

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

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

**Complainant**

**- against -**

**PAUL NEIGER,**

**Respondent.**

**Record Nos.:**  
**282-2014-APPL**  
**LL005324048-ADJC**

**NOH No.: LL005324048**

**License No.: 0919386**

-----X

The respondent appeals from the Decision dated February 11, 2014, insofar as it found him guilty of violating two counts of Title 6 of the Rules of the City of New York ("6 RCNY") § 2-234 for falsely affirming in an affidavit of service that a summons and complain had been served; violating one count of 6 RCNY § 2-233b(a)(3) for failing to enter into a contract with an independent third party for the maintenance and storage of GPS records; violating 41 counts of 6 RCNY § 2-233b(a)(2)(i) for failing to create 41 GPS records for service and attempted service made; violating seven counts of 6 RCNY § 2-233a(b)(3) for failing to maintain separate fields in 233a records for the following information: name of Process Server, Process Server license number, city or borough, zip code, whether service was delivered, type of service effected, description of door area; violating 22 counts of 6 RCNY § 2-233a(b)(3) for failing to record required information in 233a records name of Process Server, Process Server license number, type of service effected, and description of door area; violating 10 counts of 6 RCNY § 2-233(b)(6) for failing to include the name of the entity or individual from whom the process served was received in his logbook entries; and violating 10 counts of 6 RCNY § 2-233(b)(3) for failing to include the type of service effected in his logbook entries.<sup>1</sup>

Pursuant to 6 RCNY § 6-40(a)(2)(B), he also requests a waiver of the requirement to pay the fine imposed by the Decision as a requisite for consideration of his appeal. As a preliminary to deciding the appeal, a review of the supporting documentation submitted supports the respondent's waiver request and it is **granted**.

---

<sup>1</sup> The Judge found the respondent not guilty of violating New York City Administrative Code 20-101 and 6 RCNY 1-01.1(b).

However, upon consideration of the argument presented and a review of the record, the appeal is **denied**.

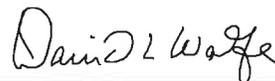
The respondent does not contest the violations but argues that the fine imposed by the Decision is excessive and inconsistent with the determination that he did not violate New York City Administrative Code ("Administrative Code") § 20-101. This argument is without merit. The respondent was found guilty of violating 94 separate counts of the rules governing his process server license, including two counts of 6 RCNY § 2-234 for falsely affirming in an affidavit of service that a Summons and Complaint had been served. The Department sought the imposition of maximum penalties. Despite the finding that the respondent violated 6 RCNY § 2-234, the Judge acted reasonably and did not abuse her discretion in dismissing the charge of violating Administrative Code § 20-101.<sup>2</sup> The Judge's finding that respondent "demonstrated good faith efforts" to comply with the rules and regulations pertaining to process servers is not inconsistent with the imposition of monetary penalties for those statutes he did violate.

Furthermore, a review of the Decision establishes that, although not explicitly stated, the Judge imposed a mitigated penalty for the violation of 6 RCNY 2-33b(a)(3) and the 42 counts of violating 6 RCNY 2-33b(a)(2)(i). Accordingly, it is determined that the Judge did not abuse her discretion as the penalties imposed are within the statutory range.<sup>3</sup> In addition, given the number of violations, the penalties imposed are not shocking to one's sense of fairness. See 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, 234 (1974); U.S. v. IIT Cont'l Baking Co., 420 U.S. 223 (1975).

Accordingly, the Decision is **affirmed**.

**SO ORDERED:**

**Date: October 22, 2014**



David L. Wolfe  
Appeals Judge

**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.**

<sup>2</sup> See Neil A. Frank and DCA v. Ralph Traub, CD5-85477, Appeal Determination (November 2, 2005).

<sup>3</sup> Administrative Code § 20-104(e)(1).

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

**Complainant,**

**- against -**

**PAUL NEIGER,**

**Respondent.**  
-----X

**DECISION AND ORDER**

**Record No.: LL005324048-ADJC**

**NOH No.: LL005324048**

**License No.: 0919386**

**Respondent's Address:  
300 East 75<sup>th</sup> Street, Apt. 12C  
New York, NY 10021<sup>1</sup>**

A hearing on the above-captioned matter was held on December 3, 2013.<sup>2</sup>

Appearances: For the Department: Alvin A. Liu, Esq.; Paul Neiger, respondent. S. Matthews, observing.

The Amended Notice of Hearing charged the Respondent with violating<sup>3</sup>:

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 2-233b(a)(3) by failing to enter into a contract with an independent third party for the maintenance and storage of GPS records (1 count)
4. 6 RCNY Section 2-233b(a)(2)(i) by failing to create a GPS record for every service and attempted service made (41 counts)
5. 6 RCNY Section 1-01.1(b) by falsely affirming in "Process Server Individual Electronic Device Certification," that Respondent "will carry and operate a mobile device that makes an electronic record of the date,

---

<sup>1</sup> See alternate address at end of Decision.

<sup>2</sup> The hearing record was held open until January 15, 2014 to allow the parties the opportunity to submit summations and case summaries by January 14, 2014. Upon application by the Department, the hearing record was further held open until January 28, 2014 for the same. Neither party complied with the Order; therefore both parties' late submissions will not be considered and the instant Decision and Order is based upon testimony and evidence offered on the December 3, 2013 hearing.

<sup>3</sup> The Notice of Hearing ("NOH") was amended to a second amended NOH.

time and location of where process is served or attempted to be served using Global Positioning System (GPS) or Assisted-Global Positioning (A-GPS) technology.” (1 count)

6. 6 RCNY Section 2-233a(b)(3) by failing to maintain separate fields in 233a records for the following information: name of Process Server, Process Server license number, city or borough, zip code, whether service was delivered, type of service effected, description of door area (7 counts)
7. 6 RCNY Section 2-233a (b)(3) by failing to record required information in 233a records including name of Process Server, Process Server license number, type of service effected, description of door area (22 counts)<sup>4</sup>
8. 6 RCNY Section 2-233 (b)(6) by failing to include the name of the entity or individual from whom the process served was received in Respondent’s logbook entries. (10 counts)
9. 6 RCNY Section 2-233(b)(3) by failing to report include the type of service effected in Respondent’s logbook entries (10 counts)
10. 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 on or about March 24, 1995 (license number 0919386).

On July 26, 2011, Respondent did not serve parties named Harvey and Carole Levine (“Levine”) by conspicuous service but affirmed in an affidavit of service that he had. On September 9, 2013, Respondent did not serve a party named Jaqueline Soto, but affirmed in an affidavit that he personally served a person of suitable age, William Soto, by delivering papers to him (see *Department’s exhibits 2,3*).

The Respondent entered into contract with an independent third party for the maintenance and storage of his GPS records during the period of on or about August 16, 2012 through August 31, 2013. The Respondent entered into a contract with Verizon in on or about August 16, 2012 and subsequently with Father and Son Administration Inc. for such services in early September, 2013 (see *Respondent’s exhibit B and C*).

---

<sup>4</sup> The Department withdrew 8 counts (see NOH p. 9, ¶ 7, “i-p”) for an updated total of 22 counts.

The Respondent failed to create forty-one (41) GPS records for service and attempted service made (*see Department's exhibit 6*).

The respondent did not falsely affirm in a "Process Server Individual Electronic Device Certification," that he "will carry and operate a mobile device that makes an electronic record of the date, time and location of where process is served or attempted to be served using Global Positioning System (GPS) or Assisted-Global Positioning (A-GPS) technology" (*see Respondent's exhibit 4,6,7*).

The Respondent failed to maintain separate files in his 233a records for the following seven (7) items of information: name of Process Server, Process Server license number, city or borough, zip code, whether service was delivered, type of service effected, description of door area during the period of October 1, 2012 through November 30, 2012 (*see Department's exhibit 8*).

On twenty-two (22) separate occasions, the Respondent failed to record required information such as name of Process Server, Process Server license number, type of service effected, description of door area in his 233a records (*see Department's exhibit 1*).

The Respondent failed to include in his logbook the name of the entity or individual from whom the process served was received in his logbook for 10 entries (*see Department's exhibit 6*), the Respondent failed to include in his logbook the type of service effected for 10 entries.

The Respondent did not fail to maintain the standards of integrity, honesty and fair dealing required of licensees.

**Opinion:**

**Charges 1-2: False Affidavits of Service Violations**

**Charge 1: 6 RCNY Section 2-234 (1 count) ("Levine")**

The Department established through documentary evidence that Respondent falsely affirmed in an affidavit of service that he served a Summons and Complaint by conspicuous service<sup>5</sup> (*see Department's exhibit,3*). Respondent admitted that he did not affix papers to the party's door but instead, served the papers via mail. His claim that he was not granted access by building personal does not set forth a meritorious defense to the violation. Accordingly, the charge shall be sustained.

**Charge 2: 6 RCNY Section 2-234 (1 count) ("Soto")**

The Department established through documentary evidence and the detailed testimony of William Soto that Respondent falsely affirmed in an affidavit that he had served a Summons and Complaint by substitute service to Jaqueline Soto by handing the Summons and Complaint to William Soto (*see*

---

<sup>5</sup> This type of service is also referred to in the industry as "nail and mail".

*Department's exhibit, 2*).<sup>6</sup> Respondent's claim that he served a "person" in the front yard of the premises, whom he believed to be Mr. Soto, is not supported by any credible, corroborating evidence and therefore fails to rebut the Department's more credible case. Accordingly, the charge shall be sustained.

### **Charges 3-5: GPS-Related Violations**

#### **Charge 3: 6 RCNY Section 2-233b(a)(3) (1 count)**

The Department established through documentary evidence that Respondent failed to enter into a contract with an independent third party for the maintenance and storage of GPS records from November 12, 2011 through on or about January 23, 2012. The Respondent testified in consistent and credible detail that he contracted with Verizon and acquired an A-GPS navigation feature and utilized such from on or about January 23, 2012 through on or about August 31, 2013. A review of the Verizon bill summary produced by the Respondent as well as a Department license renewal form, in which Respondent provided the contractor name (Verizon), address and account number, is sufficient to determine that Respondent commenced an A-GPS contract from at least January 2012 (*see Respondent's exhibit B, Department's exhibit 7*). Although the Department argued that the Verizon account does not comply with the subject rules, a detailed example of such compliance was not produced.

It is therefore determined that the aforementioned evidence and testimony establishes that Respondent contracted with Verizon for A-GPS service from on or about January 23, 2012 through on or about August 31, 2013. Respondent further produced documentation from Father and Son Administration Inc. (an independent GPS server system), starting in September 2013. It is noted and the Department does not dispute that Respondent currently contracts with Father and Son (*see Respondent's exhibit C, Department's exhibit 7*). Accordingly, the charge shall be sustained.

#### **Charge 4: 6 RCNY Section 2-233b(a)(2)(i) (41 counts)**

The Department established by a preponderance of the credible evidence that on forty-one (41) separate occasions, the Respondent failed to create a GPS record for service and attempted service made (*see Department's exhibits 5, 6, 8*). Although the Respondent credibly established that he utilized a GPS account during specific periods of time, his arguments that he is not computer savvy and that certain items of information are unnecessary, do not set forth meritorious defenses to the violation. The Respondent claimed that he substantially complied with the rule. Accordingly, the charge shall be sustained.

#### **Charge 5: 6 RCNY Section 1-01.1(b) (1 count)**

<sup>6</sup> The Respondent affirmed that he served Jaqueline Soto by delivering a summons and complaint to a "suitable age person", William Soto (*see Department's exhibit 2*).

<sup>7</sup> Respondent's electronic record does not contain all the requirements of 2-233b(a)(2)(i).

The Department failed to establish the violation by a preponderance of the credible evidence that the Respondent falsely affirmed in a "Process Server Individual Electronic Device Certification," that he "will carry and operate a mobile device that makes an electronic record of the date, time and location of where process is served or attempted to be served using Global Positioning System (GPS) or Assisted-Global Positioning (A-GPS) technology." As noted above, the credible evidence indicates that Respondent affirmed that he had entered into such contract (*see Department's exhibit 7, Respondent's exhibits B,C*). Respondent's failure to produce additional evidence of such pursuant to the Department's subpoena order (*see Department Subpoena, Department's exhibit 4*) does not conclusively prove that Respondent had not entered into a third party contract. Accordingly, the charge shall be **dismissed**.

### **Charges 6-7: Electronic Recordkeeping Violations**

**Charge 6: 6 RCNY Section 2-233a(b)(3) (7 counts)**

**Charge 7: 6 RCNY Section 2-233a (b)(3) (22 counts)**

The Department established the violations by a preponderance of the credible evidence (*see Department's exhibits 1, 8*). The Respondent admits that "description of doorway" is missing yet required. His argument that the subject rules are vague and that he is not familiar with their application does not set forth a valid defense, as a licensee is charged with knowledge of all rules and regulations which pertain to its business.<sup>8</sup> Accordingly, the charge shall be sustained.

### **Charge 8-9: Logbook Violations**

**Charge 8 6 RCNY Section 2-233(b)(6) (10 counts)**

**Charge 9 6 RCNY Section 2-233(b)(3) (10 counts)**

The Department established the violations by a preponderance of the credible evidence (*see Department's exhibit 6*).

Respondent claims that he complied with the subject rules as he understood them and that certain fields are unnecessary. Such claims fail to establish a meritorious defense to the violations. Accordingly, the charge shall be sustained.

### **Charge 10: Administrative Code Section 20-101**

The Department failed to establish by a preponderance of the credible evidence that respondent failed to maintain the standards of integrity, honesty and fair dealing required of licensees. After a careful review of the evidence presented, it is determined that Respondent's actions do not warrant revocation

---

<sup>8</sup> Respondent testified that he received a rule book in November, 2011 and took an exam in connection with the issuance/maintenance of his process server license.

of his license. The Respondent has operated as a process server for approximately 17 years and has demonstrated good faith efforts to comply with all subject rules and regulations (*see Department's exhibits 6, 8; Respondent's A-D*).

In light of the foregoing, the charge shall be **dismissed** and the respondent's license shall **not** be revoked.

**RECOMMENDED DECISION:**

The respondent is found **guilty** and is, hereby, **ordered** to pay to the Department a **TOTAL FINE** of **\$36,700.**, which is **immediately due and owing** as follows:

Charge 1: \$500 (1 count)

Charge 2: \$500 (1 count)

Charge 3: \$350 (1 count)

Charge 4: \$14,350 (\$350 per count for 41 counts)

Charge 5: DISMISSED

Charge 6: \$3,500 (\$500 per count, for 7 counts)

Charge 7: \$7,500 (\$500 per count, for 22 counts)

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

Charge 9: \$5,000 (\$500 per count, for 10 counts)

Charge 10: DISMISSED

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

**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. 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:** February 11, 2014



**Steven T. Kelly**  
**Deputy Director of Adjudication**

cc: Paul Neiger



Alvin Liu, Esq.



**Mail payment of fine in the enclosed envelope addressed to:**  
NYC Department of Consumer Affairs  
Collections Division  
42 Broadway, 9<sup>th</sup> 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](mailto:myappeal@dca.nyc.gov) and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11<sup>th</sup> 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](http://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, 11<sup>th</sup> Floor, New York, NY 10038. You must also mail a copy of your appeal to: DCA, Legal Division, 42 Broadway, 9<sup>th</sup> 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](http://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

**SECOND AMENDED  
NOTICE OF HEARING**

Complainant,

-against-

Violation # LL005324048

PAUL NEIGER  
300 E. 75TH STREET, APT. 12C  
NEW YORK, NY 10021

License # 0919386

Licensee/Respondent. (Process Server Individual)

-----x  
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 DECEMBER 3, 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, PAUL NEIGER, has been licensed by the Department as an individual process server under license number 0919386 since on or about March 24, 1995.
2. On or about February 14, 2012, Respondent submitted an application to renew his license.
3. As part of the renewal application, Respondent signed and submitted a "Process Server Individual Electronic Device Certification," dated January 23, 2012, stating that Respondent "will carry and operate a mobile device that makes an electronic record of the date, time, and location of where process is served or attempted to be served using Global Positioning System (GPS) or Assisted-Global Positioning (A-GPS) technology."
4. Respondent's application to renew his license was approved on or about February 14, 2012.
5. Respondent's current process server license will expire on February 28, 2014.
6. Respondent served or attempted to serve process at least 40 times during the period October 1, 2012 through November 30, 2012.

### Signed False Affidavits of Service

7. Respondent falsely affirmed in an affidavit of service that was filed in Sullivan County Supreme Court in the matter of *Hidden Ridge at Kusher's Country Club Home Owners Association, Inc. v. [REDACTED]*, Index No. [REDACTED], that he had served a Summons and Verified Complaint at the defendants' place of residence on July 26, 2011 at 4:00 p.m. by Conspicuous Service.
8. Respondent falsely affirmed in an affidavit of service that was filed in Bronx County Supreme Court in the matter of *Beatrice Rios v. [REDACTED]*

[REDACTED] that he had served a Summons and Complaint at 372 Bronx Park Avenue, Bronx, NY 10460 on September 9, 2013 at 10:33 a.m. by delivering the papers to “William Soto.”

**GPS-Related Violations**

9. Pursuant to 6 RCNY § 2-233b(a)(1)(i), every process server licensed by the Department must obtain a mobile device, such as a telephone or personal digital assistant, that utilizes software that “make[s] an electronic record of the location where, and the time and date when, the record is made as determined by Global Positioning System (“GPS”) technology or Assisted-Global Positioning System (“A-GPS”) technology, and labels the record with the network date and time maintained by the mobile device, the DCA license number of the process server, the DCA license number of the process serving agency that has distributed the process for service, the name of the plaintiff or petitioner, the name of the defendant or respondent, the docket number (if any), the name of the person to whom process is delivered and a unique file identifier of the process being served.
10. Pursuant to section 20-410 of the Code and 6 RCNY § 2-233b(a)(2)(i), on every occasion that a licensed process server attempts or effects service of process, the process server must ensure that the mobile device makes an electronic record of the GPS location, time and date of the attempted or effected service immediately after attempting or effecting service.
11. Pursuant to 6 RCNY § 2-233b(a)(3), a licensed process server must enter into a contract with an independent third party to provide GPS data storage and retrieval services.

12. Respondent failed to enter into a contract with an independent third party (the “Contractor”) by November 12, 2011 in accordance with 6 RCNY § 2-233b(a)(3).
13. For the period November 12, 2011 through November 30, 2012, Respondent failed to create any GPS records for his services and attempted services, including the following:
- a. 10/1/2012 @ 21:02 (Lopez);
  - b. 10/1/2012 @ 14:05 (Curtis);
  - c. 10/1/2012 @ 14:50 (Jones);
  - d. 10/1/2012 @ 15:40 (Williams);
  - e. 10/2/2012 @ 20:15 (Eveready);
  - f. 10/2/2012 @ 16:30 (Torres);
  - g. 10/3/2012 @ 22:20 (Lubecki);
  - h. 10/3/2012 @ 22:32 (Pointe) (2 entries);
  - i. 10/3/2012 @22:33 (Davidson) (2 entries);
  - j. 10/3/2012 @ 23:25 (Torres);
  - k. 10/3/2012 @ 23:30 (Stewart);
  - l. 10/3/2012 @ 17:40 (Pena);
  - m. 10/10/2012 @ 20:20 (Phillip);
  - n. 10/10/2012 @ 13:00 (Dorilas);
  - o. 10/17/2012 @ 13:00 (Lugo);
  - p. 10/22/2012 @ 15:00 (Torres);
  - q. 10/24/2012 @ 21:15 (Mcilnay);
  - r. 10/25/2012 @23:40 (Dombrowski);
  - s. 10/25/2012 @ 14:55 (Addison);
  - t. 10/30/2012 @ 19:25 (Quezada);
  - u. 11/5/2012 @ 21:20 (Ortiz);
  - v. 11/7/2012 @ 12:00 (Fruck);
  - w. 11/8/2012 @ 13:30 (Mora);
  - x. 11/13/2012 @ 22:29 (Manso);
  - y. 11/16/2012 @ 21:52 (Ramos) (2 entries);
  - z. 11/16/2012 @ 21:52 (Gomez) (2 entries);
  - aa. 11/16/2012 @ 21:53 (Roman);
  - bb. 11/16/2012 @ 21:53 (Rose) (2 entries);
  - cc. 11/16/2012 @ 21:57 (Hauser) (2 entries);
  - dd. 11/16/2012 @ 12:10 (Hauser) (2 entries);
  - ee. 11/16/2012 @ 14:20 (Zapata);
  - ff. 11/16/2012 @ 14:45 (Zapata) and
  - gg. 11/26/2012 @ 23:10 (Williams) (2 entries).
14. Respondent falsely affirmed on his “Process Server Individual Electronic Device Certification,” dated January 23, 2012, that he “will carry and operate a mobile device

that makes an electronic record of the date, time, and location of where process is served or attempted to be served using Global Positioning System (GPS) or Assisted-Global Positioning (A-GPS) technology.”

### **Electronic Recordkeeping Violations**

15. 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”).
16. 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.

17. During the period October 1, 2012 through November 30, 2012, Respondent failed to maintain separate fields in his 233a records for the following information:

- a. Name of Process Server;
- b. Process Server License number;
- c. City or borough;
- d. Zip code;
- e. Whether service was delivered;
- f. Type of service effected; and
- g. Description of door area.

18. Respondent failed to include the following information in his 233a records for the period October 1, 2012 through November 30, 2012:

- a. 10/1/2012 @ 09:02 Lopez (Process Server Name);
- b. 10/1/2012 @ 14:05 Curtis (Process Server Name);
- c. 10/1/2012 @ 14:50 Jones (Process Server Name);
- d. 10/1/2012 @ 15:40 Williams (Process Server Name);
- e. 10/2/2012 @ 20:15, Eveready (Process Server License number);
- f. 10/2/2012 @ 16:30, Torres (Process Server License number);
- g. 10/3/2012 @ 10:20, Lubecki (Process Server License number);
- h. 10/3/2012 @ 10:32, Pointe (Process Server License number);
- i. 10/3/2012 @ 10:32, Pointe (City);
- j. 10/3/2012 @ 10:33, Davidson (City and or/ Bourough);
- k. 10/3/2012 @ 10:33, Davidson (City and or/ Bourough);
- l. 10/3/2012 @ 11:25, Torres (City and or/ Bourough);
- m. 10/3/2012 @ 11:30, Stewart (Zip Code);
- n. 10/3/2012 @ 17:40 Pena (Zip Code);
- o. 10/10/2012 @ 20:20 Phillip (Zip Code);
- p. 10/10/2012 @ 13:00 Dorilas (Zip Code);
- q. 10/17/2012 @ 13:00, Lugo (If service was delivered);
- r. 10/22/2012 @ 15:00, Torres (If service was delivered);
- s. 10/24/2012 @ 09:15, Mcilnay (If service was delivered);
- t. 10/25/2012 @23:40, Dombrowski (If service was delivered);
- u. 10/25/2012 @ 14:55, Addison (Type of service effected);
- v. 10/30/2012 @ 19:25, Quezada (Type of service effected);
- w. 11/5/2012 @ 09:20, Ortiz (Type of service effected);
- x. 11/7/2012 @ 12:00, Fruck (Type of service effected);
- y. 11/8/2012 @ 13:30, Mora (Description of door area);

- z. 11/13/2012 @ 10:29, Manso (Description of door area);
- aa. 11/16/2012 @ 09:52, Ramos (Description of door area);
- bb. 11/16/2012 @ 09:52, Gomez (Description of door area);
- cc. 11/16/2012 @ 09:52, Gomez (Description of door area); and
- dd. 11/16/2012 @ 09:53, Roman (Description of door area).

**Logbook Violations**

19. Respondent failed to include in his logbook the name of the entity or individual from whom the process served was received for the following attempts or services:

- a. 10/1/2012 @ 09:02 (Lopez);
- b. 10/1/2012 @ 14:05 (Curtis);
- c. 10/1/2012 @ 14:50 (Jones);
- d. 10/1/2012 @ 15:40 (Williams);
- e. 10/2/2012 @ 20:15 (Eveready);
- f. 10/2/2012 @ 16:30 (Torres);
- g. 10/3/2012 @ 10:20 (Lubecki);
- h. 10/3/2012 @ 10:32 (Pointe);
- i. 10/3/2012 @ 10:33 (Davidson); and
- j. 10/3/2012 @ 11:25 (Torres).

20. Respondent failed to include in his logbook the type of service of effected for the following services:

- a. 10/1/2012 @ 09:02 (Lopez);
- b. 10/1/2012 @ 14:05 (Curtis);
- c. 10/1/2012 @ 14:50 (Jones);
- d. 10/1/2012 @ 15:40 (Williams);
- e. 10/2/2012 @ 20:15 (Eveready);
- f. 10/2/2012 @ 16:30 (Torres);
- g. 10/3/2012 @ 10:20 (Lubecki);
- h. 10/3/2012 @ 10:32 (Pointe);
- i. 10/3/2012 @ 10:33 (Davidson); and
- j. 10/3/2012 @ 11:25 (Torres).

## CHARGES

### Charges 1-2: Signed False Affidavit of Service

1. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in Sullivan County Supreme Court in the matter of *Hidden Ridge at Kusher's Country Club Home Owners Association, Inc. v. [REDACTED]*, that he had served a Summons and Verified Complaint at the defendants' place of residence on July 26, 2011 at 4:00 p.m. by Conspicuous Service. [1 count]
2. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in Bronx County Supreme Court in the matter of *Beatrice Rios v. [REDACTED]*, that he had served a Summons and Complaint at 372 Bronx Park Avenue, Bronx, NY 10460 on September 9, 2013 at 10:33 a.m. by delivering the papers to "William Soto." [1 count]

### Charges 3-5: GPS-Related Violations

3. Respondent violated 6 RCNY § 2-233b(a)(3) by failing to enter into a contract with an independent third party (the "Contractor") for the maintenance and storage of his GPS records during the period November 12, 2011 through August 31, 2013. [1 count]
4. Respondent violated 6 RCNY § 2-233b(a)(2)(i) by failing to create a GPS record for every service and attempted service that he made. [41 counts]
5. Respondent violated 6 RCNY § 1-01.1(b) by falsely affirming in his "Process Server Individual Electronic Device Certification," signed January 23, 2012, that Respondent "will carry and operate a mobile device that makes an electronic record of the date,

time, and location of where process is served or attempted to be served using Global Positioning System (GPS) or Assisted-Global Positioning (A-GPS) technology.” [1 count]

**Charges 6-7: Electronic Recordkeeping Violations**

6. Respondent violated 6 RCNY § 2-233a(b)(3) by failing to maintain separate fields in his 233a records for the following information during the period October 1, 2012 through November 30, 2012:

- a. Name of Process Server;
- b. Process Server License number;
- c. City or borough;
- d. Zip code;
- e. Whether service was delivered;
- f. Type of service effected; and
- g. Description of door area.

[7 counts]

7. Respondent violated 6 RCNY § 2-233a(b)(3) by failing to record the following information in his 233a records:

- a. 10/1/2012 @ 09:02 Lopez ( Process Server Name);
- b. 10/1/2012 @ 14:05 Curtis ( Process Server Name);
- c. 10/1/2012 @ 14:50 Jones ( Process Server Name);
- d. 10/1/2012 @ 15:40 Williams( Process Server Name);
- e. 10/2/2012 @ 20:15, Eveready (Process Server License number);
- f. 10/2/2012 @ 16:30, Torres (Process Server License number);
- g. 10/3/2012 @ 10:20, Lubecki (Process Server License number);
- h. 10/3/2012 @ 10:32, Pointe (Process Server License number);
- i. 10/3/2012 @ 10:32, Pointe (City and or/ Bourough);
- j. 10/3/2012 @ 10:33, Davidson (City and or/ Bourough);
- k. 10/3/2012 @ 10:33, Davidson (City and or/ Bourough);
- l. 10/3/2012 @ 11:25, Torres (City and or/ Bourough);
- m. 10/3/2012 @ 11:30, Stewart (Zip Code);
- n. 10/3/2012 @ 17:40 Pena (Zip Code);
- o. 10/10/2012 @ 20:20 Phillip (Zip Code);
- p. 10/10/2012 @ 13:00 Dorilas (Zip Code);
- q. 10/17/2012 @ 13:00, Lugo (If service was delivered);
- r. 10/22/2012 @ 15:00, Torres (If service was delivered);
- s. 10/24/2012 @ 09:15, Mcilnay (If service was delivered);
- t. 10/25/2012 @23:40, Dombrowski (If service was delivered);

- u. 10/25/2012 @ 14:55, Addison (Type of service effected);
- v. 10/30/2012 @ 19:25, Quezada (Type of service effected);
- w. 11/5/2012 @ 09:20, Ortiz (Type of service effected);
- x. 11/7/2012 @ 12:00, Fruck (Type of service effected);
- y. 11/8/2012 @ 13:30, Mora (Description of door area);
- z. 11/13/2012 @ 10:29, Manso (Description of door area);
- aa. 11/16/2012 @ 09:52, Ramos (Description of door area);
- bb. 11/16/2012 @ 09:52, Gomez (Description of door area);
- cc. 11/16/2012 @ 09:52, Gomez (Description of door area); and
- dd. 11/16/2012 @ 09:53, Roman (Description of door area).

[30 counts]

#### **Charges 8-9: Logbook Violations**

8. Respondent violated 6 RCNY § 2-233(b)(6) by failing to include the name of the entity or individual from whom the process served was received in his logbook entries. [10 counts]
9. Respondent violated 6 RCNY § 2-233(b)(3) by failing to include the type of service of effected in his logbook entries. [10 counts]

#### **LACK OF FITNESS**

10. 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) suspending or 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: November 25, 2013  
New York, New York

For: **Jonathan Mintz**  
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](mailto:adjournmentrequests@dca.nyc.gov) (preferred method)** or by mail to DCA Adjudication Tribunal, 66 John Street, 11<sup>th</sup> 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](mailto:process_server@dca.nyc.gov) or by mail to David Cho, DCA Legal Division, 42 Broadway, 9<sup>th</sup> 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](mailto: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](http://www.nyc.gov/consumers) or call 311.