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NYC DCA

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- THOMAS F. DELANEY INC., Respondent.	**CONSENT ORDER** Violation No. 05401669 License No. 1427277 (Process Serving Agency)

1. Thomas F. Delaney Inc. ("Respondent") enters into this Consent Order ("CO") with the New York City Department of Consumer Affairs ("DCA" or "the Department") to resolve allegations and/or charges that Respondent violated sections 2-234a(b), 2-233(c)(1)(iii), and 2-234a(a)(4) of Title 6 of the Rules of the City of New York ("6 RCNY" or the "Rules"), and waives any right to a hearing, appeal of or challenge of the allegations, facts or charges alleged by the Department in any forum.

2. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representations to the contrary. In addition, 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 Administrative Code of the City of New York (the "Code").

3. This Consent Order shall constitute an Order of the Commissioner pursuant to Code §§ 20-104, 20-409(a) and shall apply to Respondent and all directors, officers, employees, agents (excluding individual process servers), and subsidiaries, whose acts, practices, or policies are directed, formulated, or controlled by Respondent. In addition, Respondent shall continue to be bound by the terms of prior Consent Orders it entered into with the Department. To the extent that there is a conflict between this Consent Order and a prior Consent Order, the terms of this Consent Order shall apply.

INJUNCTIVE RELIEF

4. Respondent shall not assign, distribute, or deliver process for service in New York City to any individual process server that does not maintain an active DCA process server license.

5. Respondent shall ensure that no process server to whom it has assigned, distributed or delivered process to be served in New York City signs an affidavit of service unless the process server created a Global Positioning System Record ("GPS record") for the service, as required by 6 RCNY § 2-233b.

Monthly Record Reviews

6. At least once each month, Respondent shall review the records of each individual process server to whom it assigns or distributes process for service in New York City for completeness and accuracy,

including records that each process server maintains pursuant to 6 RCNY § 2-233 ("log book records"), 6 RCNY § 2-233a ("233a records"), and 6 RCNY § 2-233b ("GPS records").

7. Respondent shall prepare a monthly report of its review of the records maintained pursuant to 6 RCNY §§ 2-233, 2-233a, 2-233b by each individual process server to whom it assigns or distributes process using the "Monthly Compliance Report" available on the DCA Process Server Website (nyc.gov/ProcessServers). Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years. The failure of an individual process server to provide his or her log book to Respondent shall not be deemed a violation of this provision.

8. Respondent shall answer each and every question contained in the Monthly Compliance Report, truthfully, accurately and completely. This shall include identifying all record entries that are non-compliant.

Disciplinary Actions

9. Respondent shall report to the Department in writing the name and license number of each individual licensed process server who does not comply with the rules or law governing process servers within ten (10) days of learning of such non-compliance using the current "Disciplinary Actions and Non-Compliance Report." This includes reporting any failure to comply with the requirements of 6 RCNY § 2-233 (concerning bound logbooks), 6 RCNY § 2-233a (concerning electronic logbooks), 6 RCNY § 2-233b (concerning GPS), 6 RCNY § 2-235 (concerning affidavits of service), and 6 RCNY § 2-236 (concerning traverse hearings), and the failure by any process server to provide Respondent with a copy of his or her log book within thirty (30) days. The report to the Department shall be sent via e-mail to **Process_Server@dca.nyc.gov** in Microsoft Excel format.

Reporting of Traverse Hearings and Results

10. Whenever Respondent receives any type of notice, including an oral communication, that a court has scheduled a hearing to determine whether service of process assigned by Respondent to a licensed individual process server was effective (a.k.a. a "traverse hearing"), Respondent shall:
    (i) inform in writing, within ten (10) days, the individual process server whose service is being challenged of the scheduling of the hearing, the date and time of the hearing, the title and index number of the action, and the court and judge before whom the hearing is scheduled; and
    (ii) submit a report to the Department, within ten (10) days of receiving such notice, using the current "Traverse Report Form for Process Servers/Agencies Who Signed a Consent Order" available on the DCA Process Server Website. Respondent shall submit the completed traverse report form by e-mail to TraverseReports@dca.nyc.gov. Respondent shall include a copy of all written communications made pursuant to this paragraph with the traverse reports it submits to the Department, as well as all responses received from the individual process server.

11. Within ten days of learning of 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 current 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 submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.

12. 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; or (b) a written explanation of why Respondent was unable to learn the final result of the hearing.

13. If Respondent learns of a sustained traverse pertaining to process that it distributed for service in New York City and does not have a copy of the court's written decision, Respondent shall send a written request (an e-mail shall satisfy this requirement) to the plaintiff/petitioner or the plaintiff/petitioner's attorney requesting a copy of the court's decision within thirty days of learning of the sustained traverse. Respondent shall forward to DCA a copy of any court decision sustaining traverse that it receives from the plaintiff/petitioner or the plaintiff/petitioner's attorney within thirty (30) days of receipt.

Electronic Records

14. Respondent shall maintain electronic records in accordance with 6 RCNY § 2-233(c)(1)(i)-(vii) and 6 RCNY § 2-233a(b), including electronic records of daily activity and electronic copies of affidavits of service, work orders, routing sheets, process server log books, instructions to individual process servers and notes submitted by individual process servers.

FINES

15. Respondent shall pay a fine of $750 in settlement of all the violations to date in the above-referenced matter by bank cashier's check or money order payable to "NYC Department of Consumer Affairs." Payment is due upon execution of this Consent Order.

MISCELLANEOUS

16. If the Department conducts a training on process server laws/regulations in the future and requests in writing that Respondent attend such training, an employee of Respondent with management responsibility shall attend the training, on a date and time set forth by the Department.

17. 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 Code, or the Rules.

18. This Consent Order contains the entire agreement of the parties with respect to the subject matter of the Consent Order. This Consent Order supersedes any understandings or negotiations, whether written or oral, between the parties, and it can only be amended through a written document formally executed by all parties. The Respondent agrees and affirms that it has read and understands this Consent Order, it accurately states the agreement between itself and with the Department, and it enters into and is bound by the terms and conditions stated herein.

BREACH OF THIS CONSENT ORDER

19. Respondent's failure to produce any of the documents required by this Consent Order, the Code, or the Rules shall constitute prima facie evidence that Respondent has failed to maintain those records and is not in compliance with the underlying terms of the Consent Order, law, or rule for which such documents are required to be maintained. Specific violations of this Consent Order shall, in addition to a breach of this Consent Order, constitute independent and separate violations of any applicable law, regulation or rule. Nothing in this Consent Order shall prevent or otherwise affect the Department's authority to seek any and all available remedies for a breach of this Consent Order, or for a violation of a law or rule, as permitted by the New York City Charter, the Code, or the Rules,

including the Department's authority to deny a license application or license renewal application without a hearing.

20. This Consent Order shall expire four (4) years from the date that it is signed by the Department.

Agreed to by Thomas F. Delaney Inc.

By: WILLIAM M. PREZIOSO
PRESIDENT

[redacted]

Signature Date

Accepted for the Department of Consumer Affairs

By [redacted]

Tit

[redacted]

Signature Date