CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- PAUL DANKEL, Respondent.	COMBINED DECISION AND ORDER Violation No.: LL005082418 License No.: 1020803 Respondent's Address: 62-46 60th Avenue Maspeth, NY 11378
DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- NESTOR ROMAN, Respondent.	Violation No.: LL005084193 License No.: 0932043 Respondent's Address: 90 Ackerman Road Warwich, NY 10990
DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- ISMAEL MATOS, Respondent.	Violation No.: LL005084184 License No.: 1015386 Respondent's Address: 2869 Bainbridge Avenue Bronx, NY 10458

DEPARTMENT OF CONSUMER AFFAIRS, **Complainant,** **-against-** **LAMONT CATES,** **Respondent.**	**Violation No.: LL005084190** **License No.: 1185439** **Respondent's Address:** **250 East 178th Street** **Bronx, NY 10457**
DEPARTMENT OF CONSUMER AFFAIRS, **Complainant,** **-against-** **MANUEL PAGAN,** **Respondent.**	**Violation No.: LL005133492** **License No.: 1073712** **Respondent's Address:** **752 Greenwich Street** **New York, NY 10014**
DEPARTMENT OF CONSUMER AFFAIRS, **Complainant,** **-against-** **ALAN ABOODY,** **Respondent.**	**Violation No.: LL005084136** **License No.: 0871606** **Respondent's Address:** **391 Greenwich Road** **Bedford, NY 10506** **Date: June 4, 2010**

A hearing on the above-captioned matters was held on January 13, 2010 and on April 12, 2010 (by telephone conference with the parties' attorneys).[1]

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[1] The Department was granted leave to submit a post-hearing memorandum. I have received and considered the Department's memorandum submitted April 23, 2010. I also have received and considered the

Appearances: For the Department: Jordan Cohen and Philip Kimball, Esqs. For the Respondents: Preston A. Leschins, Esq.; Paul Dankel, Nestor Roman, Ismael Matos, Lamont Cates, Manuel Pagan and Alan Aboody, respondents.

LL005082418 (Paul Dankel):

The Notice of Hearing, as deemed amended at the hearing, charges respondent **Paul Dankel** with the following:

1) Title 6 of the Rules of the City of New York ("6 RCNY") § 2-233(b)(5) by not keeping records chronologically and by not keeping records in a suitably bound and paginated volume (1 count (reduced from 10 counts alleged in the original notice of hearing));

2) 6 RCNY § 2-233(a)(2)(i) by failing to maintain records showing the title of the action (10 counts);

3) 6 RCNY § 2-233(a)(2)(vi) by failing to maintain records showing the court in which the action was commenced and/or the index number of the action (10 counts);

4) 6 RCNY § 2-233(a)(5) by failing to maintain records showing the dates that affidavits of service were filed with a court (10 counts);

5) 6 RCNY § 2-233(b)(2) by failing to maintain records of the person or law firm from whom the process to be served was received (10 counts); and

6) 6 RCNY § 2-233(b)(4) by failing to include the postal receipt number of registered or certified mail after service pursuant to RPAPL § 735(1) (10 counts).

On the record, the Department later withdrew charges 4 and 6.

LL005084193 (Nestor Roman):

The Amended Notice of Hearing, as deemed further amended at the hearing, charges respondent **Nestor Roman** with the following:

1) 6 RCNY § 2-233(a)(6) by failing to keep records for two years from the date of service (4 counts);

Department's brief in these matters and the related matter of *DCA v. Eric Rivera*, LL5130923.

2) 6 RCNY § 2-233(b)(5) by not keeping records chronologically in a suitably bound and paginated volume (1 count (reduced from 10 counts alleged in the original notice of hearing));

3) 6 RCNY § 2-233(a)(2)(i) by failing to maintain records showing the title of the action (9 counts);

4) 6 RCNY § 2-233(a)(2)(iii) by failing to maintain records showing the date and approximate time service was effected (9 counts);

5) 6 RCNY § 2-233(a)(2)(v) by failing to maintain records showing the nature of the papers served (4 counts);

6) 6 RCNY § 2-233(a)(2)(vi) by failing to maintain records showing the court in which the action was commenced and/or the index number of the action (9 counts);

7) 6 RCNY § 2-233(a)(5) by failing to maintain records showing the dates that affidavits of service were filed with a court (1 count);

8) 6 RCNY § 2-233(b)(1) by failing to maintain records describing the area adjacent to the door to which he affixed the service, after effecting service (1 count);

9) 6 RCNY § 2-233(b)(2) by failing to maintain records of the person or law firm from whom the process to be served was received (9 counts); and

10) 6 RCNY § 2-233(b)(3) by failing to maintain records describing whether personal, substituted or conspicuous service was affected (3 counts).

On the record, the Department later withdrew charges 1 and 7.

LL005084184 (Ismael Matos):

The Notice of Hearing, as deemed amended at the hearing, charges respondent **Israel Matos** with the following:

1) 6 RCNY § 2-233(a)(6) by failing to keep records for two years from the date of service (5 counts);

2) 6 RCNY § 2-233(b)(5) by not keeping records in a suitably bound and paginated volume (1 count (reduced from 10 counts alleged in the original notice of hearing));

3) 6 RCNY § 2-233 (b)(6) by failing to maintain a bound volume or log free of impermissible erasures, obliterating or redactions (3 counts);

4) 6 RCNY § 2-233(a)(2)(i) by failing to maintain records showing the title of the action (10 counts);

5) 6 RCNY § 2-233(a)(2)(v) by failing to maintain records showing the nature of the papers served (3 counts);

6) 6 RCNY § 2-233(a)(2)(vi) by failing to maintain records showing the court in which the action was commenced and/or the index number of the action (3 counts); and

7) 6 RCNY § 2-233(b)(2) by failing to maintain records of the person or law firm from whom the process to be served was received (10 counts).

On the record, the Department later withdrew charge 1.

LL005084190 (Lamont Cates):

The Notice of Hearing, as deemed amended at the hearing, charges respondent **Lamont Cates** with the following:

1) 6 RCNY § 2-233(a)(6) by failing to keep records for two years from the date of service (2 counts);

2) 6 RCNY § 2-233(b)(5) by not keeping records in a suitably bound and paginated volume (1 count (reduced from 10 counts alleged in the original notice of hearing));

3) 6 RCNY § 2-233 (b)(6) by failing to maintain a bound volume or log free of impermissible erasures, obliterating or redactions (3 counts);

4) 6 RCNY § 2-233(a)(2)(i) by failing to maintain records showing the title of the action (10 counts);

5) 6 RCNY § 2-233(a)(2)(iii) by failing to maintain records showing the date and approximate time service was effected (10 counts);

6) 6 RCNY § 2-233(a)(2)(iv) by failing to maintain records showing the address where service was served (10 counts);

7) 6 RCNY § 2-233(a)(2)(v) by failing to maintain records showing the nature of the papers served (5 counts);

8) 6 RCNY § 2-233(a)(2)(vi) by failing to maintain records showing the court in which the action was commenced and/or the index number of the action (5 counts);

9) 6 RCNY § 2-233(b)(2) by failing to maintain records of the person or law firm from whom the process to be served was received (5 counts); and

10) 6 RCNY § 2-233(b)(4) by failing to include the postal receipt number of registered or certified mail after service pursuant to RPAPL § 735(1) (5 counts).

On the record, the Department later withdrew charges 1 and 10.

LL005133492 (Manuel Pagan):

The Amended Notice of Hearing, as deemed amended at the hearing, charges respondent **Manuel Pagan** with the following:

1) 6 RCNY § 2-233(a)(6) by failing to keep records for two years from the date of service (3 counts);

2) 6 RCNY § 2-233(b)(5) by not keeping records in a properly bound and paginated volume and in chronological order (1 count (reduced from 3 counts alleged in the original notice of hearing));

3) 6 RCNY § 2-233 (b)(6) by failing to maintain a bound volume or log free of impermissible erasures, obliterating or redactions (10 counts);

4) 6 RCNY § 2-233(a)(2)(i) by failing to maintain records showing the title of the action (10 counts);

5) 6 RCNY § 2-233(a)(2)(v) by failing to maintain records showing the nature of the papers served (10 counts);

6) 6 RCNY § 2-233(a)(2)(vi) by failing to maintain records showing the court in which the action was commenced and/or the index number of the action (10 counts);

7) 6 RCNY § 2-233(a)(5) by failing to maintain records showing the dates that affidavits of service were filed with a court (1 count);

8) 6 RCNY § 2-233(b)(2) by failing to maintain records of the person or law firm from whom the process to be served was received (2 counts); and

9) 6 RCNY § 2-233(b)(4) by failing to include the postal receipt number of registered or certified mail after service pursuant to RPAPL § 735(1) (1 count).

On the record, the Department withdrew charge 1, one count of charge 6, one count of charge 8, and charge 9.

LL005084136 (Alan Aboody):

The Notice of Hearing, as deemed amended at the hearing and by this decision, charges respondent **Alan Aboody** with the following:

1) 6 RCNY § 2-233(b)(5) by not keeping records chronologically in a suitably bound and paginated volume (1 count (reduced from 10 counts alleged in the original notice of hearing));

2) 6 RCNY § 2-233(b)(6) by failing to maintain a bound volume or log free of impermissible erasures, obliterating or redactions (10 counts);

3) 6 RCNY § 2-233(a)(2)(i) by failing to maintain records showing the title of the action (10 counts);

4) 6 RCNY § 2-233(a)(2)(iii) by failing to maintain records showing the date and approximate time service was effected (10 counts);

5) 6 RCNY § 2-233(a)(2)(iv) by failing to maintain records showing the address where service was served (10 counts);

6) 6 RCNY § 2-233(a)(2)(v) by failing to maintain records showing the nature of the papers served (10 counts);

7) 6 RCNY § 2-233(a)(2)(vi) by failing to maintain records showing the court in which the action was commenced and/or the index number of the action (10 counts);

8) 6 RCNY § 2-233(b)(2) by failing to maintain records of the person or law firm from whom the process to be served was received (10 counts); and

9) 6 RCNY § 2-233 by failing to personally make entries in his log books and contemporaneously with each service (1 count).

On the record, the Department withdrew charges 4 and 5.

Based on the evidence in this case, I **RECOMMEND** the following:

Findings of Fact

Each of the respondents is a process server licensed by the Department.

Each of the respondents maintains his logs in spirally-bound volumes provided by the company from whom they receive nearly all process to be served, R & A Process Serving, Inc. The format of the log pages is as provided by R & A. The format itself does not provide for inclusion of the following information: (1) the title of the action; (2) the full address where service is to be effected; and (3) the court in which the action has been commenced. The respondents otherwise did not include this information in their logs.

In at least nine instances, Mr. Roman did not record in his logbooks the year that service of process was effectuated. In at least two instances, Mr. Roman used the single letter "D," without additional explanation, to indicate the nature of the paper served and did not record the type of service effectuated. On October 2, 2007, at 3:20 p.m., Mr. Roman effectuated "conspicuous" service upon a storefront but did not record any description of the area adjacent to the door.

Mr. Matos wrote over or crossed-out the following three entries in his logbooks: November 3, 2006 at 10:18 a.m.; November 17, 2006 at 10:46 a.m.; and April 18, 2006 at 1:13 p.m. In at least three instances, Mr. Matos used the single letter "D," without additional explanation, or failed to indicate the nature of the papers served. After a traverse hearing on November 30, 2009, a traverse against one of Mr. Matos's services of a notice of petition and petition was sustained. (*Ball Four Holdings, Inc. v. Bitter But Sweet Inc.*, 8175/09 (Civil Court, NY Co.).)

Mr. Cates wrote over the following three log entries in his logbooks: October 10, 2007 at 10:45; August 16, 2007 at 1:00; and August 16, 2007 at 1:58. On at least 10 occasions, Mr. Cates did not record in his logbooks the year that service of process was effectuated. Mr. Cates used the acronym, "D-COMM," without additional explanation, in at least 5 entries to describe the "paper[s] served."

In log entries dated April 3, 2007 at 11:12 a.m., April 4, 2007 at 7:41 a.m., and April 4, 2007 at 9:16 a.m., Mr. Pagan obscured entries without drawing a straight line through the original entry. Mr. Pagan used the letter "P," without additional explanation, in at least 10 entries for the period between April 2, 2007 and April 13, 2007 to describe the "paper[s] served."

In log entries dated January 12, 2007 at 10:28 a.m. and March 15, 2007 at 10:45 a.m., Mr. Aboody obscured entries without drawing a straight line through the original entry.

Mr. Aboody did not fill out the entries in his log books; instead, Mr. Dankel filled them in for him based on entries Mr. Aboody made in a notebook. Mr. Aboody reviewed the entries made in the log book approximately one time per week. The log book's descriptions of the papers served by Mr. Aboody were complete and accurate.

Opinion

These facts are not in dispute.

6 RCNY Section 2-233 ("Records") provides, in pertinent part:

(a) Duty of individual licensee to keep records. Each process server shall keep records in compliance with the provisions of [section] 89-c [relettered as 89-u] of the General Business Law, as follows:

(1) Each process server shall maintain a legible record of *all* service made by him as prescribed in this section.

(2) The record to be maintained shall include the following information, where applicable:

(i) the title of the action;
(ii) the name of the person served, if known;
(iii) the date and approximate time service was effected;
(iv) the address where service was effected;
(v) the nature of the papers served
(vi) the court in which the action has been commenced;
(vii) the index number of the action, if known.

* * *

(5) If the process server files an affidavit of service with the court, his record shall include the date of such filing.

6 RCNY Section 2-233(b) further provides, in pertinent part:

Licensees who serve process shall also include in their records the following:

(1) If service is effected pursuant to CPLR 308(4) or RPAPL 735(1), a description of the area adjacent to the door to which process is affixed including the color and composition of hallway walls, color and composition of hallway floor or doorstep, and location of premises in relation to stairs, elevator or entranceway.

(2) The person or firm from whom the process served was received.

(3) Type of service effected whether personal, substituted or conspicuous.

* * *

(5) Records shall be kept in a chronological in a bound, paginated volume.

(6) Corrections in records 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.

The credible evidence establishes that, employing the format provided by R & A, the respondents did not include particular information required to be provided by Section 2-233(a) and (b), in the manners specifically set forth above in the Statement of Facts.

The credible evidence is that Mr. Aboody did not fail to describe the "paper[s] served" in his logbook: the descriptions are complete and accurate, and the Department presented no contrary argument.

As determined in *DCA v. Eric Rivera*, LL5130923 (Appeal Determination, March 4, 2010), the respondents' "spirally bound log[s] [are] susceptible to manipulation and alteration," "could be taken apart easily at any time and re-bound," and thus "[do] not satisfy the requirements of 6 RCNY Section 2-233(b)(5)."

The faults of the respondents in not providing the required information lies, in part, with the format, including the spiral binding. R & A, which has the same legal responsibilities as that of the respondents, provided each of the respondents this format. However, this consideration does not excuse the respondent's failures to abide by the requirements of these provisions. *See* 6 RCNY Section 2-234 ("The licensee shall at all times strictly ... conform to all laws, rules, regulations and requirements of the ... municipal authorities relating to the conduct of licensees....").

The credible evidence establishes that respondents Israel Matos, Lamont Cates, Manuel Pagan and Alan Aboody failed to maintain a bound volume or log free of impermissible erasures, obliterating or redactions, in multiple violations of 6 RCNY Section 2-233(b)(6), as set forth above in the Statement of Facts.

The credible evidence establishes that each of the respondents did not include in their records a designation of the "person or firm from whom the process served was received" (*e.g.*, the particular service agency, attorney or law firm), as required by 6 RCNY Section 2-233(b)(2). Nearly all of the process

served by the respondents was received from R & A and not from the issuing attorneys and law firms otherwise recorded in the logs.

The Department charged respondents Paul Dankel, Nestor Roman and Manuel Pagan with violation of 6 RCNY Section § 2-233(a)(5) for failure to include in their log books the date of filings of affidavits of service "with the court." However, the Department made no showing that any of these respondents made any such filings. Accordingly, these charges should be dismissed.

The Department seeks, pursuant to 6 RCNY § 6-24(c), to amend the pleadings to "conform to the evidence by adding a charge that Mr. Aboody's non-contemporaneous entries are a violation of 6 RCNY § 2-233." By my own leave pursuant to 6 RCNY § 6-24(b), I grant the Department's motion to amend the notice of hearing in this respect so as to facilitate determination of this issue.

The requirements specifically set forth in Section 2-233 are designed to help to ensure the accuracy of information respecting services made. While not explicitly set forth in Section 2-233, implicit in the specific requirements of this provision is that the entries be made by the process server himself contemporaneously with the services made. Section 2-233 thus should be fairly read as to contain this requirement, as the Department argues.

Section 2-234 additionally requires the licensee to "strictly and *promptly* conform to all ... 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" (emphasis added). As the Court of Appeal in *Barr v. Department of Consumer Affairs of the City of New York*, 70 N.Y.2d 821, 823, 517 N.E.2d 1321, 523 N.Y.S.2d 435 (1987), stated:

> [C]ivil litigants must depend on the accuracy of process servers' records to prove that proper service was or was not made (see Siegel, NY Prac. § 79). A process server whose records were illegible, inaccurate or otherwise plainly unreliable lacks credibility. The likely result is that many of the clients of such process servers will be unfairly penalized when they are called upon to prove proper service in traverse hearings.

The manner in which Mr. Aboody's entries were made in his logbook does not conform to the requirements for business records to be admissible as evidence in a court of law, that they be recorded at the time of the event or at a reasonable time thereafter. CPLR 4518(a). As the Court in *Masaryk Towers Corp. v.* [redacted] 12 Misc.3d 1172A (Civ. Ct., NY Co. 2006) stated: "Such a record would have to [be] noted immediately after each service; waiting until the end of the day to record such services would compromise accuracy and would provide an opportunity to alter the records to serve the process server's needs regarding the various times services were allegedly performed."

While an inference ordinarily will be taken that entries are not accurate from the fact they were not made contemporaneously with service attempts, *see Citibank v.* [redacted] 196 Misc.2d 292 (Civ. Ct. Richmond Co. 2003), such an inference is rebuttable. Mr. Aboody credibly testified that the procedure whereby Mr. Dankel made the entries in his log book was to ensure the entries' legibility (as required by Section 2-233(a)(1)), the entries were reviewed by him against his notes on a weekly basis, and, upon his review, the entries were corrected by him. The Department made no showing that an entry in Mr. Aboody's log, in actuality, was inaccurate in any respect. Finally, at the hearing, information as to his adopted procedure of making entries was presented not by the Department, but rather voluntarily and candidly by him in the context of this charge not yet pending against him. These circumstances and Aboody's evident intent to keep legible and accurate entries -- although misguided in the chosen manner -- should be considered in mitigation of penalty. I recommend that no additional fine be imposed for this violation of the rules.

As further determined in *DCA v. Eric Rivera*, LL5130923 (Appeal Determination, March 4, 2010), "each record of service in which [a] respondent failed to include information required by a subdivision of 6 RCNY § 2-233 constitute[s] a separate violation for which the respondent should be ordered to pay a separate fine."

The Department also requests that the respondent's licenses each be suspended for at least 30 days based on the predicates of the cited violations of its regulations. *See* Administrative Code Section 20-409(a) (providing that a process server license "*may* be suspended or revoked ... at any time for the failure of the licensee to comply with any rule [or] regulation ... promulgated by the commissioner" (emphasis added)).

The Department amply has demonstrated each respondent's failures to maintain required records of his service in the stringent manner required by statute and Departmental rules. The Department has not shown any fabrication of records or service by any of the respondents; has not shown any failures of any respondent in completing affidavits of service; and does not assert, and did not proffer any evidence, showing that any of the respondents removed or reordered any log book pages. Excepting as to its showing that a traverse was sustained against one of Mr. Matos's services, the Department has not shown an inadequacy of service.

With respect to Mr. Matos, a suspension of his license for 14 days is appropriate. I decline to suspend the other respondents' licenses.

Order:

LL005082418 (Paul Dankel):

The respondent **Paul Dankel** is found **guilty** of charges 1, 2, 3 and 5, and is **ordered** to pay to the Department **a TOTAL FINE of $11,000.** as follows:

Charge 1: $500

Charge 2: $3,500 ($350 per violation, for 10 violations)

Charge 3: $3,500 ($350 per violation, for 10 violations)

Charge 5: $3,500 ($350 per violation, for 10 violations)

Upon the Department's withdrawal of charges 4 and 6, they are **dismissed.**

LL005084193 (Nestor Roman):

The respondent **Nestor Roman** is found **guilty** of charges 2, 3, 4, 5, 6, 8, 9 and 10, and is **ordered** to pay to the Department **a TOTAL FINE of $14,500.** as follows:

Charge 2: $500

Charge 3: $3,150 ($350 per violation, for 9 violations)

Charge 4: $3,150 ($350 per violation, for 9 violations)

Charge 5: $700 ($350 per violation, for 2 violations)

Charge 6: $3,150 ($350 per violation, for 9 violations)

Charge 8: $350

Charge 9: $3,150 ($350 per violation, for 9 violations)

Charge 10: $350

Upon the Department's withdrawal of charges 1 and 7, they are **dismissed.**

LL005084184 (Israel Matos):

The respondent **Israel Matos** is found **guilty** of charges 2, 3, 4 and 6, and is **ordered** to pay to the Department **a TOTAL FINE of $18,000.** as follows:

Charge 2:	$500	
Charge 3:	$3,500	($350 per violation, for 10 violations)
Charge 4:	$3,500	($350 per violation, for 10 violations)
Charge 5:	$3,500	($350 per violation, for 10 violations)
Charge 6:	$3,500	($350 per violation, for 10 violations)
Charge 7:	$3,500	($350 per violation, for 10 violations)

The respondent's license (no. **1015386)** is **suspended** for **14 days**. The suspension shall be effective **five business days** from the date of this Decision. The respondent is directed to surrender his license document to the Licensing Division. Once the suspension period expires, the respondent may, if all fines are paid and administrative requirements met, retrieve his license document from the Licensing Division.

Failure to surrender the license document shall constitute grounds for additional suspension or revocation of the license. If the respondent continues to operate during the period of suspension, he is subject to CRIMINAL PROSECUTION and/or civil penalties of $100 per day for each day of unlicensed activity, as well as the closing of his business and/or the removal of items sold, offered for sale, or utilized in the operation of his business, pursuant to the Administrative Code of the City of New York Sections 20-105 and 20-106 (the "Padlock Law").

Upon the Department's withdrawal of charge 1, it is **dismissed.**

LL005084190 (Lamont Cates):

The respondent **Lamont Cates** is found **guilty** of charges 2, 3, 4 and 6, and is **ordered** to pay to the Department **a TOTAL FINE of $15,550.** as follows:

Charge 2:	$500	
Charge 3:	$1,050	($350 per violation, for 3 violations)
Charge 4:	$3,500	($350 per violation, for 10 violations)
Charge 5:	$3,500	($350 per violation, for 10 violations)
Charge 6:	$3,500	($350 per violation, for 10 violations)
Charge 8:	$1,750	($350 per violation, for 5 violations)

Charge 9: $1,750 ($350 per violation, for 5 violations)

Upon the Department's withdrawal of charges 1 and 10, they are **dismissed.**

The respondent is found **not guilty** of charge 7, and it is **dismissed**.

LL005133492 (Manuel Pagan):

The respondent **Manuel Pagan** is found **guilty** of charges 2, 3, 4, 6 and 8, and is **ordered** to pay to the Department **a TOTAL FINE of $12,250.** as follows:

Charge 2: $500

Charge 3: $1,050 ($350 per violation, for 3 violations)

Charge 4: $3,500 ($350 per violation, for 10 violations)

Charge 5: $3,500 ($350 per violation, for 10 violations)

Charge 6: $3,350 ($350 per violation, for 9 violations)

Charge 8: $350

Upon the Department's withdrawal of charges 1 and 9, they are **dismissed.**

The respondent is found **not guilty** of charge 7, and it is **dismissed**.

LL005084136 (Alan Aboody):

The respondent **Alan Aboody** is found **guilty** of charges 1, 2, 3, 6, 8 and 9, and is **ordered** to pay to the Department **a TOTAL FINE of $11,700..** as follows:

Charge 1: $500

Charge 2: $700 ($350 per violation, for 2 violations)

Charge 3: $3,500 ($350 per violation, for 10 violations)

Charge 7: $3,500 ($350 per violation, for 10 violations)

Charge 8: $3,500 ($350 per violation, for 10 violations)

Charge 9: $0

Upon the Department's withdrawal of charges 4 and 5, they are **dismissed.**

The respondent is found **not guilty** of charge 6 and the additional charge of violation of 6 RCNY Section 2-2333, and they are **dismissed**.

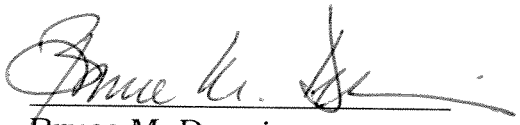
This constitutes the recommendation of the Administrative Law Judge.

Mitchell Nisonoff
Administrative Law Judge

DECISION AND ORDER

The recommendation of the Administrative Law Judge is **approved.**

This constitutes the Decision and Order of the Department. Failure of any respondent to comply with this order within thirty (30) days shall result in that respondent's license, and may result in the suspension of any other Department of Consumer Affairs license(s) held by that respondent.



Bruce M. Dennis
Deputy Director of Adjudication

cc: Philip Kimball and Jordan Cohen, Esqs.

By email: leschins@att.net
Preston A. Leschins, Esq.

NOTICE TO RESPONDENT(S): If you wish to **APPEAL** this decision, or file a **MOTION FOR REHEARING**, you must file your appeal or motion with the Director of Adjudication, Department of Consumer Affairs, 66 John Street, New York, NY 10038, **within 30 days of the date of this decision**. You must include with your appeal or motion (1) a check or money order payable to the Department of Consumer Affairs for the sum of $25; and (2) a check or money order payable to the Department of Consumer Affairs 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, supported by evidence of financial hardship, including the most recent tax returns you have filed. In addition, you must serve a copy of your appeal or motion for rehearing, and any related documents, on the Legal Compliance and Fitness Division of the Department of Consumer Affairs, 42 Broadway, 9th Floor, New York, NY 10004.

Mail payment in the enclosed envelope addressed to:
NYC Department of Consumer Affairs
Collections Division
42 Broadway, 9th Floor
New York, NY 10004

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

PAUL DANKEL
LAMONT CATES
MANUEL PAGAN
NESTOR ROMAN
ISMAEL MATOS
ALAN ABOODY

Respondents.

APPEAL DETERMINATION

Violation Nos.:
LL005082418
LL005084190
LL005133492
LL005084193
LL005084184
LL005084136

License Nos.:
1020803
1185439
1073712
0932043
1015386
0871606

Date: September 13, 2010

Each of the respondents appeals from the Decision dated June 4, 2010.

The appeals filed by Paul Dankel, Lamont Cates, and Manuel Pagan are **denied.** These respondents failed to submit payment of the fines imposed by the Decision.

Nestor Roman, Ismael Matos, and Alan Aboody have presented no support for their arguments on appeal that "there is no precedent" for the fines ordered by the Decision, and that the fines are arbitrary and capricious.[1] The respondents' claim that the fines "pose a severe and unfair financial burden upon the respondent[s]" is not a valid basis for an appeal pursuant to 6 RCNY Section 6-40.

Accordingly, the Decision is **affirmed.**

[1]This tribunal has recently upheld decisions ordering process servers to pay similar fines for violations of the Department's rules governing licensed process servers. *See, Department of Consumer Affairs v. Jimmy Roman*, LL005133488 (Appeal Determination, July 20, 2010), and *Department of Consumer Affairs v. Eric Rivera*, LL005130923 (Appeal Determination, March 4, 2010).

SO ORDERED:

Nancy J. Schindler
Director of Adjudication

Department of
Consumer Affairs

CERTIFICATE OF MAILING

On **September 13, 2010**, **a copy** of the attached,
☑ Appeal Determination
Was Mailed for the Following:

Violation Nos.: **LL005082418, LL005084193, LL005084184**
LL005084190, LL005133492, LL005084136

License Nos.: **020803, 0932043,1015386**
1185439, 1073712, 0871606

By enclosing it/them in an envelope addressed to:

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Anzzlone & Leschins
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New York, NY 10106

By email: Leschins@att.net

Nestor Roman
90 Ackerman Road
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Alan Aboody
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Bedford, NY 10506

Ismael Matos
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Manuel Pagan
752 Greenwich Street
New York, NY 10014

Lamont Cates
250 East 178th Street
Bronx, NY 10457

Paul Dankel
62-46 60th Avenue
Maspeth, NY 11378

By emailing it/them to the following address:

Jordan Cohen, Esq.
Sanford Cohen, Esq.
Phillip Kimball, Esq.
Megan Roberts, Esq.

Margarita Ramirez
SIGNATURE

Margarita Ramirez
PRINT

CAMIS ENTRY: **Decision Affirmed**

CAMIS ENTRY DATE: **September 13, 2010**