



Julie Menin
Commissioner

42 Broadway
9th Floor
New York, NY 10004

nyc.gov/consumers

February 9, 2016

BY FIRST-CLASS AND CERTIFIED MAIL

Cory Banks


RE: Denial of Application No. 261-2016-RPSI

Dear Mr. Banks:

You submitted to the Department of Consumer Affairs (the “Department” or “DCA”) an application to renew individual Process Server License Number 1166423. This letter is to inform you that **the Department denies your application**. As explained below, the denial is based on the Department’s determination that you are not fit to be licensed, pursuant to New York City Administrative Code (“Code”) § 20-101, due to your failure to maintain standards of integrity, honesty, and fair dealing required of licensees.

Prior Settlement Agreement

In June 2013, you entered into a Consent Order with the Department to resolve allegations that you violated sections 2-233(b)(6) and 2-233a(d) of Title 6 of the Rules of the City of New York (“6 RCNY”) (the “2013 CO”). Paragraph 34 of the 2013 CO requires you to make all log book entries “contemporaneously.” Paragraph 37 of the 2013 CO requires you to make log book corrections “only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry.” Paragraph 46 of the 2013 CO requires you to “strictly and promptly conform to all federal, state and municipal laws, rules, regulations and requirements relating to the preparation, notarization and filing of affidavits of service, as required by 6 RCNY § 2-234.” Paragraph 47 of the 2013 CO states that your “affidavits of service shall be truthful.”

Service of Process Rules and Laws

6 RCNY § 2-234 requires licensed process servers to “at all times strictly and promptly conform to all laws, rules, regulations and requirements of the federal, state and municipal authorities relating to the conduct of licensees and the service of process in the State of New York and the preparation, notarization



and filing of affidavits of service and other documents now in force or hereafter adopted during any license period.”

In civil proceedings, pursuant to Section 308 of the New York Civil Practice Law and Rules (“CPLR”), service upon a natural person must be made in the following manner:

1. by delivering the summons within the state to the person to be served; or
2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served . . . ; or
3. by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318 . . . ; or
4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business

In landlord/tenant actions, pursuant to section 735 of the New York Real Property Actions and Proceedings Law (“RPAPL”):

1. Service of the notice of petition and petition shall be made by personally delivering them to the respondent; or by delivering to and leaving personally with a person of suitable age and discretion who resides or is employed at the property sought to be recovered, a copy of the notice of petition and petition, if upon reasonable application admittance can be obtained and such person found who will receive it; or if admittance cannot be obtained and such person found, by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises;

Service of rent demands, pursuant to RPAPL § 711(2), must also comply with the service requirements contained in RPAPL § 735.

Sewer Service/False Affidavits of Service

115 Mulberry LLC v. John Giacobbe, et al.

You swore falsely in an affidavit of service that was filed in New York County Housing Court in the matter of *115 Mulberry LLC v. John Giacobbe, et al.* (Index No. 87798/14) that you served John Giacobbe with a rent demand (three day notice) on October 24, 2014 at 9:58 a.m. at [REDACTED],

██████████ by delivering the papers to “**JOHN SMITH, REFUSED FULL NAME** a person of suitable age and d[i]scretion, who was willing to receive same **and who resided at said property**” (emphases in original).

On March 16, March 17 and March 18 of 2015, the New York County Housing Court held a traverse hearing in *115 Mulberry*. Following the hearing, the court sustained traverse and found that you did not, in fact, serve a person of suitable age and discretion at the premises. Specifically, the court found that you “fabricated this information because service was already late and there was insufficient time for [you] to do a second attempt.” See *115 Mulberry LLC v. John Giacobbe, et al.*, Index No. L&T 87708/2014, Decision & Order (Mar. 20, 2015 N.Y. Civ. Ct.). Your failure to serve process in accordance with RPAPL § 735 and your signing of a false affidavit of service in *115 Mulberry* violated 6 RCNY § 2-234 and paragraphs 46 and 47 of the 2013 CO.

Eyal Zabari v. Doron Zabari

You swore falsely in an affidavit of service that was filed in New York County Supreme Court in the matter of *Eyal Zabari v. Doron Zabari* (Index No. 653997/13) that you served Doron Zabari with a Summons and Verified Complaint on January 28, 2014 at 3:51 p.m. at ██████████, New York, by delivering the papers to Doron Zabari personally.

On July 16, 2014, the New York County Supreme Court held a traverse hearing in *Zabari*. Following the hearing, the court sustained traverse. The court did not credit your testimony that you served Doron Zabari personally. The court found that your “affidavit of service, log book and in court testimony were at odds” and credited the testimony of Mr. Zabari, who testified that he did not meet you face to face. Mr. Zabari’s doorman, John Morgan, confirmed that you were never face to face with Mr. Zabari and testified that he retrieved the papers you allegedly served from the outside of the building where you left them. The Court further found that you were “simply not credible” given that the alleged height and hair color recorded in your log book were at odds with Mr. Zabari’s in-court physical appearance. See *Eyal Zabari v. Doron Zabari*, Index No. 653997/13, Supplemental Decision (July 17, 2014 N.Y. Sup. Ct.).

Your failure to serve process in accordance with CPLR § 308 and your signing of a false affidavit of service in *Zabari* violated 6 RCNY § 2-234 and paragraphs 46 and 47 of the 2013 CO.

Matthew Weissman and Seth Weissman v. John Roche, et al.

You swore falsely in an affidavit of service that was filed in New York County Housing Court in the matter of *Matthew Weissman and Seth Weissman v. John Roche, et al.* (Index No. 57293/12) that you served John Roche with a Notice of Petition and Petition on March 1, 2012 at 6:42 p.m. at ██████████ ██████████, by delivering the papers to John Roche personally.

On June 15, 2012 and June 29, 2012, the New York County Housing Court held a traverse hearing in *Weissman*. Following the hearing, the court sustained traverse and made the following findings with respect to your testimony and records: “Banks’ testimony of respondent’s physical description was overwhelmingly inaccurate. His description did not closely reflect what respondent looked like at the hearing. Banks’ recorded entries were no better. Both Banks’ testimony and his log book entries failed to identify respondent’s most distinguishing feature – his very full mustache. A distinctive mustache, let alone any mustache, is a significant identifying facial characteristic that an experienced licensed process server would be expected to notice. Furthermore, of the four physical descriptive items that Banks did record in his log book, only one, respondent’s height, was close to an accurate description of his actual physical appearance.” See *Matthew Weissman and Seth Weissman v. John Roche, et al.*, Index No. L&T 57293/12, Decision & Order (Aug. 7, 2012 N.Y. Civ. Ct.).

Your failure to serve process in accordance with RPAPL § 735 and your signing of a false affidavit of service in *Weissman* violated 6 RCNY § 2-234.

505 West 143rd Street HDFC v. Charlene Coppedge, et al.

You swore falsely in an affidavit of service that was filed in New York County Housing Court in the matter of *505 West 143rd Street HDFC v. Charlene Coppedge, et al.* (Index No. 090627/12) that you served John Roche with a Notice of Petition and Petition on December 11, 2012 at 11:05 a.m. at [REDACTED] by conspicuous service.

On July 17, 2013 and July 19, 2013, the New York County Housing Court held a traverse hearing in *Coppedge*. Following the hearing, the court sustained traverse and dismissed the case without prejudice, finding that “[p]etitioner has not met its burden of providing that it served the notice of petition and petition upon Respondent in compliance with CPLR §735.” See *505 West 143rd Street HDFC v. Charlene Coppedge, et al.*, Index No. L&T 090627/12, Decision & Order (Aug. 28, 2013 N.Y. Civ. Ct.).

Your failure to serve process in accordance with RPAPL § 735 and your signing of a false affidavit of service in *Coppedge* violated 6 RCNY § 2-234.

Recordkeeping Violations

According to the court decision in *115 Mulberry*, you wrote over at least thirteen separate log book entries instead of drawing a straight line through them and printing the accurate information directly above, which violated 6 RCNY § 2-233(b)(8) and paragraph 37 of the 2013 CO. The court further noted that your log book entries were not made contemporaneously with your services, which violated 6 RCNY § 2-233(b)(1) and paragraph 34 of the 2013 CO.

According to the court decision in *Weissman*, you failed to make entries in your log book in chronological order, which violated 6 RCNY § 2-233(b)(1). The court further noted that you used two



separate log books that covered services made during the same time period, which violated 6 RCNY § 2-233(b)(2), and failed to record in your log book the court in which the action was commenced, which violated 6 RCNY § 2-233(a)(2)(vi).

Fitness to Hold a Process Server License

Based on the foregoing, you fail to maintain standards of integrity, honesty and fair dealing and, pursuant to section 20-101 of the Code, the Department determines that you are not fit to hold any Department license and denies your application to renew your process server license.

Sincerely,

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Senior Staff Attorney
Legal Division