, Inc. v. [REDACTED] Kings County Civil Court (" [REDACTED]); Gonzalez v. [REDACTED] (Index No. [REDACTED], Queens County Family court (" [REDACTED]); SPV I, LLC v. [REDACTED] Queens County Civil Court (" [REDACTED]); Moraciewski v. [REDACTED] Queens County Civil Court (" [REDACTED]). In each of these 7 matters respondent also failed to within 100 days after the scheduled date of the traverse hearings, report to the Department either: a) the final results of the traverse hearings; or (b) that respondent made attempts to learn the final results of the traverse hearings but was unable to do so. Further, the respondent failed to attempt to learn the results of the 7 traverse hearings in accordance with the procedures specified in 6 RCNY Section 2-236 (c) (1).

Opinion:

The Department established by a preponderance of the evidence the following charges:

Charges 1-5: False Affidavits of Service Violations

Charge 1: 6 RCNY Section 2-234 (1 count) (“McDowell”)

The Department established through documentary evidence that respondent falsely affirmed in an affidavit of service that he served a Summons and Complaint by substitute service (see DCA#5a & 5B). Respondent’s claim that he no longer maintains records pertaining to this service due to a revision in the law, even if true, does not establish a meritorious defense to the violation. The issue is whether respondent falsely swore on an affidavit not whether he maintained records. Respondent further claims that his signature is forged although it is sworn to before a notary and contains his license number. The respondent failed to rebut the Department’s case with any credible evidence. Accordingly, the charge shall be sustained.

Charge 2: 6 RCNY Section 2-234 (1 count) (“Weiss”)

The Department established that respondent falsely affirmed in an affidavit that he had served a Summons and Complaint by substitute service. (see DCA#6A & 6B). Respondent’s claim that he no longer maintains records pertaining to this service due to a revision in the law, even if true, does not establish a meritorious defense to the violation. The respondent failed to rebut the Department’s case with any credible evidence. Accordingly, the charge shall be sustained.

Charge 3: 6 RCNY Section 2-234 (1 count) (“Henry”)

The Department established the charge by a preponderance of the credible evidence. (see DCA #4) Respondent’s claims are: that he served the respondent by substitute service because he correctly indicated Mr. Henry’s race, that he does not have the opportunity to talk to or look at the person who he is serving for very long, that his broad descriptions of the people he serves (ie. age, height and weight descriptions) is limited by the independent server he uses. These claims fail to rebut the Department’s more credible case. Accordingly, the charge shall be sustained.

Charge 4: 6 RCNY Section 2-234 (1 count) (“Davis”)

The Department established by a preponderance of the credible evidence that the respondent falsely affirmed in an affidavit of service that he effected substitute service on [REDACTED] (see DCA#3a & 3D). The respondent failed to rebut the Department’s case with any credible evidence. Accordingly, the charge shall be sustained.

Charge 5: 6 RCNY Section 2-234 (1 count) (“Cardenas”)

The Department established through the detailed and consistent testimony of Mr. [REDACTED] and supporting evidence that respondent falsely swore on an affidavit of service that he served a Summons and Complaint by substituted service. Respondent’s claim that he served [REDACTED] sister, [REDACTED], is

rebutted by the Department's case. Mr. [REDACTED] testimony along with supporting documentation establish that [REDACTED] was out of the country at the time. (see DCA# 2A, 2B, 2D). Respondent's claim is not supported by any credible evidence. Accordingly, the charge shall be sustained.

Charge 6: Affidavits of Service Violations

Charge 6: 6 RCNY Section 2-234 (10 counts)

The respondent claims that by providing the process serving agency's name, city, state and zip code without the building address on affidavits of service he has satisfied the requirement because sometimes items mailed without the full address are delivered successfully. This claim does not establish a meritorious defense to the violation. It is determined that the rule requires a complete mailing address (see DCA#15). Accordingly, the charge shall be sustained.

Charge 7: Electronic Recordkeeping Violations

Charge 7: 6 RCNY Section 2-233a (b) (15 counts)

The Department established by a preponderance of the evidence that respondent failed to include in 5 instances the name of the court on his 233a records (on 6/18/2012 @ 8:19, 11:31, 11:38 and 12:17; on 6/22/2012 @ 13:46). In 8 instances, the respondent failed to record the zip code in his 233a record (on 6/19/2012 @ 8:39 and 8:47, on 6/26/2012 @ 10:42 and 11:55, on 7/19/2012 @ 10:27, on 7/25/2012 @ 13:31, on 7/30/2012 @14:11 and 18:22. On 5/23/2012 @ 11:10 for two entries respondent failed to include the description of the door and area adjacent (see DCA#16A, B and C).

Respondent claims that documents such as judicial subpoenas are exempt because they are not filed with the court and do not always include the name of the court. The cited section requires recording "the court in which the action has been commenced" and does not provide for an exemption under the aforesaid circumstances. Further, the respondent fails to establish with any credible evidence that the actions in the cited instances had not yet commenced when service was attempted or effected.

Respondent's further claim that the name of the court may have been missing from his records due to GPS failure is not supported by any credible evidence.

With respect to failure to record zip codes, respondent's claim of either forgetting to record them or not being given the zip code does not eliminate the

requirement to include this information and therefore does not establish a meritorious defense to the violation.

With respect to two entries on May 23, 2012, respondent claims that he provided no description of the door and area adjacent to the door because contrary to his own records (which indicate there was conspicuous service) he was actually attempting personal service. Conspicuous service requires the description of the door area, personal service does not. This claim is not supported by any credible evidence. Accordingly, the charge shall be sustained.

Charge 8: Logbook Violations

Charge 8 6 RCNY Section 2-233 (a)(2)(iv) (10 counts)

Respondent claims that he was not able to record all of the required information in his logbook, a composition style notebook of his choosing, because there was not enough space. (e.g. city, state and zip code). This claim does not establish a meritorious defense to the violation. Respondent's additional claim that the information he omitted from his logbook is recorded in his GPS record does not eliminate the separate recording requirement for the logbook and therefore does not establish a meritorious defense. Accordingly, the charge shall be sustained.

Charges 9-11: Traverse Hearing Reporting Violations

Charges 9-11 6 RCNY Section 2-236(a) (7 counts) 6 RCNY Section 2-236(c)(2) (7 counts) 6 RCNY Section 2-236(c)(1) (7 counts)

The Department established the violations by a preponderance of the credible evidence (see DCA#8-12). The respondent's claim of notifying the Department either by fax or by email of scheduled traverse hearings, his attempts to ascertain the results of the hearings and/or the results of the hearings is not supported by any credible evidence and fails to rebut the Department's more credible case. Respondent's claim of emailing notifications to the Department, albeit to the wrong email address, does not establish a meritorious defense to the violation. Respondent's additional claim of not being able to report a result if the case has not concluded or because he cannot find a result also does not establish a meritorious defense to the violation. The reporting requirement requires that a process server notify the Department even when there is no result.

It is determined that there is no basis for mitigation of any of the fines.

Charge 12: Administrative Code Section 20-101

The Department established by a preponderance of the credible evidence that respondent failed to maintain the standards of integrity, honesty and fair dealing required of licensees in light of all of the foregoing careless record-keeping, repeated omissions and the filing of false affidavits.

In light of the foregoing, the charges shall be sustained and the respondent's license is hereby revoked.

RECOMMENDED DECISION:

The respondent is found **guilty** and is, hereby, **ordered** to pay to the Department a **TOTAL FINE** of **\$30,500., which is immediately due and owing** as follows:

Charge 1: \$500 (1 count)

Charge 2: \$500 (1 count)

Charge 3: \$500 (1 count)

Charge 4: \$500 (1 count)

Charge 5: \$500 (1 count)

Charge 6: \$5,000 (\$500 per count, for 10 counts)

Charge 7: \$7,500 (\$500 per count, for 15 counts)

Charge 8: \$5,000 (\$500 per count, for 10 counts)

Charge 9: \$3,500 (\$500 per count, for 7 counts)

Charge 10: \$3,500 (\$500 per count, for 7 counts)

Charge 11: \$3,500 (\$500 per count, for 7 counts)

Charge 12: Revocation of License

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").

This constitutes the recommendation of the Administrative Law Judge of the Department.

N. Tumelty
Administrative Law Judge

DECISION AND ORDER

The recommendation of the Administrative Law Judge is approved.

This constitutes the Decision and Order of the Department. The Department may suspend any DCA license(s) held by the respondent if the respondent fails to comply with this Decision and Order, including payment of the fine, within thirty (30) days. 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. Such 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.

Date: January 28, 2014



Eryn DeFontes
Associate Director of Adjudication

cc: Alvin Liu, Esq.
Via email: [REDACTED]

Nasser Atrash
Email: [REDACTED]

Myra G. Sencer, Esq.
[REDACTED]
[REDACTED]
Email: [REDACTED]

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 **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 \$25 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**

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DEPARTMENT OF CONSUMER AFFAIRS

**FOURTH AMENDED
NOTICE OF HEARING**

Complainant,

-against-

Violation #LL005307559

NASSER ATRASH
1460 OVERTON AVE 1ST FLR
BROOKLYN, NY 11219

License # 1295969

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(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 TRIBUNAL OF THE DEPARTMENT OF CONSUMER AFFAIRS, 11TH FLOOR, 66 JOHN STREET, NEW YORK, NEW YORK 10038 AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2013** 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 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.

FACTS AND APPLICABLE LAW

1. Respondent, NASSER ATRASH, has been licensed by the Department as an individual process server under license number 1295969 since on or about August 20, 2008.
2. Respondent's current process server license will expire on February 28, 2014.
3. Respondent served or attempted to serve process at least 2000 times during the period May 1, 2012 through July 31, 2012.

"Sewer Service" and Filing False Affidavits of Service with a Court

4. Respondent falsely affirmed in an affidavit of service that was filed in New York County Civil Court in the matter of *U.S. Equities Corp. v. [REDACTED]* No. [REDACTED], that he had served a Summons and Complaint at the defendant's place of residence on March 24, 2009 by substitute service upon Anday "Doe".
5. Respondent falsely affirmed in an affidavit of service that was filed in Kings County Civil Court in the matter of *Midland Funding, LLC v. [REDACTED]* [REDACTED], that he had served a Summons and Formal Complaint at the defendant's place of residence on December 8, 2009 at 14:14 p.m. by substitute service upon "[REDACTED]."
6. Respondent falsely affirmed in an affidavit of service that was filed in Queens County Civil Court in the matter of *Cavalry SPV I, LLC v. [REDACTED]* [REDACTED], that he had served a Summons and Complaint at the defendant's place of residence on June 5, 2012 by substitute service upon "[REDACTED]."
7. Respondent falsely affirmed in an affidavit of service that was filed in New York County Civil Court in the matter of *Capital One Bank (USA), N.A. v. [REDACTED]* [REDACTED], that he had served a Summons and Complaint at the

defendant's place of residence on February 4, 2012 by substitute service upon "Mr. Henry."

8. Respondent falsely affirmed in an affidavit of service that was filed in Queens County Civil Court in the matter of Capital One, N.A. v. [REDACTED] [REDACTED] that he had served a Summons and Complaint at the defendant's place of residence on February 2, 2013 at 8:27 a.m. on [REDACTED]"

Affidavits of Service Violations

9. Pursuant to 6 RCNY § 2-235, an individual process server must maintain a copy of every affidavit of service for at least seven years in electronic form or as a paper copy.
10. 6 RCNY § 2-235 also requires that an individual process server must include his license number on all affidavits of service that he/she signs.
11. In addition, section 89-ff of The New York General Business Law requires that individual process servers must include on all affidavits of service that he/she signs the name and address of any process serving agency from whom he/she obtained the process for service. Pursuant to 6 RCNY § 2-234, this requirement applies to all individual process servers licensed by the Department.
12. Respondent failed to include the process serving agency's address on the following affidavits of service that he signed:

5/1/12 @ 12:13 [REDACTED]
5/3/12 @ 11:34 [REDACTED]
5/7/12 @ 19:28 [REDACTED]
5/7/12 @ 12:56 [REDACTED]
5/8/12 @ 18:39 [REDACTED]
5/8/12 @ 17:55 [REDACTED]
5/9/12 @ 10:52 [REDACTED]
5/9/12 @ 8:49 ([REDACTED]
5/9/12 @ 13:08 [REDACTED] d
5/9/12 @ 9:50 ([REDACTED]

Electronic Recordkeeping Violations

13. Pursuant to section 20-406.3 of the Code and 6 RCNY § 2-233a, a licensed process server is required to maintain records of service of process in an electronic format (“233a records”).

14. The 233a records must contain the following information in separate fields:

- (i) name of the individual process server to whom service is assigned, which will be entered as last name, first name;
- (ii) the license number of the individual process server to whom service is assigned, which will be specified as a seven digit number, where the first number shall be zero if the process server's license number is less than seven digits;
- (iii) the title of the action or proceeding, if any;
- (iv) the name of the person served, if known, which shall be entered as last name, first name;
- (v) the date that service was effected, which shall be entered as MM/DD/YYYY;
- (vi) the time service was effected, which shall be entered as military time;
- (vii) the address where service was effected, which shall be entered as three different fields such that one field will be for the street address and any apartment number, the second field will be for the city or borough, and the third field will be for zip code;
- (viii) the nature of the papers served;
- (ix) the court in which the action has been commenced, which shall be entered as either Civil Court NYC, Civil Supreme, Criminal, Housing(L/T), or District Court, followed by the county of the court, the judicial department if appellate, or the federal district;
- (x) the full index number, which shall be entered with all information necessary to identify the case, such as XXXXX/XX, unless the case is a Civil Local matter, in which case, it will include the prefix of CV, CC, LT, MI, NC, RE, SC, or TS;
- (xi) if service was effected pursuant to subdivisions (1) through (3) of CPLR §308, a description of the person served which shall consist of six fields, including sex, hair color, approximate age, height, weight, and any other identifying features provided by the process server;
- (xii) whether service was delivered, as indicated by a Y or N;
- (xiii) the type of service effected, which shall be entered as a P for personal service, an S for substitute service, a C for conspicuous service, or a CO for corporate service; and
- (xiv) if service was effected pursuant to subdivision (4) of CPLR §308 or subdivision one of RPAPL §735, a description of the door and the area adjacent.

15. Respondent failed to record and maintain the following information in his 233a records for the period May 1, 2012 through July 31, 2012:

6/18/12 @ 8:19 (court name);
6/18/12 @ 11:31 (court name);
6/18/12 @ 11:38 (court name);
6/18/12 @ 12:17 (court name);
6/22/12 @ 13:46 (court name);
6/19/12 @ 8:39 (zip code);
6/19/12 @ 8:47 (zip code);
6/26/12 @ 10:42 (zip code);
6/26/12 @ 11:55 (zip code);
7/19/12 @ 10:27 (zip code);
7/25/12 @ 13:31 (zip code);
7/30/12 @ 14:11 (zip code);
7/30/12 @ 18:22 (zip code)
5/4/12 @ 8:30 (description of door and area adjacent);
5/23/12 @ 11:10 (2 entries) (description of door and area adjacent);
5/29/12 @ 8:33 (description of door and area adjacent);
6/16/12 @ 8:11 (3 entries) (description of door and area adjacent);
6/25/12 @ 10:19 (description of door and area adjacent); and
6/25/12 @ 11:27 (description of door and area adjacent).

Logbook Violations

16. Respondent failed to include in his logbook the complete address where service was attempted or effected for the following attempts or services:

5/10/12 @ 15:21
5/12/12 @ 10:01
5/16/12 @ 11:21
6/4/12 @ 14:41 (F
6/11/12 @ 10:39
6/28/12 @ 8:08 (C
7/2/12 @ 10:11 (N
7/4/12 @ 10:21 (A
7/10/12 @ 10:45 (C
7/18/12 @ 10:36 (C

Traverse Hearing Reporting Violations

Jan Chetnik v. [REDACTED]

17. On information and belief, in or about 2012, process was distributed to Respondent for service in the matter of Jan Chetnik v. [REDACTED]

██████████, Queens County Civil Court) (██████████) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Jan Chetnik was filed with the clerk of the court.

18. The court in ██████████ scheduled a traverse hearing for December 5, 2012 concerning the service of process allegedly made by Respondent.
19. Respondent received notice of the scheduling of the traverse hearing in ██████████.
20. Respondent did not report to the Department in writing, by certified mail or e-mail, that a traverse hearing had been scheduled in ██████████, within ten days of receiving notice of the hearing.
21. Respondent did not attempt to learn the result of the traverse hearing in ██████████ in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
22. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing in ██████████ or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so, within one hundred days of the hearing.

Fia Card Services, NA v. ██████████

23. On information and belief, in or about 2009, process was distributed to Respondent for service in the matter of Fia Card Services, NA v. ██████████ ██████████, Kings County Supreme Court) (██████████) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in ██████████ was filed with the clerk of the court.
24. The court in ██████████ scheduled a traverse hearing for January 15, 2013 concerning the service of process allegedly made by Respondent.

25. Respondent received notice of the scheduling of the traverse hearing in [REDACTED] Services.
26. Respondent did not report to the Department in writing, by certified mail or e-mail, that a traverse hearing had been scheduled in Fia Card Services, within ten days of receiving notice of the hearing.
27. Respondent did not attempt to learn the result of the traverse hearing in Fia Card Services in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
28. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing in Fia Card Services or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so, within one hundred days of the hearing.

Barbara and Jacob Panzer v. [REDACTED]

29. On information and belief, in or about 2009, process was distributed to Respondent for service in the matter of Barbara and Jacob Panzer v. [REDACTED] ([REDACTED] Kings County Supreme Court) (“[REDACTED]”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in [REDACTED] was filed with the clerk of the court.
30. The court in Panzer scheduled a traverse hearing for January 18, 2013 concerning the service of process allegedly made by Respondent.
31. Respondent received notice of the scheduling of the traverse hearing in [REDACTED].
32. Respondent did not report to the Department in writing, by certified mail or e-mail, that a traverse hearing had been scheduled in Panzer, within ten days of receiving notice of the hearing.

33. Respondent did not attempt to learn the result of the traverse hearing in [REDACTED] in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
34. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing in [REDACTED] or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so, within one hundred days of the hearing.

Media Morphosis, Inc. v. [REDACTED]

35. On information and belief, in or about 2012, process was distributed to Respondent for service in the matter of Media Morphosis, Inc. v. [REDACTED] [REDACTED], Kings County Civil Court) ([REDACTED]) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Media Morphosis was filed with the clerk of the court.
36. The court in Media Morphosis scheduled a traverse hearing for March 4, 2013 concerning the service of process allegedly made by Respondent.
37. Respondent received notice of the scheduling of the traverse hearing in Media Morphosis.
38. Respondent did not report to the Department in writing, by certified mail or e-mail, that a traverse hearing had been scheduled in Media Morphosis, within ten days of receiving notice of the hearing.
39. Respondent did not attempt to learn the result of the traverse hearing in Media Morphosis in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
40. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing in Media Morphosis or that Respondent made

attempts to learn the result of the traverse hearing and was unable to do so, within one hundred days of the hearing.

Cervantes O. Gonzalez v. [REDACTED]

41. On information and belief, in or about 2012, process was distributed to Respondent for service in the matter of Cervantes O. Gonzalez v. [REDACTED], [REDACTED], Queens County Family Court) (“Gonzalez”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Gonzalez was filed with the clerk of the court.
42. The court in Gonzalez scheduled a traverse hearing for April 8, 2013 concerning the service of process allegedly made by Respondent.
43. Respondent received notice of the scheduling of the traverse hearing in Gonzalez.
44. Respondent did not report to the Department in writing, by certified mail or e-mail, that a traverse hearing had been scheduled in Gonzalez, within ten days of receiving notice of the hearing.
45. Respondent did not attempt to learn the result of the traverse hearing in Gonzalez in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
46. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing in Gonzalez or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so, within one hundred days of the hearing.

Cavalry SPV I, LLC v. [REDACTED]

47. On information and belief, in or about 2012, process was distributed to Respondent for service in the matter of Cavalry SPV I, LLC v. [REDACTED], [REDACTED], Queens County Civil Court) (“Cavalry”) and thereafter an affidavit of

service executed by Respondent in which he attested that he had served such process in Cavalry was filed with the clerk of the court.

48. The court in Cavalry scheduled a traverse hearing for April 10, 2013 concerning the service of process allegedly made by Respondent.
49. Respondent received notice of the scheduling of the traverse hearing in Cavalry.
50. Respondent did not report to the Department in writing, by certified mail or e-mail, that a traverse hearing had been scheduled in Cavalry, within ten days of receiving notice of the hearing.
51. Respondent did not attempt to learn the result of the traverse hearing in Cavalry in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
52. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing in Cavalry or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so, within one hundred days of the hearing.

Stephan Moraciewski v. [REDACTED]

53. On information and belief, in or about 2012, process was distributed to Respondent for service in the matter of Stephan Moraciewski v. [REDACTED] [REDACTED], Queens County Civil Court) (“Moraciewski”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Moraciewski was filed with the clerk of the court.
54. The court in Moraciewski scheduled a traverse hearing for April 18, 2013 concerning the service of process allegedly made by Respondent.
55. Respondent received notice of the scheduling of the traverse hearing in Moraciewski.

56. Respondent did not report to the Department in writing, by certified mail or e-mail, that a traverse hearing had been scheduled in Moraciewski, within ten days of receiving notice of the hearing.
57. Respondent did not attempt to learn the result of the traverse hearing in Moraciewski in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
58. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing in Moraciewski or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so, within one hundred days of the hearing.

CHARGES

Charges 1-5: False Affidavits of Service

1. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in New York County Civil Court in the matter of *U.S. Equities Corp. v. [REDACTED]*, that he had served a Summons and Complaint at the defendant's place of residence on March 24, 2009 by substitute service upon "Anday Doe." [1 count]
2. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in Kings County Civil Court in the matter of *Midland Funding, LLC v. [REDACTED]*, that he had served a Summons and Formal Complaint at the defendant's place of residence on December 8, 2009 at 14:14 p.m. by substitute service upon "Leila Lewis." [1 count]
3. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in New York County Civil Court in the matter of *Capital One Bank (USA), N.A. v. [REDACTED]*, that he had served a Summons and Complaint at the defendant's place of residence on February 4, 2012 by substitute service upon "Mr. Henry." [1 count]
4. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in Queens County Civil Court in the matter of *Cavalry SPV I, LLC v. Conrad A. Davis*, Index No. 15012/12, that he had served a Summons and Complaint at the defendant's place of residence on June 5, 2012 by substitute service upon "Tonya Davis." [1 count]
5. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in Queens County Civil Court in the matter of *Capital One, N.A. v.*

Efrain A. Cardenas, Index No. 003318/13, that he had served a Summons and Complaint at the defendant's place of residence on February 2, 2013 at 8:27 a.m. on "Diana Cardenas." [1 count]

Charge 6: Affidavits of Service Violations

6. Respondent failed to include the process serving agency's address on at least 10 affidavits of service that he signed. [10 counts]

Charge 7: Electronic Recordkeeping Violations

7. Respondent violated 6 RCNY § 2-233a(b) by failing to record the following

information in his 233a records:

6/18/12 @ 8:19 (court name);
6/18/12 @ 11:31 (court name);
6/18/12 @ 11:38 (court name);
6/18/12 @ 12:17 (court name);
6/22/12 @ 13:46 (court name);
6/19/12 @ 8:39 (zip code);
6/19/12 @ 8:47 (zip code);
6/26/12 @ 10:42 (zip code);
6/26/12 @ 11:55 (zip code);
7/19/12 @ 10:27 (zip code);
7/25/12 @ 13:31 (zip code);
7/30/12 @ 14:11 (zip code);
7/30/12 @ 18:22 (zip code)
5/4/12 @ 8:30 (description of door and area adjacent);
5/23/12 @ 11:10 (2 entries) (description of door and area adjacent);
5/29/12 @ 8:33 (description of door and area adjacent);
6/16/12 @ 8:11 (3 entries) (description of door and area adjacent);
6/25/12 @ 10:19 (description of door and area adjacent); and
6/25/12 @ 11:27 (description of door and area adjacent).

[19 counts]

Charge 8: Logbook Violations

8. Respondent violated 6 RCNY § 2-233(a)(2)(iv) by failing to include the complete address where service was attempted or effected in his logbook entries. [10 counts]

Charges 9-11: Traverse Hearing Reporting Violations

9. Respondent violated 6 RCNY § 2-236(a) by failing to report to the Department the scheduling of 7 traverse hearings within ten (10) days of receiving notice of the scheduled hearings. [7 counts]
10. Respondent violated 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of 7 traverse hearings, report to the Department either: (a) the final results of the traverse hearings; or (b) that Respondent made attempts to learn the final results of the traverse hearings but was unable to do so. [7 counts]
11. Respondent violated 6 RCNY § 2-236(c)(1) by failing to attempt to learn the results of 7 traverse hearings in accordance with the procedures specified in 6 RCNY § 2-236(c)(1). [7 counts]

Charge 12: Lack of Fitness

12. 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 license; 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.

Dated: August 16, 2013
New York, New York

For: **Jonathan Mintz**
Commissioner

By: 
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 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)** 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 aliu@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.”

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