

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

JIMMY ROMAN,

Respondent.

DECISION AND ORDER

Violation No.: LL 5133488

License No.: 1132155

**Respondent's Address:
387 E. Mosholu Parkway North (1B)
Bronx, NY 10467**

Date: March 22, 2010

A hearing on the above-captioned matter was held on December 14, 2009.¹

Appearances: For the Department: Jordan Cohen, Esq. For the Respondent: Preston A. Leschins, Esq.; Jimmy Roman, respondent; Alan Aboody, Owner of R&A Process Server (respondent's employer), witness.

The respondent is charged with violating the following:

- 1) Title 6 of the Rules of the City of New York ("6 RCNY") Section 2-233 (b)(5) by not keeping records chronologically in a suitably bound and paginated volume (10 counts).
- 2) 6 RCNY Section 2-233(b)(6) by failing to maintain a bound volume or log free of impermissible erasures, obliterations or redactions (2 counts).
- 3) 6 RCNY Section 2-233(a)(2)(i) by failing to maintain records showing the title of the action (10 counts).
- 4) 6 RCNY Section 2-233(a)(2)(ii) by failing to maintain records showing the name of the person served (5 counts).
- 5) 6 RCNY Section 2-233(a)(2)(iv) by failing to maintain records showing the address where service was served (10 counts).

¹ An Interim Order was issued January 4, 2010, directing the Department to set forth the number of counts of each violation it was alleging, by January 18, 2010. The Department responded within the allowed time. On January 19, 2010, the respondent requested that the decision in this matter be held in abeyance pending the appeal of Department v. Eric Rivera (LL5133488) matter, in that the appeal determination might serve as precedent in the instant matter. On March 4, 2010, the Eric Rivera appeal was determined

- 6) 6 RCNY Section 2-233(a)(2)(v) by failing to maintain records showing the nature of the papers served (9 counts).
- 7) 6 RCNY Section 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).
- 8) 6 RCNY Section 2-233(b)(2) by failing to maintain records of the person or law firm from whom the process was received (10 counts).
- 9) 6 RCNY Section 6-42(c) by failing to comply with an Assurance of Discontinuance with the Department.
- 10) Administrative Code Section 20-101 by failing to maintain standards of honesty, integrity and fair dealing required of licensees.

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

Findings of Fact

The respondent is a process server licensed by the Department for approximately six years.

The respondent produced 17 logbooks in response to a subpoena from the Department, covering the period March 14, 2005 to October 15, 2007. The respondent maintains his log (designated a "registry ledger") in spirally-bound volumes provided by his employer, R & A Process Serving Inc., from whom he receives all process to be served. 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, including the borough, where service is to be effected; and (3) the court in which the action has been commenced. In October 2007, the respondent did not otherwise include this information in his log on ten separate occasions respecting the title and address, and on five separate occasions respecting the court in which the action had been commenced. Although the format calls for "paper served," the respondent abbreviated the papers he served (such as "RD" or "D") and did not otherwise include the nature of the papers served on nine separate occasions. Although the format provides for inclusion of "firm name," on ten separate dates, the respondent recorded "BGA," an abbreviation for "Borah Goldstein and Addison," the name of the law firm from whom he received process.

The respondent left two entries blank following each of the filled-in entries on these five dates: October 2, 2007; October 3, 2007; October 4, 2007; October 9, 2007; and October 12, 2007.

The log pages are paginated. Page number 003440 repeats, starting on July 12, 2007 at 11:31 and July 16, 2007, at 1:28. The logbook covering the period October 1 to October 15, 2007 has two sets of page numbers: one written by hand at the upper right-hand corner and one stamped at the lower right-hand corner of each page.

In a log entry dated October 2, 2007, the respondent drew an “x” through the entry. He did not print the accurate information directly above the inaccurate entry. On October 3, 2007, the respondent obliterated a section in an attempt to correct it and did not clearly write above the inaccurate entry.

The respondent recorded the name “John Doe” or “Jane Doe” on five separate occasions on October 2 and October 3, 2007 when the person he served refused to give his or her name.

On March 3, 2006, the respondent entered into an Assurance of Discontinuance with the Department, settling LL5084017 and agreeing to comply with the licensing law and relevant rules and to refrain from committing the violations for which he was cited, which included 6 RCNY Sections 2-233(a)(2)(i), 2-233(a)(3)(vi), 2-233(a)(4), 2-233(b)(1), 233(b)(4) and 2-234.

Opinion

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 [re-lettered 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.

(Emphasis added.)

There is no issue that, employing the format provided by R & A, the respondent did not include: (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. Although the fault of the respondent in not providing the required information lies primarily in the format provided by R & A, this does not excuse the respondent from complying with these provisions, nor does it provide a basis for mitigation. 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...”). Accordingly, charges 3, 5 and 7 shall be sustained.

Moreover, although the R & A format provided for inclusion of “paper served,” the respondent abbreviated the papers he served (such as “RD” or “D”) and did not otherwise include the nature of the papers served on nine separate occasions. Although he testified that “RD” represented “rent demand” and “D” stood for “dispossess”, it is not clear from the abbreviations themselves what papers were served, and cannot be seen to comply with the requirements of 6 RCNY Section 2-233(a)(2)(v). Accordingly, charge 6 shall be sustained.

The Department presented insufficient evidence to establish a violation of charge 4. The respondent testified credibly that he recorded the name “John Doe” or “Jane Doe” when the person he served refused to give his or her name. He further testified that neither “John Doe” nor “Jane Doe” was named in the captions of any of the papers served. The Department had a full opportunity to question Mr. Roman. I note also that the Department did not rebut the believable testimony of the respondent. I conclude that the respondent satisfied the requirement of 6 RCNY Section 2-233(a)(2)(ii) in writing “John Doe” or “Jane Doe” when the name of the person served was not known. Accordingly, charge 4 shall be dismissed.

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

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

- (2) The person or firm from whom the process served was received.
- (5) Records shall be kept in chronological order 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 the respondent did not comply with the requirements of 6 RCNY Section 2-233(b)(5). First, the records were not chronological on ten separate occasions when the respondent left blank entries,

which would permit the record to later be illegally altered. Second, on two separate occasions, the pages were not suitably paginated in that page numbers repeated or were labeled with two sets of numbers. Third, the logbooks were not suitably bound. The Appeal Determination in Department v. Eric Rivera (LL5130923) cited Masaryk Towers Corp. v. ██████, 12 Misc. 3d 1172A, 820 N.Y.S.2d 843, 2006 NY Slip Op 51157U (Civ. Ct. New York County 2006), where the court found that a logbook consisting of a single continuous computer printout secured in a binder did not meet the requirements of 6 RCNY Section 2-233(b)(5). The Appeal Determination in Eric Rivera found that “the respondent’s spirally bound log is similarly susceptible to manipulation” and “could be taken apart easily at any time and re-bound.” Accordingly, the respondent’s logbooks did not satisfy the requirements of 6 RCNY Section 2-233(b)(5)

The credible evidence establishes that the respondent twice failed to maintain a bound volume or log free of impermissible erasures, obliterating or redactions, in two violations of charge 2 (6 RCNY Section 2-233(b)(6)).

The credible evidence establishes that respondent did not include in his 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) on ten separate dates, in that he recorded an abbreviation. I find that recording an abbreviation is not sufficient, as someone other than the respondent himself could not readily decipher the name. Accordingly, charge 8 shall be sustained on all 10 counts.

In considering the penalty to be imposed, I note that the Eric Rivera Appeal Determination found that “the Deputy Director of Adjudication correctly found that each record of service in which the respondent failed to include information required by a subdivision of 6 RCNY Section 233 constituted a separate violation for which the respondent should be ordered to pay a separate fine.” Accordingly, I impose separate fines for each violation.

On March 3, 2006, the respondent entered into an Assurance of Discontinuance with the Department, settling LL5084017 and agreeing to comply with the licensing law and relevant rules and to refrain from committing the violations for which he was cited, which included 6 RCNY Sections 2-233(a)(2)(i), 2-233(a)(3)(vi), 2-233(a)(4), 2-233(b)(1), 233(b)(4) and 2-234. In the instant matter, he was charged with violations of 6 RCNY Sections 2-233(a)(2)(i) and 2-233(a)(2)(vi), both of which resulted from the format of the logbook created by R & A.

The Department demonstrated respondent’s failure to maintain required records of his service in the stringent manner required by statute and Departmental rules. The respondent argues that even though he signed an Assurance of Discontinuance some three years ago, he is obligated to comply with the rules and regulations anyway. However, I note that he agreed at the time that “a violation of any charges cited on the above referenced Notice of

Violation shall be punishable upon proof thereof by the maximum penalty allowable by law.”

The Department requests that respondent’s license be suspended for two weeks based on 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)).

In determining the penalty to impose, the respondent has shown his understanding and ready admission of his errors. Both he and Mr. Aboody, the owner of R & A, presented the new logbook he will use to conform his future practice to the stringent requirements of the Department’s rules. Accordingly, I impose a suspension of two weeks, as requested by the Department, for the respondent’s failure to comply with an Assurance of Discontinuance (charge 9).

The Department has not shown any fabrication of records or service by the respondent; has not shown any failure of the respondent to complete affidavits of service; and has not shown any inadequacy of service or a successful traverse against the respondent. Even though I have found the respondent guilty of numerous record-keeping violations, I do not find that collectively they establish a finding that he is unfit to hold a license, given his ample admission of his errors and subsequent correction of his logbook. Accordingly, charge 10 shall be dismissed.

Order

The respondent is **Ordered** to pay to the Department a **TOTAL FINE of \$19,600** as follows:

Charge 1:	\$3,500	(\$350 per violation, for 10 violations)
Charge 2:	\$700	(\$350 per violation, for 2 violations)
Charge 3:	\$3,500	(\$350 per violation, for 10 violations)
Charge 5:	\$3,500	(\$350 per violation, for 10 violations)
Charge 6:	\$3,150	(\$350 per violation, for 9 violations)
Charge 7:	\$1,750	(\$350 per violation, for 5 violations)
Charge 8:	\$3,500	(\$350 per violation, for 10 violations)

It is further ordered that charges 4 and 10 be **dismissed**.

It is further Ordered that the license is suspended for two weeks for his violation of charge 9. 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, 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 Sections 20-105 and 20-106 (the “Padlock Law”).

This constitutes the recommendation of the Administrative Law Judge.

Judith Gould
Administrative Law Judge

DECISION AND ORDER

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

This constitutes the Decision and Order of the Department.

Bruce M. Dennis
Deputy Director of Adjudication

cc: Jordan Cohen, Esq.

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**

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DEPARTMENT OF CONSUMER AFFAIRS,

NOTICE OF HEARING

Complainant,

**LL # 5133488
License # 1132155**

-against-

Jimmy Roman,

Jimmy Roman
387 E. Mosholu Parkway North
Apt 1-B
Bronx, NY 10467

Licensee/Respondent.

(Process Server Individual)

-----X
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 August 13, 2009 at 930AM**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, Jordan P. Cohen, Esq., as and for its complaint upon information and belief alleges the following:

LICENSE STATUS

1. Respondent, Jimmy Roman, has held an Individual Process Server license issued by the Department since on or about May 15, 2003.
2. A process server license is renewable in two-year intervals.
3. Respondent's last process server license expired on February 28, 2008.
4. Respondent's application for a renewal license, to commence on February 28, 2008 and expire on February 28, 2010, has been held in pending status until the conclusion of the Department's investigation of his process server business practices.
5. The Department issued to Respondent temporary permission to operate until April 30, 2008.

FACTS

Respondent Served with Subpoena

6. On or about February 29, 2008, the Department issued to Respondent a subpoena duces tecum.
7. The subpoena called for Respondent's appearance and for certain of Respondent's books and records, including production of process serving logbooks that Respondent is required to maintain for a period of two years from date of service pursuant to 6 RCNY 2-233.

FAILURE TO COMPLY WITH RECORD-KEEPING REQUIREMENTS

**Failure to Keep Records Required To Be Kept Under §2-233 and or General
Business Law § 89-cc for the Requisite Period of Time**

8. In response to the subpoena duces tecum, Respondent produced, in pertinent part, seventeen (17) logbooks containing entries for process he served between March 14, 2005 and October 15, 2007.
9. Respondent's logbooks covered the following time period:
 - a. March 14, 2005 to March 31, 2005;
 - b. March 31, 2005 to April 12, 2005;
 - c. April 28, 2006 to May 15, 2006;
 - d. May 15, 2006 to June 1, 2006;
 - e. June 1, 2006 to June 15, 2006;
 - f. June 30, 2006 to July 12, 2006;
 - g. July 14, 2006 to July 31, 2006;
 - h. July 31, 2006 to August 7, 2006;
 - i. August 14, 2006 to August 21, 2006;
 - j. October 17, 2006 to October 31, 2006;
 - k. November 1, 2006 to November 15, 2006;
 - l. November 15, 2006 to November 28, 2006;

m. December 1, 2006 to December 15, 2006;

n. March 1, 2007 to March 15, 2007;

o. May 15, 2007 to May 31, 2007;

p. June 29, 2007 to July 16, 2007; and

q. October 1, 2007 to October 15, 2007.

10. Records for the following extended periods of time were missing without explanation:

a. August 22, 2006 to October 16, 2006;

b. December 14, 2006 to February 28, 2007;

c. March 16, 2007 to May 14, 2007;

d. July 17, 2007 to August 31, 2007; and

e. October 16, 2007 to February 29, 2008.

Failure to Keep Records in Chronological Order

11. Respondent failed to record entries in the logbooks in chronological order by leaving blank spaces between entries.

12. Respondent left blank spaces in his logbook where notations could be inserted out of chronological order without detection including, but not limited to the

following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:

- a. The two (2) blank entries following the entry dated October 2, 2007 at 11:31;
- b. The two (2) blank entries following the entry dated October 3, 2007 at 2:48;
- c. The two (2) blank entries following the entry dated October 4, 2007 at 1:56;
- d. The two (2) blank entries following the entry dated October 9, 2007 at 1:24;
and
- e. The two (2) blank entries following the entry dated October 12, 2007 at 10:13.

13. Blank spaces and pages are not permitted as Respondent cannot show that entries in the logbook were entered chronologically

Failure to Keep Record Service of Process in Properly Paginated Volumes

14 In response to the subpoena, the Respondent produced seventeen (17) logbooks.

15. Respondent's logbooks are not properly paginated for the following reasons:

- a. Booklets are not properly paginated, as page numbers starting with 003440 repeat, starting on July 13, 2007 at 11:31 and July 16, 2007 at 1:28, in the logbook covering the period from June 29, 2007 to July 16, 2007; and
- b. The logbook covering the period from October 1, 2007 to October 15, 2007 has two sets of page numbers, one written in at the top and one stamped at the bottom of each page.

Unlawful Corrections in Records of Process Served

16. Respondent failed to make corrections in his logbooks by drawing a straight line through the original entry.
17. Respondent made corrections by obscuring the entry.
18. Respondent's failure to make proper corrections, include, but are not limited to, the following entries in his logs:
 - a. Entry titled "[REDACTED]" the seventh entry in the logbook covering the period from October 1, 2007 to October 15, 2007; and
 - b. Entry dated October 3, 2007 at 11:48 in the logbook covering the period from October 1, 2007 to October 15, 2007.

Failure to Record the Title of the Action

19. Respondent failed to record in the logbooks the title of the action for service of process effectuated by him.
20. Respondent's failure to record the title of the action include, but are not limited to the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:
 - a. Entry dated October 2, 2007 at 9:11;
 - b. Entry dated October 2, 2007 at 9:26;
 - c. Entry dated October 2, 2007 at 9:42;
 - d. Entry dated October 2, 2007 at 9:56;

- e. Entry dated October 2, 2007 at 10:11;
- f. Entry dated October 2, 2007 at 10:33;
- g. Entry dated October 2, 2007 at 10:53;
- h. Entry dated October 2, 2007 at 10:56;
- i. Entry dated October 2, 2007 at 11:01; and
- j. Entry dated October 2, 2007 at 11:14.

Failure to Record the Name of the Person Served

- 21. Respondent failed to record in his logbooks the name of the person served in substituted service.
- 22. Respondent recorded "John Doe" or "Jane Doe," where the name of the person to be served was known or should have been known.
- 23. Respondent's failure to record the name of the person served include, but are not limited to, the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007::
 - a. Entry dated October 2, 2007 at 10:11;
 - b. Entry dated October 2, 2007 at 1:09;
 - c. Entry dated October 2, 2007 at 1:27;
 - d. Entry dated October 3, 2007 at 12:01, index number 89267; and

- e. Entry dated October 3, 2007 at 2:07, index number 89272.

Failure to Record the Full Address Where Service was Effectuated.

- 24. Respondent failed to consistently record in the logbooks the full address where service of process was effectuated

- 25. Respondent failed to record the city, county, and zip code where service of process was effectuated in any logbooks.

- 26. Respondent's failure to record the address where service of process was effectuated include, but are not limited to the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:
 - a. Entry dated October 2, 2007 at 9:11;

 - b. Entry dated October 2, 2007 at 9:26;

 - c. Entry dated October 2, 2007 at 9:42;

 - d. Entry dated October 2, 2007 at 9:56;

 - e. Entry dated October 2, 2007 at 10:11;

 - f. Entry dated October 2, 2007 at 10:33;

 - g. Entry dated October 2, 2007 at 10:53;

 - h. Entry dated October 2, 2007 at 10:56;

 - i. Entry dated October 2, 2007 at 11:01; and

 - j. Entry dated October 2, 2007 at 11:14.

Failure to Record of the Nature of the Papers Served

27. Respondent failed to clearly set forth in the logbooks the nature of the papers Respondent served.

28. Papers served are only described with ambiguous abbreviations which are not always clearly identifiable.

29. Respondent's failure to record the nature of the papers served include, but are not limited to, the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:

- a. Entry dated October 3, 2007 at 11:48;
- b. Entry dated October 3, 2007 at 12:01;
- c. Entry dated October 3, 2007 at 12:11;
- d. Entry dated October 4, 2007 at 12:44;
- e. Entry dated October 4, 2007 at 12:53;
- f. Entry dated October 4, 2007 at 1:18;
- g. Entry dated October 12, 2007 at 11:03;
- h. Entry dated October 12, 2007 at 11:18; and
- i. Entry dated October 12, 2007 at 11:21.

Failure to Record the Name of the Court in Which the Action Was Commenced

30. Respondent failed to set forth in the logbooks the name of the court in which the action was commenced.

31. Respondent's failure to record the court in which the action was commenced include, but not limited to, the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:

- a. Entry dated October 2, 2007 at 12:07, index number 89709;
- b. Entry dated October 3, 2007 at 9:48, index number 89493;
- c. Entry dated October 3, 2007 at 10:03, index number 89499;
- d. Entry dated October 9, 2007 at 10:36, index number 90539; and
- e. Entry dated October 11, 2007 at 9:11, index number 90790.

Failure to Record the Date An Affidavit of Service Was Filed With a Court

32 Respondent failed to record in his logbooks the date on which proof of service was filed with a court in those instances in which an affidavit of services was required to be filed by law.

33. Respondent's failure to record the date on which proof of service was filed with a court include, but are not limited to the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:

- a. Entry dated October 2, 2007, at 12:17, index number 88544;
- b. Entry dated October 2, 2007 at 12:19, index number 88542; and
- c. Entry dated October 2, 2007 at 12:46, index number 88900.

**Failure to Record the Person or Firm from Whom Process for Service
Was Received**

34. Respondent failed to record in his logbooks the name of the person or firm from whom Respondent received the process for service.
35. Respondent only listed initials and abbreviations of the attorney in the case
36. Respondent's failure to record the name of the person or firm from whom process was received include, but are not limited to the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:
- a. Entry dated October 2, 2007 at 9:11;
 - b. Entry dated October 2, 2007 at 9:26;
 - c. Entry dated October 2, 2007 at 9:42;
 - d. Entry dated October 2, 2007 at 9:56;
 - e. Entry dated October 2, 2007 at 10:11;
 - f. Entry dated October 2, 2007 at 10:33;
 - g. Entry dated October 2, 2007 at 10:53;
 - h. Entry dated October 2, 2007 at 10:56;
 - i. Entry dated October 2, 2007 at 11:01; and
 - j. Entry dated October 2, 2007 at 11:14.

Failure to Record the Postal Receipt Numbers of Registered or Certified Mail

37. Under section 735 (1) of the RPAPL, where service of process is by delivery to a person of suitable age and discretion or by conspicuous place service, service is not complete unless the legal papers are also delivered no later than a day later by regular and registered or certified mail.
38. The receipt numbers must be recorded in the process server's log pursuant to 6 RCNY 2-233(b) (4).
39. Respondent failed to record in his logbooks the postal receipt number of the registered or certified mail when he alleged service of the Notice of Petition and Petition by delivery to a person of suitable age and discretion or by conspicuous place service.
40. Respondent's failure to record the postal receipt numbers include, but are not limited to, the following entries in the logbook covering the period from October 1, 2007 to October 15, 2007:
- a. Entry dated October 2, 2007: at 12:17, index number 88544;
 - b. Entry dated October 2, 2007 at 12:19, index number 88542; and
 - c. Entry dated October 2, 2007 at 12:46, index number 88900.

Breach of Prior Assurance of Discontinuance with DCA

41. In or about March 3, 2006, Respondent settled LL # 5084017 by entering into an Assurance of Discontinuance ("Agreement") with the Department.

42. Paragraph 3 of the March 3, 2006 Agreement provided that Respondent shall comply fully with the Consumer Protection Law, the Licensing Law, and all relevant rules.

43. Paragraph 3 of the March 3, 2006 Agreement also provided that Respondent shall refrain in the future from committing the violations cited in the Notice of Violation.

44. The charges in LL 5084017 were as follows:

- a. 6 RCNY2-233.A.2.I;
- b. 6 RCNY2-233 A.2.VI;
- c. 6 RCNY2-233 A.4;
- d. 6 RCNY2-233.B.1;
- e. 6 RCNY2-233 B.4; and
- f. 6 RCNY2-234

45. Respondent is in breach of the March 3, 2006 Agreement as Respondent is now being charged with, among other violations, of violating:

- a. 6 RCNY2-233 A.2.I;
- b. 6 RCNY2-233 A.2.VI;
- c. RCNY2-233.A.4; and
- d. 6 RCNY2-233.B.4.

CHARGES

FAILURE TO COMPLY WITH RECORD-KEEPING REQUIREMENTS

**Failure To Keep Records Required To Be Kept Under §2-233 and or General
Business Law § 89-cc for the Requisite Period of Time**

Counts 1 - 5

1. The allegations of paragraphs 8 - 10 above are incorporated by reference as though fully realleged herein.
2. Respondent failed to keep records required to be kept under §2-233 (a) for two years from the date of service in violation of the Rules of City of New York, Title 6, § 2-233 (a) (6).

Failure to Keep Records in Chronological Order

Counts 6 - 15

- 3 The allegations of paragraphs 11 - 13 above are incorporated by reference as though fully realleged herein.
4. Respondent failed keep records in chronological order within the meaning of and in violation of the Rules of City of New York, Title 6, § 2-233 (b) (5).

**Failure to Keep Record Service of Process in Properly Bound and or Paginated
Volumes**

Counts 16 - 17

- 5 The allegations of paragraphs 14 - 15 above are incorporated by reference as though fully realleged herein.

6. Respondent failed to maintain entries in a properly bound and paginated volume or logbook in violation of the Rules of City of New York, Title 6, § 2-233 (b) (5).

Unlawful Corrections in Records of Process Served

Counts 18 - 19

7. The allegations of paragraphs 16- 18 above are incorporated by reference as though fully realleged herein.
8. Respondent failed to maintain a bound volume or log free of impermissible erasures, obliterating or redactions, etc. in violation of the Rules of City of New York, Title 6, § 2-233 (b) (6).

Failure to Record the Title Of The Action

Counts 20 - 29

9. The allegations of paragraphs 19 - 20 above are incorporated by reference as though fully realleged herein.
10. Respondent failed to maintain records showing the title of the action in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (i).

Failure to Record the Name of the Person Served

Counts 30 - 34

11. The allegations of paragraphs 21 - 23 above are incorporated by reference as though fully realleged herein.

12. Respondent failed to maintain records showing the name of the person served, in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (ii).

Failure to Record the Full Address Where Service was Effectuated.

Counts 35 - 44

13. The allegations of paragraphs 24 - 26 above are incorporated by reference as though fully realleged herein.

14. Respondent failed to maintain records showing the address where service was served, in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (iv).

Failure to Record of the Nature of the Papers Served

Counts 45 - 53

15. The allegations of paragraphs 27 - 29 above are incorporated by reference as though fully realleged herein

16. Respondent failed to maintain records showing the nature of the papers served, in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (v).

Failure to Record the Name of the Court In Which The Action Was Commenced

Counts 54 - 58

17. The allegations of paragraphs 30 - 31 above are incorporated by reference as though fully realleged herein.

18. Respondent failed to maintain records showing the court in which the action was commenced/the index number of the action in violation of the Rules of City of New York, Title 6, § 2-233 (a) (2) (vi).

Failure to Record the Date An Affidavit of Service Was Filed With a Court

Counts 59 - 61

19. The allegations of paragraphs 32 - 33 above are incorporated by reference as though fully realleged herein.
20. Respondent failed to maintain records showing the dates that affidavits of service were filed with a court, in violation of the Rules of City of New York, Title 6, § 2-233 (a) (5).

Failure to Record the Person or Firm From Which Process for Service Was Received

Counts 62 - 71

21. The allegations of paragraphs 34 - 36 above are incorporated by reference as though fully realleged herein.
22. Respondent failed to maintain records of the person or law firm from whom he/she received the process to be served, in violation of the Rules of City of New York, Title 6, § 2-233 (b) (2)

Failure to Record the Postal Receipt Numbers of Registered or Certified Mail

Counts 72 - 74

23. The allegations of paragraphs 37 - 40 above are incorporated by reference as though fully realleged herein.
24. Respondent failed to include the postal receipt number of registered or certified mail after service pursuant to RPAPL §735 (1), in violation of the Rules of City of New York, Title 6, § 2-233 (b) (4).

BREACH OF PRIOR ASSURANCE OF DISCONTINUANCE WITH DCA

Counts 75

25. The allegations of paragraphs 41 – 45 above are incorporated by reference as though fully realleged herein.
27. 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).
28. Respondent failed to comply with said settlement agreement, in violation of the Rules of City of New York, Title 6, § 6-42 (c).

LACK OF FITNESS

29. The allegations of all of the above paragraphs are incorporated by reference as though fully realleged herein.
30. By virtue of the activities described above, Respondent failed to maintain the standards of integrity, honesty and fair dealing required of licensees pursuant to 20-101 of the Code by committing the violations of law set forth above, thereby demonstrating a lack of fitness to hold a license with the Department.

WHEREFORE, the Department demands that an order issue: 1) finding Respondent unfit to hold future Department licenses for a period of no less than two (2) 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 3 (THREE) 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 3 (THREE) 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.

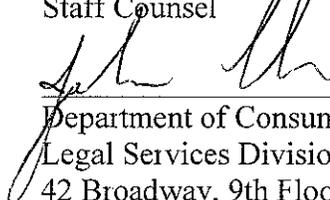
IF YOU DO NOT SPEAK FLUENT ENGLISH, YOU MAY USE THE TRANSLATION SERVICES PROVIDED BY DCA.

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, OR CAN BE OBTAINED FOR FREE BY CALLING 311, OR BY COMING TO THE DEPARTMENT IN PERSON.

Dated: July 22, 2009
New York, New York

For: Jonathan Mintz
Commissioner

By: Jordan P. Cohen, Esq
Staff Counsel


Department of Consumer Affairs
Legal Services Division
42 Broadway, 9th Floor
New York, NY 10004
Phone: (212) 487-6279

Prepared By: Steven Guerrero,
Legal Intern

Cc: ANZALONE & LESCHINS
888 7th Avenue, Suite 300
New York, NY 10106
Attn: Preston Leschins, Esq
Attorney for Respondent
Via fax: 212 265 9582



Department of
Consumer Affairs

RESPONDENT CONTACT INFORMATION FORM

DATE: 7/22/08 VIOLATION#: LL 5133488

CASE NAME: DCA v. Jimmy Roman

RESPONDENT'S NAME: Jimmy Roman

ADDRESS: 387 E Mosholu Pkwy North, 1B
Bronx, NY

TELEPHONE NUMBER: 718 582 6185, FAX: _____

RESPONDENT'S RELATIONSHIP TO BUSINESS: _____

BUSINESS INFORMATION:

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

TELEPHONE NUMBER (S): _____

FAX NUMBER(S): _____

BUSINESS E-MAIL ADDRESS: _____

DO YOU HAVE AN ATTORNEY YES NO

ATTORNEY'S NAME: Auston Leschins

FIRM NAME: Anzelone & Leschins

MAILING ADDRESS: 888 7th Ave, Suite 300
NY, NY 10106

TELEPHONE: 212 247 3104 FAX: 212 265 9592

EMAIL ADDRESS: _____



THE CITY OF NEW YORK DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF HEARING [] LL [] WH [] IP [] OL [] GL [] HC [] WO [] DATE MAILED: / / 1 OF

THE BELOW ENTITY IS HEREBY CHARGED WITH THE FOLLOWING VIOLATION (S) OF:

- [] TITLE 20 of the N Y C ADMINISTRATIVE CODE (see column 1, 2, & 3)
[] TITLE 1 of the NY CODES, RULES and REGULATIONS (see column 4)
[] TITLE 6 of the RULES of the CITY OF NEW YORK (see column 4)
[] NEW YORK GENERAL BUSINESS LAW (see column 3)
[] NY AGRICULTURE & MARKETS LAW ARTICLE 16 (see column 3)
[] Other (see column 3)

Table with columns: 1 CH, 2 SUBCH, 3 SECTION, 4 REG./RULE NO., NATURE OF VIOLATION, COUNTS. Includes handwritten 'See attached' in the violation column and a 'TOTAL' row at the bottom.

I/WE AFFIRM UNDER PENALTY OF PERJURY THAT I/WE OBSERVED THE ABOVE AND, ON THE DATE AND TIME LISTED ABOVE, SERVED UPON THE PERSON LISTED BELOW A TRUE COPY OF THIS DOCUMENT

Administrative information fields: CAMIS ID #, TAX ID #, LICENSE NO., START TIME, END/SERVED TIME, CERT. # (5133488), NAME, DBA, ADDRESS, BORO, ZIP, INSPECTION DATE, BUS CODE.

TYPE OF INSPECTION (CHECK ONE)

Inspection type checkboxes: [] PATROL (PTL), [] REQUEST (REQ), [] SUSPENSION (SUS), [] REVOCATION (REV), [] CONSENT JUDGEMENT ORDER (CJO), [] POSTING ORDER (POO), [] POSTING ORDER FOLLOW-UP (POF)

INSPECTION RESULT

Inspection result checkboxes: [] VIOLATION ISSUED, [] LICENSED, [] NO EVIDENCE OF ACTIVITY, [] RESULT PENDING, [] REINSPECTION, [] BUSINESS PADLOCKED, [] OBT. EVIDENCE OF ACTIVITY, [] NO VIOLATION, [] OOB, [] NO LICENSE REQUIRED, [] WARNING, [] CONFISCATION, [] W & M ORDER

Inspector information fields: INSPECTOR'S NAME, INSPECTOR'S SIGNATURE, DIV, UNIT, ID, BADGE (for two inspectors).

YOU ARE HEREBY ORDERED TO APPEAR FOR A HEARING ON THE ABOVE CHARGES ON THIS DATE AND TIME AT EITHER: [] THE ADJUDICATION DIVISION, 66 JOHN STREET 11TH FLOOR, NEW YORK NY 10038 OR [] LITIGATION & MEDIATION DIVISION, 42 BROADWAY, 9TH FLOOR, NEW YORK NY 10004

AT A M OR P.M. READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION A COPY OF THIS NOTICE WAS RECEIVED BY ME

Vendor information fields: VENDOR'S NAME (PRINT), VENDOR'S SIGNATURE, POSITION, DATE

PRE-HEARING DISPOSITION

Disposition fields: RECIDIVIST [] Y [] N, PLEADING LETTER \$, DATE SENT / /, BY, DATE SETTLED / /, FINE \$, [] PAID, [] PAR, [] DNP, SETTLEMENT OFFICER

WHITE - ADJUDICATION YELLOW - VENDOR PINK - ENFORCEMENT

PLEASE BRING THIS NOTICE WITH YOU

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

-----X APPEAL DETERMINATION
DEPARTMENT OF CONSUMER AFFAIRS,

Violation Number:
LL005133488

Complainant

License Number:
1132155

- against -

Date: July 20, 2010

JIMMY ROMAN,

Respondent.

-----X

The respondent appeals from the Decision dated March 22, 2010.

The respondent has presented no support for his assertion on appeal that “there is no precedent” for the fines ordered by the Decision,¹ or that the fines are arbitrary and capricious. The respondent’s argument that the fines “pose a severe and unfair financial burden upon the respondent” is not a valid basis for an appeal pursuant to 6 RCNY Section 6-40.

Accordingly, the Decision is **affirmed**.

¹ In fact, this tribunal recently upheld a decision in which similar fines were ordered. *See, Department of Consumer Affairs v. Eric Rivera*, LL5130923 (Appeal Determination, March 4, 2010).

SO ORDERED:



Nancy J. Schindler
Director of Adjudication

There will be no further agency action in this matter. Should the respondent wish to pursue the matter, it may attempt to do so pursuant to Article 78 of the Civil Practice Law and Rules. If the respondent decides to proceed, it may find it useful to consult with the Clerk of the New York State Supreme Court or its attorney. The Department of Consumer Affairs cannot render assistance to persons who are contemplating suit against it.

CERTIFICATE OF MAILING

On **July 20, 2010**, a copy of the attached,

Appeal Determination

Was Mailed for the Following:

Violation No.: **LL005133488**

License No.: **1132155**

By enclosing it/them in an envelope addressed to:

Jimmy Roman
387 E. Mosholu Parkway North Apt. 1B
Bronx, NY 10467

By emailing it/them to the following address:

leschins@att.net

Preston A. Leschins, Esq.
888 Seventh Avenue, Suite 300
New York, NY 10106-0399

Jordan Cohen, Esq.
Philip Kimball, Esq.


SIGNATURE

Margarita Ramirez
PRINT

CAMIS ENTRY: **Decision Affirmed**

CAMIS ENTRY DATE: **July 20, 2010**