

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

**DEPARTMENT OF CONSUMER AFFAIRS,  
Complainant,**

**-against-**

**BARRY GERMAN,**

**Respondent.**

**DEFAULT DECISION AND ORDER**

**Violation No.: LL005130989**

**License No.: 0982866**

**Date: October 22, 2010**

The respondent is charged with the violation(s) in the attached Notice of Hearing.

A hearing was scheduled for September 30, 2010. The respondent did not appear.

The respondent is found **guilty upon default**. The respondent is further found guilty of violating 6 RCNY Section 1-14 for failing to appear at a duly noticed hearing.

**ORDER**

The respondent is therefore **ordered to pay to the Department a TOTAL FINE of \$850**, as follows:

6 RCNY Section 1-16 (\$350 per count, for 1 count)	\$350
6 RCNY Section 1-14	\$500
TOTAL	\$850

In addition, the license is **REVOKED**, effective immediately, for violation of Administrative Code 20-101 and 6 RCNY § 6-42(c). If the respondent continues to operate with a revoked license, it 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 its business and/or the removal of items sold, offered for sale, or utilized in the operation of its business, pursuant to the Administrative Code of the City of New York §§ 20-105 and 20-106 (the "Padlock Law").

**Failure to comply with this order within thirty (30) days shall result in the suspension of the license at issue, and may result in the suspension of any other Department of Consumer Affairs license(s) held by the respondent(s).**

**This constitutes the Decision and Order of the Department.**

**Judith Gould  
Administrative Law Judge**

<p><b><u>Mail payment of fine in the enclosed envelope addressed to:</u></b> NYC Department of Consumer Affairs Collections Division 42 Broadway, 9<sup>th</sup> Floor New York, NY 10004</p>
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### **APPEAL INFORMATION**

<p>You have 15 days to file a MOTION TO VACATE this decision. Your motion <b>must</b> include ALL of the following: 1) A check or money order for \$25 payable to the Department of Consumer Affairs; 2) the reason for your failure to appear on the hearing date; <i>and</i> 3) a sworn statement outlining a meritorious defense to the charge(s) in the Notice of Hearing.</p>
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<p><b>BY EMAIL:</b> Send your motion to <a href="mailto:myappeal@dca.nyc.gov">myappeal@dca.nyc.gov</a> and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. Make sure to write the violation number(s) on your check or money order. <b>NOTE:</b> The determination on your motion to vacate may be sent to you by email if you choose to submit your motion to us by email.</p>
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<p><b>BY REGULAR MAIL:</b> Mail your motion and the appeal fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. You must also mail <b>a copy</b> of your motion to: Legal Compliance and Fitness Division, Department of Consumer Affairs, 42 Broadway, 9<sup>th</sup> Floor, New York, NY 10004. Make sure to include in your motion some indication or proof that you have sent a copy of the motion to DCA's Legal Compliance and Fitness Division.</p>
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**CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS**

-----X  
DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

BARRY GERMAN,

Licensee/Respondent.  
-----X

**NOTICE OF HEARING**

**LL # 5130989**

8682 17<sup>th</sup> Avenue, Apt. 1F  
Brooklyn, NY 11214

**License # 0982866**

**(Process Server Individual)**

**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 THURSDAY, SEPTEMBER 30, 2010 at 8:30AM** 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, Megan Roberts, Esq., as and for its complaint upon information and belief alleges the following:

**LICENSE STATUS**

1. Respondent, Barry German, has held an Individual Process Server license issued by the Department since on or about August 20, 1998.
2. A process server license is renewable in two-year intervals.
3. Respondent's process server license will expire on February 28, 2012.

**FACTS**

**Respondent Entered into Assurance of Discontinuance**

4. On or about December 31, 2008, the Department issued to Respondent a Notice of Hearing for LL 5084159 for various violations of 6 RCNY 2-233 and General Business Law ("GBL") 89-cc.
5. On or about November 30, 2009 the Department settled LL 5084159 with Respondent, who entered into an Assurance of Discontinuance ("AOD"). The AOD is attached hereto as Exhibit A and incorporated herein by reference.
6. The AOD requires that the Respondent submit to records reviews upon notification by the Department for a three (3) year period following the execution of the agreement.

**FAILURE TO RESPOND TO RECORDS INSPECTION**

7. On or about August 3, 2010, the Department sent a letter to Respondent instructing him pursuant to the AOD to appear and produce certain of Respondent's books and records, including Respondent's process serving logbooks, affidavits of service, and digital photographs that he is required to maintain pursuant to 6 RCNY 2-233 and his AOD.
8. The letter called for production on August 18, 2010.
9. On August 18, 2010, Respondent failed to appear or make any other contact with the Department.
10. On or about August 19, 2010, the Department sent another letter to Respondent, instructing him to produce his records to the Department on August 31, 2010.
11. On August 31, 2010, Respondent failed to appear or make any other contact with the Department.

**FAILURE TO ATTEND REQUIRED TRAINING**

12. The AOD required Respondent to attend a training session regarding the laws and rules governing process servers. The Department provided the training on March 11, 2010
13. The Department sent a letter to Respondent on or about February 25, 2010, instructing him to attend the training.
14. Respondent did not attend the training in violation of his AOD.

**BREACH OF PRIOR ASSURANCE OF DISCONTINUANCE WITH DCA**

15. The aforementioned November 30, 2009 AOD, paragraphs 37, 43, and 61, provide that if Respondent breaches the Agreement by failing to comply with the provisions of the process server law, the Department can seek maximum penalties as provided by law and can seek to revoke the Respondent's license.
16. Respondent breached the following provisions of the AOD:
- a. Paragraphs 38-45, in that Respondent failed to report to the Department for records inspection despite two timely requests; and
  - b. Paragraphs 36-37, in that Respondent failed to attend a required training.

### **CHARGES**

#### **FAILURE TO RESPOND TO RECORDS INSPECTION**

##### **Count 1**

1. The allegations of paragraphs 7 - 12 above are incorporated by reference as though fully realleged herein.
2. Respondent failed to make available for inspection records he is required to maintain in violation of the Rules of City of New York, Title 6, § 1-16.

#### **BREACH OF PRIOR ASSURANCE OF DISCONTINUANCE WITH DCA**

##### **Counts 2 - 3**

3. The allegations of paragraphs 13 - 17 above are incorporated by reference as though fully realleged herein. The settlement agreement between the Respondent and the Department has the force of a final order, pursuant to the Rules of City of New York, Title 6, § 6-42 (c).

4. Respondent violated an order of the Department by failing to comply with said settlement agreement, in violation of the Rules of City of New York, Title 6, § 6-42 (c).

**LACK OF FITNESS**

5. By his misconduct described above, Respondent failed to maintain the standards of integrity, honesty and fair dealing required of licensees pursuant to § 20-101 of the Code.

**WHEREFORE**, the Department respectfully requests that an order issue: 1) finding Respondent unfit to hold future Department licenses for a period of no less than five (5) 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 THREE (3) 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 THREE (3) 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.

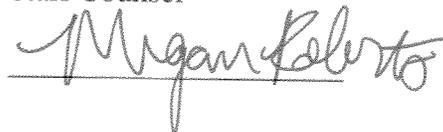
IF YOU DO NOT SPEAK FLUENT ENGLISH, YOU MAY USE THE TRANSLATION SERVICES PROVIDED BY DCA.

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](http://www.nyc.gov/consumers), OR CAN BE OBTAINED FOR FREE BY CALLING 311, OR BY COMING TO THE DEPARTMENT IN PERSON.

Dated: September 10, 2010  
New York, New York

For: Jonathan Mintz  
Commissioner

By: Megan Roberts, Esq.  
Staff Counsel

A handwritten signature in black ink, appearing to read "Megan Roberts", is written over a horizontal line.

Department of Consumer Affairs  
Legal Services Division  
42 Broadway, 9th Floor  
New York, NY 10004  
Phone: (212) 361-2273

CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS

-----X  
**DEPARTMENT OF CONSUMER AFFAIRS,**

**Complainant,**

**-against-**

**BARRY GERMAN,**

**Respondent.**

ASSURANCE OF  
DISCONTINUANCE

PROCESS SERVER  
INDIVIDUAL  
License # **0982866**

Violation No. LL # **5084159**  
-----X

Barry German ("Respondent") consents to this Assurance of Discontinuance ("AOD" or "Agreement") to settle the above captioned violation with the Department of Consumer Affairs ("DCA" or "the Department") and agrees as follows:

**ACKNOWLEDGMENT OF SERVICE**

Respondent acknowledges receipt of the Notice of Hearing in the above captioned matter, which charged him with violating provisions of Title 20 of the Administrative Code of the City of New York (the "Code"), found in: Chapter 1 of the Code, beginning at Section 20-101 (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 (the "Process Servers Rules") in connection with his Process Server license.

**I. DEFINITIONS:**

A. "Serve" or "service" shall mean the delivery of process in manner prescribed by the laws of the State of New York.

- B. "Process" means a summons, notice of petition, order to show cause, subpoena, notice, citation or other 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; provided, however, that if under the laws of the State of New York the mailing of such legal paper is sufficient to effect service, such legal paper shall not be process for the purpose of this Agreement.
- C. 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," whether such challenge is waived, settled by stipulation or decided by court order after a hearing.
- D. "Contemporaneous" with respect to the entry of an event in a record or logbook means that each entry shall be made at or about the time as the act with respect to which the entry is made.
- E. "Chronological" with respect to the notation in the process server record or logbook means that each notation shall be entered consecutively in order of date and time and that no blank spaces shall be left allowing the entry of an additional notation between any two notations.
- F. "Bound volume" means a book, logbook, process server record or ledger that at the time of purchase contains a specified number of unfolded sheets of paper or other material that are permanently secured to covers by stitching, glue such other method that is calculated to make readily discernable the removal or inclusion of one or more sheets after the first use of such volume.
- G. "Paginated" means each page in the volume or logbook must contain either a page number in sequence starting with the number "1" at the time of purchase or an indelible label stating the number of pages the volume originally contained.
- H. "Due diligence" in delivering process shall mean that three or more reasonable efforts were made to locate and deliver process personally to the person(s) to be served within the State.
- I. "Reasonable efforts" means that attempts to serve process is made at a time, date or location the Respondent knows the person to be served could reasonably be found.
- J. "Reasonable efforts to locate" means that Respondent has made reasonable attempts to locate the person to be served and confirmed the address or location by dependable sources before delivering process.

- K. "Reasonable efforts to effectuate service by personal delivery" means that the Respondent shall attempt personal delivery more than once and that he/she shall deliver process by substituted service or by conspicuous place service only after the third attempt to find the person to whom service must be delivered.
- L. "Same time" with respect to efforts to make delivery means within two hours before and after of an hour.
- M. "Material breach" means the failure to comply with this Agreement in whole or in part by commission or omission without legal excuse.
- N. "Report to the Department" means directing a written communication to the New York City Department of Consumer Affairs, Attn.; Legal Services Division, 42 Broadway, 9<sup>th</sup> Floor, NY, NY 10004 or as specifically indicated in this Agreement.
- O. "Disposition" of a case or traverse hearing means the court's final decision on the matter.
- P. "Affidavit of Service" or "Proof of Service" means a sworn statement in writing made under oath before a public notary in which the process server affirms that service of process in a matter was effectuated, the manner in which service was effectuated and other sworn statements.

## II. INJUNCTIVE RELIEF

### A. Duty to Comply With Law:

- 1) Respondent shall strictly and promptly comply with all laws, rules, regulations and requirements of the federal, state and municipal authorities and this Agreement when serving process.

### B. Duties When Effectuating Service on a Natural Person:

- 2) When effectuating service of process by conspicuous place service, Respondent shall affix the process to be served to the door of the person to be served and to no other.
- 3) When effectuating service of process by conspicuous place service, Respondent shall at all times attach the process to the dwelling place door of the person to be served with transparent tape.
- 4) When making diligent efforts to deliver process in accordance with the requirements of CPLR 308, all attempts of service shall not be made on the same day and no two attempts at delivery shall be made at the same time on different days.

- 5) 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.
- 6) Those efforts shall include, but not be limited to, inquiring of neighbors and other persons present at those locations, checking public and commercial data bases, and requesting information from the owner of the premises, if different from the person to be served.
- 7) Respondent shall not deliver process at a location that he knows not to be the actual place of business, dwelling place, or usual place of abode of the person to be served, unless permitted by statute or by binding case law.
- 8) When service is effectuated pursuant to CPLR 308(4) or Section 735(1) of the Real Property Actions and Proceedings Law ("RPAPL"), Respondent shall take date and time stamped digital photographs of the hallway walls adjacent to the door to which process is affixed and the entryway to the building where the conspicuous posting is made, which she shall keep stored on computer disks in chronological order.
- 9) Respondent shall always write "personal and confidential" on the mailing envelope when delivering or completing service by mail.
- 10) Respondent shall insure that any mailing is made to the location indicated by the applicable law.
- 11) Respondent shall not indicate on mailing envelopes that the communication is from an attorney or concerning an action against the person sought to be served.

**C. Duty to Maintain Proper Records:**

- 12) Respondent shall maintain records of service of process in the City of New York as required by General Business Law 89-cc and 6RCNY § 2-233.
- 13) Respondent shall maintain in his logbooks all information required by General Business Law 89-cc and 6 RCNY § 2-233 with respect to every case in which he/she serves process.
- 14) All service of process effectuated by the Respondent in the City of New York shall be entered in a single volume/logbook until it is complete.
- 15) All entries shall be made contemporaneously and in chronological order.

- 16) Respondent shall record the date and time of each and every attempt of service, whether or not successful, with a separate entry in his/her logbook.
- 17) Respondent shall record in his process server logbook the date and time of each and every attempt of service in chronological order.
- 18) Respondent shall describe in affidavits of service the person of suitable age and discretion to whom process is delivered by setting forth the age, height, weight, skin color, eye color and hair color of the person to whom process is delivered.
- 19) Respondent shall always state the place and time of delivery of process in the affidavits of service.

**D. Completion of Affidavits and other Proofs of Service**

- 20) Respondent shall 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 required by 6 RCNY § 2-234.
- 21) Respondent's affidavit shall be truthful and contain all information required by law and, in addition, the following facts, where applicable:
  - a) A detailed description of Respondent's efforts to effectuate personal delivery within the State;
  - b) Respondent's source of the information about the whereabouts of the person to be served;
  - c) A description of Respondent's efforts to confirm the information about the whereabouts of the person to be served;
  - d) Whether the Respondent made use of a picture or other physical representations of the person(s) to be served when delivering process;
  - e) A description of the age, height, weight, skin color, eye color and hair color of the person to whom delivery of process was made;
  - f) The location and detailed description of the place where delivery was effectuated;
  - g) The name and description of any witnesses to the delivery of process; and
  - h) Where service of process is accomplished by personal delivery, all information confirming that Respondent knew the person to whom process was delivered to be the actual intended recipient of the process; and

- i) Where information required is unknown, Respondent shall clearly state so in the affidavit.
- 22) Respondent shall not sign or notarize or cause to be signed or notarized any affidavit of service before entering all required information.
- 23) Respondent shall not sign his/her name on any affidavit containing any information that has the capacity, tendency or effect of intentionally misleading a reader of the affidavit.
- 24) Any affidavit affirmed 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.
- 25) It shall be the Respondent's burden to show that he/ she did not intend the affidavit to be misleading.
- 26) Respondent shall at all times specifically state in the affidavit whether he knows or does not know the name(s) of the person(s) to whom service was delivered.
- 27) Respondent shall not use fictitious names in his affidavit to refer to defendants or persons, except where the use of "Jane Doe" or "John Doe" is actually used to name unknown parties in the process to be served.
- 28) Respondent shall always state the process server organization name, address and DCA license number, as well his own name, d/b/a and DCA license number, on all affidavits of service to be filed with a court.

**E. Maintenance of Records**

- 29) Respondent shall maintain all digital photographs, logbooks, records, affidavits and other documents required by the General Business Law, the Rules of the Commissioner and this Agreement for a period of not less than five years.

**F. Duty to Report Contested Service of Process**

- 30) The Respondent shall notify the Department (attention of Counsel's Office), in writing, by certified mail, within ten days of the conclusion of any traverse hearing, court hearing or hearing concerning a contest to service of process in which her service of process is contested in a motion, order to show cause, hearing or trial, and whether such dispute was resolved by settlement of the parties, waiver by defendant or by decision of the court.
- 31) The report shall include the following:

- a) Heading stating "REPORT OF A TRAVERSE HEARING";
  - b) Process server's name;
  - c) Process server's license number;
  - d) the index number of the action or proceeding;
  - e) the name of the action or proceeding;
  - f) the court in which the action was commenced;
  - g) the name of the firm, entity or person on behalf of whom service was effectuated;
  - h) the name, address and license number of the process server organization that assigned service to Respondent;
  - i) a copy of the affidavit of service or proof of service;
  - j) copies of the mailing receipts;
  - i) the final disposition of the matter; and
  - j) a copy of the court order, stipulation or court file jacket setting forth the final disposition of the matter shall be attached to the report to the Department or may be similarly mailed separately within 10 days of the rendering of the decision.
- 32) Respondent shall have an affirmative obligation to forward a copy of the decision, stipulation, statement or other proof of disposition of the hearing concerning a contest to service to the Department.
- 33) Respondent shall maintain in a separate bound, paginated volume or logbook, separate from the records required by General Business Law and or 6 RCNY § 2-233, where he records every contest to service of process (traverse hearing) setting forth all of the information to be reported to the Department, as required by this Agreement and the law and rules, and the date and certified mail number.

**G. Providing Identification**

- 34) Respondent may not possess, display or wear any badges, insignias, shields, medals or decoration while serving process.
- 35) Respondent shall display his Department identification card upon request of a person upon whom Respondent is attempting service or any other interested person.

**H. Training**

- 36) Respondent shall obtain 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.
- 37) Respondent's failure to provide proof of having attended training, after notice has been issued that such training is available shall be sufficient grounds for the revocation of his license or denial of a license renewal application until such time as this requirement is met.

**I. Inspection of Records:**

- 38) For the next three years, Respondent shall report to the Department at the Legal Services Division, 42 Broadway, 9<sup>th</sup> Floor, New York, NY 10004, every six (6) months for a compliance review.
- 39) The first such review shall occur on or about six (6) months from the date of the execution of this Agreement at a date and time scheduled by the Department.
- 40) The Department will provide written notice of the date and time of the compliance review to Respondent by regular United States mail sent to Respondent's residential address on file with the Department not later than ten (10) days before the schedule review.
- 41) Respondent shall appear at the review with all digital photographs, records, affidavits and other documents that this Agreement requires Respondent to maintain, for the preceding six months, or as provided by the Department in writing and with such other materials as the Department by notice shall request.
- 42) The Department will conduct a review to assess whether Respondent has complied with the requirements of Article 8-A of the General Business Law, Subchapter W of Chapter 2 of the Rules of the Commissioner, and this Agreement.
- 43) Respondent's failure to comply may result in proceedings for license revocation or suspension, fines and such other remedies as provided by law and this Agreement.
- 44) Respondent's failure to provide proof of compliance with the review and reporting requirement of this section, on or before the application for a license renewal, shall be sufficient grounds for the denial of such license application.
- 45) Respondent shall produce all records demanded by the Department within 72 hours of the receipt of a written demand.

### III. FINES

- 46) Respondent shall pay a fine of \$300.00 in settlement of all the violations to date. The fine amount shall be paid according to the following payment schedule: \$150.00 on the execution of this AOD and a final payment of \$150.00 on or before December 30, 2009.
- 47) If Respondent's check on any payment in a pay-out agreement is returned by the bank for insufficient funds, Respondent will be assessed a bounced check charge (100% of the bank charge assessed to DCA, whatever that amount may be) *and* the agreement balance will be automatically accelerated, the entire balance of the principal then owing becoming due immediately.
- 48) If, within 5 days of its due date, DCA does not receive one of Respondent's scheduled payments *subsequent* to the initial payment, DCA will add a \$50 late charge to the amount owed, due at the next scheduled payment.
- 49) If Respondent is late making a second payment during the life of the pay-out agreement, Respondent will be assessed a second charge of \$100, *and* the agreement balance will be automatically accelerated, the balance thus becoming due immediately.

### IV. RESOLUTION OF CONSUMER COMPLAINTS

- 50) 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 the receipt the complaint.
- 51) Respondent shall respond to any subsequent communications from the Department concerning the complaint within five (5) business days.
- 52) Nothing in this provision waives or diminishes Respondent's obligation to comply with 6 RCNY Section I-13.
- 53) Respondent shall provide to the Department a copy of every written complaint that Respondent receives from any other governmental body and from any non-governmental entity and Respondent's response thereto within ten days of Respondent's receipt of the complaint. Respondent shall report to the Department the resolution of every such complaint and provide a copy of any writing setting forth the resolution within ten (10) business days of such resolution.

**V. RESPONDENT'S DUTY TO REPORT CHANGES OF ADDRESS TO THE DEPARTMENT**

54) Respondent affirms that the address and telephone number listed with the Department are current and correct.

55) Respondent represents that the following is his e-mail address.

\_\_\_\_\_ @ \_\_\_\_\_

56) Respondent acknowledges that the Department intends to use this e-mail address to communicate official matters to the Respondent and Respondent agrees to accept such communications.

57) Respondent shall notify the Department when his address, telephone number and or e-mail address change in writing within 10 days of such change.

58) Respondent shall provide the notification in writing to the Department's Licensing Unit at 42 Broadway, 5<sup>th</sup> Floor, NY, NY 10004 and the Legal Services Unit located at 42 Broadway, 9<sup>th</sup> Floor, NY, NY 10004.

59) Respondent's failure to notify the Department of any change in address in a timely manner shall be sufficient grounds for the suspension of the license for a period of not less than three months, upon proof of the failure to notify the Department of such change and an opportunity to be heard.

60) Respondent's failure to respond to any Department communication within the period specified in this Agreement or by law shall be deemed Respondent's failure to notify the Department of his/her whereabouts and shall be sufficient grounds for the suspension of the license, upon proof of such failure to respond and an opportunity to be heard.

**VI. BREACH OF THIS AGREEMENT**

61) A finding, after notice and 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 and for ineligibility to be licensed for a period of five years.

62) Specific violations of this Agreement shall constitute independent and separate violations of any applicable law, regulation or rule.

63) Violations of law and violations of this Agreement shall be assessed as separate fines, with a maximum penalty of \$1,000.00 each.

