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COURT DISMISSES PROCESS SERVER INDUSTRY LAWSUIT AGAINST THE DEPARTMENT OF CONSUMER AFFAIRS AS “GROUNDLESS”

The Court Affirms the Department’s Power to Enforce Laws Regulating Process Servers, Protecting New Yorkers Against Sewer Service, When a Process Server Claims to Have Delivered Papers that were Never Delivered

NEW YORK, NY — United States District Judge Denise Cote has dismissed all claims brought by the New York State Professional Process Servers Association, a process serving agency and an individual process server against the Department of Consumer Affairs (DCA), its attorneys and administrative law judges. The lawsuit challenged DCA’s enforcement of Local Law 7 of 2010, which gave powerful tools to DCA to identify and investigate illegal process serving activities, including “sewer service” and made process server agencies legally responsible for oversight of their process servers. Many consumers do not know to complain about faulty service, or “sewer service,” which is why DCA engages in ongoing in-depth investigations of process servers to ensure they are complying with the law. DCA’s investigations determine if a process server committed sewer service, failed to properly keep records or failed to report traverse hearings, which are hearings to determine whether papers were properly served.

“As indicated by the judge’s dismissal of all charges, this lawsuit by the process server industry was completely without merit,” said DCA Commissioner Julie Menin. “The plaintiffs’ alleged claims were a transparent effort to intimidate administrative law judges and DCA attorneys to prevent them from enforcing laws designed to put an end to decades of sewer service. With these enforcement tools we are able to protect New Yorkers from having default decisions issued against them when they don’t even know they have been sued.”

Following extensive public hearings held by DCA and legislative hearings held by the City Council, the Council enacted Local 7 of 2010 to address a widespread problem of “sewer service.” Sewer service is a practice in which a process server fails to serve court papers to a defendant but signs a court affidavit swearing that the papers were

served. Based on the false statement, a court may allow a debt collector or landlord to obtain a judgment against a defendant who has no knowledge of the case. That can result in garnishment of wages, frozen bank accounts, liens on property and impaired credit ratings. When sewer service leads to a frozen bank account, a consumer may be unable to pay rent or utilities or pay for food, medicine and other necessities. A judgment can also show up on credit reports, which makes it more difficult to find an apartment, get a job, and obtain credit.

Under Local Law 7 of 2010, process servers must now carry an electronic device that uses Global Positioning System (GPS) technology to track the location of the process server while serving; maintain a paper logbook and electronic record of all attempted services; pass an exam when they apply for or renew their license; obtain a surety bond to provide consumer restitution; and report traverse hearings about improper service to DCA. The GPS technology has greatly enhanced DCA's ability to uncover sewer service by making it easier to establish the location process server on any given day in a matter of minutes. The increased recordkeeping requirements greatly assist the courts, who rely on the records in court proceedings to establish whether service was made.

The claims, which the decision called "groundless," alleged that DCA and its employees deprived them of their constitutional rights and had violated the Racketeer Influence Corrupt Organizations Act by enforcing the process server licensing laws and rules in the administrative tribunal. DCA licenses 749 individual process servers and 121 process serving agencies.

The Department of Consumer Affairs (DCA) licenses, inspects, and educates businesses, mediates complaints, educates consumers, and offers free financial counseling and safe banking products. DCA enforces the Consumer Protection Law, the Paid Sick Leave Law and other related business laws throughout New York City and licenses nearly 80,000 businesses in 55 different industries. Through targeted outreach, partnerships with community and trade organizations, and informational materials, DCA educates consumers and businesses alike about their rights and responsibilities. DCA's Office of Financial Empowerment assists low-income New Yorkers with innovative programs and services to increase access to high-quality, low-cost financial education and counseling, safe and affordable mainstream banking, and access to income-boosting tax credits and savings. For more information, call 311 or visit DCA online at nyc.gov/consumers (link to: <http://www.nyc.gov/consumers>) or on its social media sites, [Twitter](http://www.twitter.com/nycdca) (link to: <http://www.twitter.com/nycdca>), [Facebook](http://www.facebook.com/nycdca) (link to: <http://www.facebook.com/nycdca>), [Instagram](http://www.instagram.com/nycdca) (link to: <http://www.instagram.com/nycdca>), and [YouTube](http://www.youtube.com/nycdca) (link to: <http://www.youtube.com/nycdca>).