

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

-----X
DEPARTMENT OF CONSUMER AFFAIRS

CONSENT ORDER

Complainant,

-against-

MANUEL PAGAN

Licensee/Respondent.
-----X

Violation No. LL005133492

License No. 1073712

(Process Server Individual)

1. Manuel Pagan ("Respondent") acknowledges that the New York City Department of Consumer Affairs ("DCA" or "the Department") duly served Respondent with a Notice of Hearing charging Respondent with violations of the following rule(s): 6 RCNY §§ 2-233(a)(2)(i), 2-233(a)(2)(v), 2-233(a)(2)(vi), 2-233(a)(5), 2-233(a)(6), 2-233(b)(2), 2-233(b)(4), 2-233(b)(5), 2-233(b)(6).
2. Respondent enters into this Consent Order ("CO") with the Department to resolve these charges, and waives any right to a hearing, appeal of or any challenge of the facts alleged by the above-referenced violation under Section 20-104 of the New York City Administrative Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806, in any forum.
3. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, Respondent shall make no representations to the contrary, and nothing in this Consent Order shall be construed to limit in any way the authority of the Department to exercise its regulatory or enforcement powers under Sections 20-104 or 20-409 of the Code.
4. This Consent Order shall in no respect reduce any of Respondent's obligations under any other Consent Order Respondent has entered into with the Department.

DEFINITIONS

5. A "contest to service of process" means a challenge to the service of process effectuated by a process server alleged in an answer, motion, or other pleading submitted in a judicial, administrative or other legal proceeding on the ground that the service did not comply with the requirements of New York State or other applicable law, including a hearing commonly known as a "traverse hearing," regardless of whether such challenge is waived, settled by stipulation or decided by court order after a hearing.
6. "CPLR" means the New York Civil Practice Law and Rules.
7. "Logbook" means the bound and paginated volume in which a process server maintains records of all attempted and effected services of process, as prescribed by 6 RCNY § 2-233.
8. "Process" means any one of the following: (a) a summons; (b) a notice of petition; (c) an order to show cause; (d) a subpoena; (e) a notice; (f) a citation; or (g) any legal paper issued under the laws of the State of New York directing an appearance or response to a legal action, legal proceeding or administrative proceeding. However, if under the laws of the State of New York the mailing of such

a paper listed above is sufficient to effect service, it shall not be considered process by the Department.

9. Other terms are defined in 6 RCNY § 2-231.

INJUNCTIVE RELIEF

Duty to Comply With Law

10. Respondent shall strictly and promptly comply with all laws, rules, regulations and requirements of the federal, state and municipal authorities pertaining to process servers and the service of process.
11. Respondent shall not serve process in New York City for an unlicensed process serving agency.

Duties When Effectuating Service on a Natural Person

12. Respondent shall make reasonable efforts to confirm whether the address at which service is attempted is the actual place of business, dwelling place or usual place of abode of the person to be served. Respondent shall make and maintain a written or electronic record of those efforts and the results of those efforts, which shall include, but not be limited to, at least one of the following: inquiring of neighbors and other persons present at those locations, checking public and commercial databases, and requesting information from the owner of the premises, if different from the person to be served.
13. Prior to performing service under CPLR § 308 by affixing process to the door of an actual dwelling place or usual place of abode within the state of the person to be served, sometimes known as “conspicuous” or “nail and mail” service, Respondent shall make reasonable efforts to ascertain if the intended recipient of process is employed and the location of the intended recipient’s place of employment. If the intended recipient is employed, Respondent shall attempt to effectuate service by delivering the process personally to the intended recipient at the intended recipient’s place of employment.

Duty to Maintain Proper Records

14. Respondent shall maintain complete and accurate records of all services and attempted services made by Respondent in and outside of New York City. Such records must be maintained in accordance with the requirements of Section 89-cc of the New York General Business Law and 6 RCNY §§ 2-233, 2-233a, 2-233b, 2-235.

Logbooks

15. Respondent shall maintain complete and accurate records of all services and attempted services made by Respondent in and outside of New York City in a bound and paginated paper logbook. Such records shall be legible, meaning easily read and discernible in all of its details, and in no way obscured.
16. Respondent shall (a) record separate entries in his or her logbook for each attempted and effected service of process; (b) record all entries contemporaneously; (c) record entries in a single logbook until it is complete; and (d) record all entries in chronological order, which means that each entry must be entered sequentially according to the time and date of the activity recorded, without leaving any blank spaces between each entry that would allow for the insertion of any additional notation.

17. Respondent shall ensure that each page in Respondent's logbook, at the time of purchase, is sequentially numbered starting with the number "1" or contains an indelible label stating the number of pages the volume originally contained.
18. Corrections shall be made only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry. All other methods of correction, including but not limited to, erasing, opaquing, obliterating, or redacting, are prohibited.
19. Respondent shall maintain the following information in his or her logbook:
 - a. the name and license number of the process serving agency from whom the process was received, or, if not received from a process serving agency, of such other law firm, government agency, person or organization from whom the process was received;
 - b. the title of the action or a reasonable abbreviation thereof;
 - c. the name of the individual, company or organization served;
 - d. the date and approximate time of service or attempted service;
 - e. the address of service or attempted service;
 - f. the nature of the papers;
 - g. the court in which the action has been commenced;
 - h. the index number of the action;
 - i. a description of the individual served (including gender, height, weight, age, skin color, hair color, and any other identifying features);
 - j. the type of service effected (personal, substituted, conspicuous, or corporate);
 - k. for service of process effected by conspicuous service: (i) the color and composition of hallway walls adjacent to the door to which process was affixed, (ii) the color and composition of the hallway floor or doorstep, and (iii) the location of the premises in relation to stairs, elevators or entranceways;
 - l. for service of process made pursuant to RPAPL § 735(1) using registered or certified mail, the postal receipt number of the registered or certified mail; and
 - m. if an affidavit of service is filed with the court by the process server, the date of such filing.

Electronic Records and GPS

20. Respondent shall maintain complete and accurate records of all services and attempted services made by Respondent in and outside of New York City in an electronic format that is resistant to tampering, as prescribed by 6 RCNY § 2-233a(a) ("233a records").
21. Respondent shall maintain 233a records by using at least one of the following methods:

Method 1: Scanning logbooks into image files (e.g., .PDF or .TIFF) and backing up the files to a portable media device in accordance with 6 RCNY § 2-233a(a)(1).

Method 2: Inputting information into the DCA-created Excel spreadsheet (available on the DCA website) and backing up the file to portable media devices in accordance with 6 RCNY § 2-233a(b)(1).

Method 3: Uploading the required data to a third party service provider in accordance with 6 RCNY § 2-233a(b)(1).

22. If Respondent chooses to maintain 233a records by using either Method 2 or Method 3, Respondent shall ensure that the following information is contained in each entry:
- a. the name of the individual process server to whom service was assigned, entered in two fields (last name, first name);
 - b. the license number of the individual process server to whom service was assigned, entered as a seven digit number, where the first number is zero if the process server's license number is less than seven digits;
 - c. the title of the action or proceeding, if any;
 - d. the name of the individual, company or organization served, if known;
 - e. the date that service was effected, entered as MM/DD/YYYY;
 - f. the time that service was effected, entered as military time;
 - g. the address where service was effected, 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;
 - h. the nature of the papers served;
 - i. the court in which the action was commenced, 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;
 - j. the full index number, 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;
 - k. if service was effected pursuant to subdivisions (1) through (3) of CPLR § 308, a description of the person served, consisting of six fields, including sex, hair color, approximate age, height, weight, and any other identifying features provided by the process server;
 - l. whether service was delivered, as indicated by a Y or N;
 - m. the type of service effected, entered as a P for personal service, an S for substitute service, a C for conspicuous service, or a CO for corporate service; and
 - n. 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.
23. In every instance in which Respondent attempts or effects service of process in and outside of New York City, Respondent shall, immediately after attempting or effecting service, create an electronic record of the location, time and date of the attempted or effected service, as determined by Global Positioning System ("GPS") technology or, in the event that no GPS signal is available at the time of attempted or effected service of process, as determined by triangulated cell tower signals. Respondent shall ensure that the information contained in such records is accurate and complete.
24. Except when Respondent cannot obtain a GPS or cellular signal, or attempts or effects service of process at multiple apartments or offices within the same building, in every instance in which Respondent attempts or effects service of process in or outside of New York City, Respondent shall ensure that Respondent's GPS record include a photograph of the outside of the building where Respondent attempted or effected service of process. The photograph must include the front entrance door to the building and, if possible, the number of the building. If Respondent attempts or effects service of process at multiple apartments or offices within the same building, only the GPS record corresponding to the last attempted or effected service of process within the building must include a photograph of the outside of the building. Where Respondent is unable to obtain a GPS or cellular

signal in the direct vicinity of the building where Respondent served or attempted to serve process, Respondent shall, as soon as a GPS or cellular signal becomes available: (a) take a photograph of the outside of the nearest building in accordance with the instructions above; and (b) input in the GPS record the address of the photographed building or the nearest cross-section.

25. Prior to signing this Consent Order, Respondent shall enter into a contract with an independent third party (“the Contractor”) pursuant to which the Contractor will provide services and perform functions described below that enable Respondent to meet the data storage and retrieval requirements set forth below, provided, however, that if Respondent performs process serving activities distributed to him or her by a licensed process serving agency, the process server may utilize the device and facilities for the electronic record of service that the process serving agency obtains under a contract with a Contractor. Respondent shall ensure that the Contractor store each electronic record of service according to the following terms:
- a. the original digital file must be maintained by the Contractor unaltered for a period of not less than seven years;
 - b. neither Respondent nor the process serving agency will be permitted to alter the original data, but may obtain copies of the original data file;
 - c. the Contractor must maintain the records in a manner that will permit retrieval by 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;
 - d. the Contractor must maintain the records in a manner that will ensure that their integrity is adequate for admissibility in a judicial proceeding under the rules of evidence applicable in the state of New York;
 - e. the Contractor must produce upon request by the Department, and to any other party according to an appropriate order or subpoena, a copy of the electronic records, or any reasonably described part involved, certified to be true and accurate;
 - f. the Contractor must provide to the Department upon request a street map in hard copy format and access to an interactive electronic street map that display the locations where the digital records were recorded with a date and time provided by GPS or cellular date and time; and
 - g. the Contractor must provide to the Department upon request, and to any other party according to an appropriate order or subpoena, such software as may be necessary to display the electronic records in an MS Excel spreadsheet, 2003 version or later, with the following fields and in the following data formats:
 - a unique file identifier of the process being served;
 - the process server’s license number;
 - the process serving agency’s license number;
 - plaintiff or petitioner, which must be specified by the last name of the first plaintiff, or, if not a natural person, the name of the entity, except that the field may contain the name of every plaintiff or petitioner in the case, provided that the entire record is searchable by a wildcard search of the name of any plaintiff or petitioner;
 - defendant or respondent, which must be specified by the last name of the first defendant, or, if not a natural person, the name of the entity, except that the field may contain the name of every defendant or respondent in the case, provided that the entire record is searchable by a wildcard search of the name of any defendant or respondent;
 - the full docket/index number, which must be entered with all information necessary to identify the case, such as XXXXXX/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;

28. Any affidavit signed by Respondent that has the capacity, tendency or effect of misleading a reader of the affidavit shall be considered intentional if there are repeated similar acts because of Respondent's or Respondent's agent's use of canned or form language. It shall be the Respondent's burden to show that he or she did not intend the affidavit to be misleading.
29. Respondent shall not use fictitious names in his or her affidavits of service to refer to defendants or persons, except when Respondent is unable to obtain the name of the person. Where Respondent is unable to obtain the first name of the person, Respondent shall use either "John" (for a male) or "Jane" (for a female) to represent the first name of the person. When Respondent is unable to obtain the last name of the person, Respondent shall use "Doe" to represent the last name of the person.

Duty to Report Contests to Service of Process

30. Whenever Respondent receives any type of notice, including an oral communication, that a court has scheduled a hearing concerning a contest to service of process by Respondent (known as a "traverse hearing"), Respondent shall, within ten (10) days of receiving such notice, fill out and submit to the Department the "Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order," available on the DCA Process Server Website (nyc.gov/processserver). Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.
31. Each traverse report form notifying the Department of a scheduled traverse hearing shall include at least the following information:
 - a. The date of the hearing;
 - b. The name of the court, county, and judge before whom the hearing is scheduled;
 - c. The index number of the action or proceeding;
 - d. The name of the petitioner or plaintiff;
 - e. The name of the respondent or defendant;
 - f. The process server's name;
 - g. The process server's license number; and
 - h. The name of the process serving agency on behalf of whom service was effectuated.
32. Respondent shall learn the final result of each scheduled traverse hearing that concerns service of process by Respondent, including any judicial order, cancellation of the hearing or settlement resolving the challenge to service of process. Respondent shall also obtain a copy of the court's order or decision on any traverse hearings that actually occur, including any stipulation or court file jacket setting forth the final result of the matter. "Decision reserved" is not a final result.
33. Within ten (10) days of learning the final result of a traverse hearing, Respondent shall notify the Department of the result by submitting a traverse report to the Department using the traverse report form titled "Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order," available on the DCA Process Server Website. Respondent shall also append a copy of the court's order or decision on any traverse hearings that actually occur to Respondent's traverse report, including any court file jacket setting forth the final result of the matter. Respondent shall submit the completed traverse report form and court decision by e-mail to **TraverseReports@dca.nyc.gov**.
34. If Respondent fails to learn the final result of the traverse hearing and obtain a copy of the court's decision within thirty (30) days of the scheduled hearing date, Respondent shall send a written communication to the plaintiff/petitioner or the plaintiff/petitioner's attorney to obtain the final result and a copy of the court's decision. If Respondent fails to learn the final result and obtain a copy of the court's decision within sixty (60) days of the scheduled hearing date, Respondent shall search the court file for such information. If Respondent fails to learn the final result and obtain a copy of the

court's decision within ninety (90) days of the scheduled hearing date, Respondent shall search the court file again for such information. Within 100 days of the scheduled hearing date, Respondent must submit to the Department, by e-mail to TraverseReports@dca.nyc.gov, either (a) the final result of the hearing and a copy of the court's decision; or (b) a written explanation of why Respondent has been unable, so far, to learn the final result of the hearing or obtain a copy of the court's decision.

35. Respondent shall continue to search the court file every thirty (30) days until it learns the final result of the traverse hearing and is able to obtain a copy of the court's decision. Within ten (10) days of learning the final result of a traverse hearing, Respondent shall notify the Department of the result by submitting a traverse report to the Department using the traverse report form titled "Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order," available on the DCA Process Server Website.
36. Respondent and the process serving agency for whom he or she serves process must each submit a completed Traverse Report Form upon learning of the scheduling of a traverse hearing and learning the result of a traverse hearing. Process serving agencies may not submit traverse reports on Respondent's behalf.
37. Respondent shall maintain, in one Microsoft Excel file, an electronic record of every traverse hearing scheduled concerning service of process by Respondent. This shall be done by using the Excel spreadsheet titled "Record of Scheduled Traverse Hearings," available on the DCA Process Server Website.

Training and Exams

38. Respondent shall attend any future training about the laws and regulations that relate to and govern the service of process in the City of New York upon notice from the Department that it has determined that there is available within the City of New York one or more programs that provide such training in a satisfactory manner. Respondent's failure to provide proof of having attended such training, after notice has been issued that such training is available, shall be sufficient grounds for the revocation of his or her license or denial of his or her license renewal application until such time as this requirement is met

Additional Duties

39. Respondent shall provide to the Department a reply to all consumer complaints to the Department relating to Respondent's process serving activity within ten (10) business days of receiving the complaint and shall respond to any subsequent communications from the Department concerning the complaint within five (5) business days. Respondent shall also notify the Department within ten (10) days of receipt of any (i) complaints, actions or proceedings filed against Respondent by consumers in any forum, including state and federal courts, the Better Business Bureau, the Office of the Attorney General of the State of New York, or any other agency or association, (ii) actions, proceedings or investigations by any government agency against Respondent; and (iii) results of any actions, proceedings or investigations against Respondent that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea, or a conviction.

40. Respondent shall notify the Department when his or her address, telephone number or e-mail address changes, in writing, within ten (10) days of such change. Respondent shall provide such notification in writing to the Department's Licensing Division at 42 Broadway, 1st Floor, New York, NY 10004.
41. Respondent will respond within the time required to any correspondence from the Department requesting further information on the status or disposition of any criminal complaints or arrests of Respondent. Respondent's failure to respond within the time required to any correspondence from the Department regarding the status or disposition of any criminal complaint or arrest of Respondent will be considered a breach of this Agreement and shall be sufficient grounds for the suspension of Respondent's license, upon proof of such failure and an opportunity to be heard.
42. Upon request from the Department, Respondent shall produce, within fourteen (14) days, any records that it is required to maintain pursuant to this Consent Order, the Rules of the City of New York or the New York City Administrative Code.

FINES

43. Respondent shall pay a fine of \$5,000.00 in settlement of all the violations to date in the above-referenced matter. Respondent shall make a payment of \$1,667.00 by bank cashier's check or money order payable to "NYC Department of Consumer Affairs upon execution of this Consent Order and shall pay the balance plus 1.5% monthly interest over six (6) months in accordance with a payment plan to be signed by Respondent (the "Payment Plan"). The terms of the Payment Plan shall be incorporated into this Consent Order.

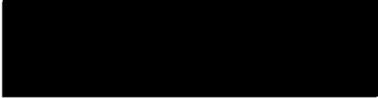
BREACH OF THIS AGREEMENT

44. A finding, after notice and a hearing, that Respondent has committed a material breach of the terms of this Agreement shall be sufficient grounds for the revocation of Respondent's license. This provision shall not apply to the Department's consideration of any license or renewal applications.
45. Specific violations of this Agreement shall constitute independent and separate violations of any applicable law, regulation or rule.

Agreed to by Respondent

Accepted for the NYC Department of Consumer Affairs

By: Manuel Pagan

By: 

 3-9-16
Signature Date





THE CITY OF NEW YORK DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF HEARING [X] LL [] WH [] IP [] OL [] GL [] HC [] WO [] DATE MAILED: / / 1 OF

THE BELOW ENTITY IS HEREBY CHARGED WITH THE FOLLOWING VIOLATION (S) OF:

- [] TITLE 20 of the N.Y.C. ADMINISTRATIVE CODE (see column 1, 2, & 3)
[] TITLE 1 of the NY CODES, RULES and REGULATIONS (see column 4)
[] TITLE 6 of the RULES of the CITY OF NEW YORK (see column 4)
[] NEW YORK GENERAL BUSINESS LAW (see column 3)
[] NY AGRICULTURE & MARKETS LAW ARTICLE 16 (see column 3)
[] Other (see column 3)

Table with columns: 1 CH, 2 SUBCH, 3 SECTION, 4 REG./RULE NO., NATURE OF VIOLATION, COUNTS. Includes handwritten note '(See attached)' and a TOTAL row.

I/WE AFFIRM UNDER PENALTY OF PERJURY THAT I/WE OBSERVED THE ABOVE AND, ON THE DATE AND TIME LISTED ABOVE, SERVED UPON THE PERSON LISTED BELOW A TRUE COPY OF THIS DOCUMENT

Vendor information fields: CAMIS ID # 40815681, TAX ID #, LICENSE NO. 1073712, START TIME, END/SERVED TIME, CERT. # 5133492, NAME (INDIVIDUAL, PARTNERSHIP, CORPORATION) Manuel Palma, D.B.A., TELEPHONE NO., INSPECTION DATE, BUS. CODE K09, ACTION (CHECK ONE) [] PATROL (PTL), [] REQUEST (REQ), [] SUSPENSION (SUS), [] REVOCATION (REV), [] CONSENT JUDGEMENT ORDER (CJO), [] POSTING ORDER (POO), [] POSTING ORDER FOLLOW-UP (POF)

INSPECTION RESULT fields: [] VIOLATION ISSUED, [] LICENSED, [] NO EVIDENCE OF ACTIVITY, [] RESULT PENDING, [] REINSPECTION, [] BUSINESS PADLOCKED, [] OBT. EVIDENCE OF ACTIVITY, [] NO VIOLATION, [] OOB, [] NO LICENSE REQUIRED, [] WARNING, [] CONFISCATION, [] W & M ORDER

YOU ARE HEREBY ORDERED TO APPEAR FOR A HEARING ON THE ABOVE CHARGES ON THIS DATE AND TIME AT EITHER [X] THE ADJUDICATION DIVISION, 66 JOHN STREET, 11TH FLOOR, NEW YORK, NY 10038, OR [] LITIGATION & MEDIATION DIVISION, 42 BROADWAY, 9TH FLOOR, NEW YORK, NY 10004. August 20th, 2009 AT 9:30 A.M. OR P.M.

VENDOR'S NAME (PRINT), VENDOR'S SIGNATURE, POSITION, DATE, PRE-HEARING DISPOSITION: [] PAID, [] PAR, [] DNP, SETTLEMENT OFFICER, RECIDIVIST [] Y, [] N, PLEADING LETTER, DATE SENT, BY, DATE SETTLED, FINE, \$

WHITE - ADJUDICATION YELLOW - VENDOR PINK - ENFORCEMENT

PLEASE BRING THIS NOTICE WITH YOU

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

-----X
DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

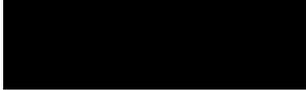
-against-

Manuel Pagan,

Licensee/Respondent.

NOTICE OF HEARING

LL #5133492

Manuel Pagan


**License #1073712
(Process Server Individual)**

Mail to:


-----X
TO THE ABOVE NAMED LICENSEE:

In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Section 2203(e) of Chapter 64 of the Charter of the City of New York and Section 20-104 of the Administrative Code of the City of New York ("the Code"), **YOU ARE HEREBY ORDERED TO APPEAR FOR A HEARING AT THE ADJUDICATION DIVISION OF THE DEPARTMENT OF CONSUMER AFFAIRS, 11TH FLOOR, 66 JOHN STREET, BOROUGH OF MANHATTAN, NEW YORK, NEW YORK 10038 ON AUGUST 20, 2009 AT 9:30AM** to: have charges against you heard concerning violations of the Code, found in Chapter 1 of the Code, beginning at Section 20-101 (known as the License Enforcement Law), Chapter 2 of the Code, Subchapter 23, beginning at Section 20-403 (known as the Process Servers Law), Title 6 of the Rules of the City of New York ("6 RCNY"), beginning at Section 1-01 (known as the License Enforcement Rules), Title 6 of the Rules of the City of New York, Chapter 2, Subchapter W, beginning at Section 2-231 (known as the Process Servers Rules);

AND SHOW CAUSE why your license to operate as an Individual Process Server should not be suspended or revoked, why monetary penalties should not be imposed on you and why you should not be prohibited, based on lack of fitness, from holding any license issued by the Department on the grounds specified herein.

Complainant, The City of New York Department of Consumer Affairs, by its attorney, [REDACTED] as and for its complaint upon information and belief alleges the following:

LICENSE STATUS

1. Respondent, Manual Pagan, has held an Individual Process Server license issued by the Department since on or about 2001.
2. A process server license is renewable in two-year intervals.
3. Respondent's last process server license expired on February 28, 2008.
4. Respondent's application for a renewal license, to commence on February 28, 2008 and expire on February 28, 2010, has been held in pending status until the conclusion of the Department's investigation of her process server business practices.
5. The Department has issued to Respondent temporary permission to operate until August 30, 2009.

FACTS

Respondent Served with Subpoena

6. On or about February 29, 2008, the Department issued to Respondent a subpoena duces tecum.

7. The subpoena called for Respondent's appearance and for certain of Respondent's books and records, including production of process serving logbooks for the period between February 28, 2006 and February 29, 2008 that Respondent is required to maintain pursuant to 6 RCNY 2-233.

FAILURE TO COMPLY WITH RECORD-KEEPING REQUIREMENTS

Failure to Keep Records Required To Be Kept Under §2-233 and or General Business Law § 89-cc for the Requisite Period of Time

8. In response to the subpoena duces tecum, Respondent produced, in pertinent part, eight (8) logbooks containing entries for process he served between December 1, 2005 and October 18, 2007.
9. Respondent's logbooks covered the following time period:
 - a. December 1, 2005 to December 19, 2005 ("logbook one (1)");
 - b. January 27, 2006 to February 27, 2006 ("logbook two (2)");
 - c. April 12, 2006 to April 20, 2006 ("logbook three (3)");
 - d. September 7, 2006 to September 25, 2006 ("logbook four (4)");
 - e. January 12, 2007 to January 29, 2007 ("logbook five (5)");
 - f. February 5, 2007 to February 15, 2007 ("logbook six (6)");
 - g. April 2, 2007 to April 13, 2007 ("logbook seven (7)"); and
 - h. September 29, 2007 to October 18, 2007 ("logbook eight (8)").

10. Records for the following extended periods of time were missing without explanation:
 - a. April 21, 2006 to September 6, 2006;
 - b. April 14, 2007 to September 28, 2007; and
 - c. October 19, 2007 to February 29, 2008.

Failure to Keep Records in Chronological Order

11. Respondent failed to record entries in the logbooks in chronological order leaving blank spaces between entries.
12. Blank spaces and pages are not permitted as Respondent cannot show that entries in the logbook were entered chronologically.
13. Respondent's failure to record service in chronological order include, but are not limited to, the following entries in his logs:
 - a. Page 000488 of logbook seven (7); and
 - b. Page 000494 of logbook seven (7).

Unlawful Corrections in Records of Process Served

14. Respondent failed to make corrections in his logbooks by drawing a straight line through the original entry and instead obscures the entry he seeks to change.
15. Respondent's failures to make proper corrections, include, but are not limited to, the following entries in his logs:

- a. April 3, 2007 at 11:12am, page 000458 of logbook seven (7);
- b. April 4, 2007 at 7:41am, page 000460 of logbook seven (7); and
- c. April 4, 2007 at 9:16am, page 000462 of logbook seven (7).

Failure to Record the Title of the Action

16. Respondent failed to regularly record in the logbooks the title of the action for service of process effectuated by him.
17. Respondent failed to record the title of the action throughout logbook seven (7).
18. Respondent's failures to record the title of the action include, but are not limited to, the following entries in his logs:
 - a. April 4, 2007 at 10:34am, page 000465 of logbook seven (7);
 - b. April 4, 2007 at 10:59am, page 000466 of logbook seven (7); and
 - c. April 4, 2007 at 12:39am, page 000469 of logbook seven (7).

Failure to Record of the Nature of the Papers Served

19. Respondent failed to set forth in the logbooks the nature of the papers Respondent served.
20. Respondent's failure to set forth the nature of the papers served is evident in his consistent use of improper abbreviations throughout the logbook covering the period between April 2, 2007 and April 13, 2007.
21. Respondent's failures to record the nature of the papers served include, but are not limited to, the following entries in his logs:

- a. April 5 at 9:17am, page 000471 of logbook seven (7);
- b. April 5 at 9:31am, page 000472 of logbook seven (7); and
- c. April 5 at 11:12am, page 000474 of logbook seven (7).

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

22. Respondent failed to set forth in the logbooks the name of the court in which the action was commenced.
23. Respondent's failures to record the court in which the action was commenced include, but not limited to, the following entries in his logs:
 - a. April 6 at 9:02am, page 000475 of logbook seven (7);
 - b. April 6 at 9:15am, page 000475 of logbook seven (7); and
 - c. April 6 at 10:15am, page 000478 of logbook seven (7).

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

24. Respondent failed to record in his logbooks the date on which proof of service was filed with a court in those instances in which an affidavit of services was required to be filed by law.
25. Respondent's failures to record the date on which proof of service was filed with a court include, but are not limited to, the following entries in his logs:
 - a. April 10 at 12:13pm, page 000484 of logbook seven (7).

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

26. Respondent failed to record in his logbooks the name of the person or firm from which Respondent received the process for service.
27. Respondent's failures to record the name of the person or firm from which process was received include, but are not limited to, the following entries in his logs:
 - a. April 4 at 9:06am, page 000461 of logbook seven (7);
 - b. April 4 at 9:19am, page 000462 of logbook seven (7); and
 - c. April 4 at 9:41am, page 000463 of logbook seven (7).

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

28. Under section 735 (1) of the RPAPL, where service of process is by delivery to a person of suitable age and discretion or by conspicuous place service, service is not complete unless the legal papers are also delivered no later than a day later by regular and registered or certified mail.
29. The receipt numbers must be recorded in the process server's log pursuant to 6 RCNY 2-233(b) (4).
30. Respondent failed to record in his logbooks the postal receipt number of the registered or certified mail when he alleged service of the Notice of Petition and Petition by delivery to a person of suitable age and discretion or by conspicuous place service.

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

- a. April 10 at 12:13pm, page 000484 of logbook seven (7).

CHARGES

FAILURE TO COMPLY WITH RECORD-KEEPING REQUIREMENTS

Failure To Keep Records Required To Be Kept Under §2-233 and or General Business Law § 89-cc for the Requisite Period of Time

Counts 1 - 3

1. The allegations of paragraphs 8 - 10 above are incorporated by reference as though fully realleged herein.
2. Respondent failed to keep records required to be kept under §2-233 (a) for two years from the date of service in violation of the Rules of City of New York, Title 6, § 2-233 (a) (6).

Failure to Keep Records in Chronological Order

Counts 4 - 6

3. The allegations of paragraphs 11 - 13 above are incorporated by reference as though fully realleged herein.
4. Respondent failed keep records in chronological order within the meaning of and in violation of the Rules of City of New York, Title 6, § 2-233 (b) (5).

Unlawful Corrections in Records of Process Served

Counts 7 - 16

5. The allegations of paragraphs 14 - 15 above are incorporated by reference as though fully realleged herein.

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

Failure to Record the Title Of The Action

Counts 17 - 26

7. The allegations of paragraphs 16 - 18 above are incorporated by reference as though fully realleged herein.

8. Respondent failed to maintain records showing the title of the action in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (i).

Failure to Record of the Nature of the Papers Served

Counts 27 - 36

9. The allegations of paragraphs 19 – 21 above are incorporated by reference as though fully realleged herein.

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

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

Counts 37 - 46

11. The allegations of paragraphs 22 - 23 above are incorporated by reference as though fully realleged herein.
12. Respondent failed to maintain records showing the court in which the action was commenced in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (vi).

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

Counts 47

13. The allegations of paragraphs 24 - 25 above are incorporated by reference as though fully realleged herein.
14. Respondent failed to maintain records showing the dates that affidavits of service were filed with a court, in violation of the Rules of City of New York, Title 6, § 2-233 (a) (5).

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

Counts 48 - 57

15. The allegations of paragraphs 26 - 27 above are incorporated by reference as though fully realleged herein.
16. Respondent failed to maintain records of the person or law firm from whom he received the process to be served, in violation of the Rules of City of New York, Title 6, § 2-233 (b) (2).

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

Counts 58

17. The allegations of paragraphs 28 - 31 above are incorporated by reference as though fully realleged herein.
18. Respondent failed to include the postal receipt number of registered or certified mail after service pursuant to RPAPL §735 (1), in violation of the Rules of City of New York, Title 6, § 2-233 (b) (4).

WHEREFORE, the Department demands that an order issue: 1) finding Respondent unfit to hold future Department licenses for a period of no less than two (2) years; 2) imposing maximum fines on Respondent for each and every charge set forth herein; and 3) granting such other relief as is deemed just and proper.

YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL

IF, AFTER THE HEARING ON THESE CHARGES, YOU ARE FOUND TO HAVE VIOLATED THE LICENSING LAWS OR REGULATIONS AS CHARGED HEREINABOVE, YOU MAY BE SUBJECT TO A FINE, YOUR LICENSE MAY BE REVOKED, AND/OR OTHER PENALTIES MAY BE IMPOSED, AS AUTHORIZED BY LAW.

IF YOU DO NOT APPEAR FOR THE HEARING AS ORDERED, A DECISION MAY BE RENDERED ON DEFAULT, YOU MAY BE SUBJECT TO A FINE AND LICENSE REVOCATION, AND AN ADDITIONAL PENALTY FOR FAILING TO APPEAR MAY BE IMPOSED.

THE DATE OF THIS HEARING WILL NOT BE CHANGED UNLESS A WRITTEN REQUEST FOR AN ADJOURNMENT IS RECEIVED BY THE DIRECTOR OF ADJUDICATION OF THE DEPARTMENT, A COPY OF THAT REQUEST IS DELIVERED TO THE COUNSEL'S OFFICE OF THE DEPARTMENT AND TO ALL

OTHER OPPOSING PARTIES, IF ANY, AT LEAST 3 (THREE) BUSINESS DAYS PRIOR TO THE HEARING, AND UNLESS THE REQUEST IS APPROVED. THE REQUEST WILL BE APPROVED ONLY IF THERE IS PROOF OF THE NECESSITY FOR THE ADJOURNMENT. A HEARING MAY BE ADJOURNED IF REQUESTED FEWER THAN 3 (THREE) BUSINESS DAYS BEFORE THE HEARING ONLY UPON PROOF OF AN EMERGENCY AND AFTER EVERY OPPOSING PARTY HAS BEEN NOTIFIED.

IN ORDER TO DEFEND AGAINST THESE CHARGES, YOU MUST APPEAR EITHER PERSONALLY OR THROUGH AN AGENT FAMILIAR WITH THE CASE. IF AN AGENT APPEARS WITHOUT YOU, WHAT HE OR SHE SAYS WILL BE DEEMED YOUR OWN TESTIMONY.

IF YOU DO NOT SPEAK FLUENT ENGLISH, YOU MAY USE THE TRANSLATION SERVICES PROVIDED BY DCA.

A BOOKLET ENTITLED "ADMINISTRATIVE HEARING GUIDE" WHICH EXPLAINS THE HEARING REGULATIONS OF THE DEPARTMENT IS AVAILABLE ONLINE ON THE DCA WEBSITE www.nyc.gov/consumers, OR CAN BE OBTAINED FOR FREE BY CALLING 311, OR BY COMING TO THE DEPARTMENT IN PERSON.

Dated: July 29, 2009
New York, New York

For: Jonathan Mintz
Commissioner

By: [REDACTED]

Prepared By: [REDACTED]

[REDACTED]
Department of Consumer Affairs
Legal Services Division
42 Broadway, 9th Floor
New York, NY 10004
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