

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

Complainant,

- against -

KENNETH P. WONICA,

Respondent.

DECISION AND ORDER

Record No.: LL005324960-ADJC

NOH No.: LL005324960

License No.: 1279283

**Respondent's Address:
210 Willard Avenue
Staten Island, New York 10314**

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A hearing on the above-captioned matter was held on March 13, 2014¹.

Appearances: For the Department: Alvin A. Liu, Esq.; Ashkan Mojdehi, Esq., observing. For the Respondent: Kenneth P. Wonica; Myra G. Sencer, Esq.

The Amended Notice of Hearing charged the respondent with violating:

1. Title 6 of the Rules of the City of New York ("6 RCNY") Section 2-236(a) by failing to report to the Department the scheduling of a traverse hearing within ten (10) days of receiving notice of the scheduled hearing (2 counts);
2. 6 RCNY Section 2-236(c)(1) by failing to attempt to learn the results of a traverse hearing in accordance with the procedures specified in 6 RCNY Section 2-236(c)(1) (2 counts); and
3. 6 RCNY Section 2-236(c)(2) by failing, within one hundred (100) days after the scheduled date of a traverse hearing, to report to the Department either (a) the final result of the hearing; or (b) that Respondent made attempts to learn the final result of the traverse hearing but was unable to do so (2 counts).

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

Findings of Fact:

The respondent is a licensed process server with the Department.

¹ The record was held open until March 27, 2014 for the respondent to submit additional documentation, and for the Department to submit a response. The Department requested an extension until April 3, 2014, which was granted.

On April 25, 2013, a traverse hearing was scheduled in the matter of *Monica Santiago v.* [REDACTED] Bronx County Family Court). The respondent received notice, and testified at the hearing. The respondent failed to report to the Department the scheduling of the traverse hearing within ten days of receiving notice. The respondent also failed to, within 100 days after the scheduled date of the traverse hearing, report to the Department either: a) the final result of the traverse hearing; or (b) that respondent made attempts to learn the final results of the traverse hearings but was unable to do so.

On May 2, 2013, a traverse hearing was scheduled in the matter of *Deutsche Bank National Trust Company v.* [REDACTED] [REDACTED] [REDACTED] Kings County Civil Court). Again, the respondent received notice, of the hearing. The respondent failed to report to the Department the scheduling of the traverse hearing within ten days of receiving notice. The respondent also failed to, within 100 days after the scheduled date of the traverse hearing, report to the Department either: a) the final result of the traverse hearing; or (b) that respondent made attempts to learn the final results of the traverse hearings but was unable to do so.

All required reports were sent by email to the Department in October 2013.

Opinion:

The Department has established Charges #1 and #3 by a preponderance of the credible evidence. 6 RCNY Section 2-236(a) states in pertinent part: “Whenever a process server or process serving agency receives any type of notice, including an oral communication, that a court has scheduled a hearing to determine whether service of process made or assigned by such licensee was effective, the licensee shall submit a report to the Department (attention of Counsel’s Office), in writing, by certified mail, or by email to an address designated by the Department within ten days of receiving such notice...”. 6 RCNY Section 2-236(c)(2) states: “The licensee shall report to the Department by certified mail or email (i) within ten days of learning the result, or (ii) that it made attempts to learn the result and was unable to do so not later than one-hundred days after the scheduled date of such hearing.

Mr. Wonica testified that he timely submitted the required reports by certified mail. Although Mr. Wonica ultimately produced documentation of repairs for his flooded basement, the preponderance of the credible evidence fails to establish that he timely complied with the rules, as he was unable to provide documentation for any of the five required reports. Accordingly, the charge shall be sustained.

Ms. Sencer’s argument, that in the alternative, 6 RCNY Sections 2-236(a) and (c) do not require a reporting from both the process server agency and the process server individual. This Tribunal has held however, that both the

agency and the individual are required to submit reports², and this argument is without merit.

However, Mr. Wonica's immediate correction of the violations upon notice that the documents had not been received, is noted.

The Department has not established Charge #2 by a preponderance of the credible evidence. This section does not require the licensee to submit any reports, but requires it to "**attempt** to learn the result of such hearing" (emphasis added). There was no testimony from the Department as to whether or not any **attempts** (emphasis added) were made. However, Mr. Wonica's submission of the reports by email upon receipt of the Notice of Hearing indicates an attempt to learn the results of the hearings. Accordingly, the charge shall be dismissed.

RECOMMENDED DECISION:

The respondent is found **guilty** of Charges #1 and #3, and is, hereby, **ordered** to pay to the Department a **TOTAL FINE** of **\$800 which is immediately due and owing** as follows:

Charge 1: \$400 (\$200 per count, for 2 counts)

Charge 3: \$400 (\$200 per count, for 2 counts)

The respondent is found **not guilty** of Charge #2, and it is hereby **dismissed**.

This constitutes the recommendation of the Administrative Law Judge of the Department.

**Esther Simon
Administrative Law Judge**

DECISION AND ORDER

The recommendation of the Administrative Law Judge is approved.

This constitutes the Decision and Order of the Department. The Department may suspend any DCA license(s) held by the respondent if the respondent fails to comply with this Decision and Order, including payment of the fine, within thirty (30) days. Payment with a check that is dishonored or a credit card transaction that is denied or reversed will not be considered compliance with this Decision and Order. Such license(s) will not be reinstated until the respondent has served any suspension

² See *Department of Consumer Affairs v. Ricardo Curo* (Appeal Determination dated April 15, 2014).

period ordered in this Decision and has paid ALL fines owed to the Department.

Date: June 3, 2014

Steven T. Kelly
Deputy Director of Adjudication

cc: Alvin Liu, Esq.
Via email: [REDACTED]

Kenneth Wonica
Via email: [REDACTED]

Myra G. Sencer, Esq.

[REDACTED]
Via email: [REDACTED]

Mail payment of fine in the enclosed envelope addressed to:

NYC Department of Consumer Affairs
Collections Division
42 Broadway, 9th Floor
New York, NY 10004

APPEAL INFORMATION

You have **30 days** to file an **APPEAL** of this decision. You must include with your appeal **all** of the following: (1) a check or money order payable to DCA for the sum of \$25; and (2) a check or money order payable to DCA 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. The application must be supported by evidence of financial hardship, including the most recent tax returns you have filed.

BY EMAIL: Send your appeal to myappeal@dca.nyc.gov and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11th Floor, New York, NY 10038. (Make sure to write the violation number(s) on your check or money order.) You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

BY REGULAR MAIL: Mail your appeal and the \$25 appeal fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11th Floor, New York, NY 10038. You must also mail a copy of your appeal to: DCA, Legal Division, 42 Broadway, 9th Floor, New York, NY 10004. Make sure to include in your appeal some indication or proof that you have sent a copy of the appeal to DCA's Legal Division. You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS

AMENDED NOTICE OF
HEARING

Complainant,

-against-

Violation # LL005324960

KENNETH P. WONICA
210 WILLARD AVENUE
STATEN ISLAND, NY 10314

License # 1279283

Licensee/Respondent.

(Process Server Individual)

-----X

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 DEPARTMENT'S ADJUDICATION TRIBUNAL AT 66 JOHN STREET, 11TH FLOOR, NEW YORK, NEW YORK AT 9:30 A.M. ON WEDNESDAY, JANUARY 22, 2014;**

AND SHOW CAUSE why your license to operate as an individual process server should not be suspended or revoked and why monetary penalties should not be imposed on you:

APPLICABLE LAW

1. Pursuant to Title 6 of the Rules of the City of New York ("6 RCNY") § 2-236(a), whenever an individual process server receives notice that a court has scheduled a hearing to determine whether service of process made by the process server was effective (known as a "traverse hearing"), the process server must submit, by certified mail or e-mail, a written report to the Department within ten (10) days of receiving such notice. The written report must include the title and index number of the action,

the court and the judge before whom the hearing is scheduled, the date(s) of the hearing, and the name and license number of every licensee who effected service or assigned or distributed the process for service.

2. Pursuant to 6 RCNY § 2-236(c)(1), an individual process server must attempt to learn the results of his or her traverse hearings by following specific procedures, including searching court files sixty (60) and ninety (90) days after the hearing.
3. Pursuant to 6 RCNY § 2-236(c)(2), an individual process server must submit a written report to the Department, by certified mail or e-mail, stating:
 - (a) the result of the traverse hearing (including any judicial order or voluntary settlement resolving the challenge to service of process), within ten (10) days of learning the result; or
 - (b) that he or she made attempts to learn the result of the traverse hearing but was unable to do so, within one hundred (100) days of the hearing.

FACTS

4. Respondent is licensed by the Department as an individual process server under license number 1279283.

Monica Santiago v. [REDACTED]

5. In or about 2012, process was distributed to Respondent for service in the matter of *Monica Santiago v. [REDACTED]* ([REDACTED] Bronx County Family Court) (“Santiago”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Santiago was filed with the clerk of the court.
6. The court in Santiago scheduled a traverse hearing for April 25, 2013 concerning the service of process allegedly made by Respondent.
7. Respondent received notice of the scheduling of the traverse hearing in Santiago.

8. Respondent did not submit a written report to the Department, by certified mail or e-mail, that a traverse hearing had been scheduled in Santiago within ten (10) days of receiving notice of the scheduled hearing.
9. Respondent did not attempt to learn the result of the traverse hearing in Santiago in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
10. Respondent did not submit a written report to the Department, by certified mail or e-mail, the result of the traverse hearing in Santiago or that Respondent made attempts to learn the result of the hearing but was unable to do so, within one hundred (100) days of the hearing.

Deutsche Bank National Trust Company v. [REDACTED]

11. In or about 2012, process was distributed to Respondent for service in the matter of *Deutsche Bank National Trust Company v. [REDACTED]* (Index Number [REDACTED] Kings County Civil Court) (“[REDACTED]”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Deutsche Bank was filed with the clerk of the court.
12. The court in Deutsche Bank scheduled a traverse hearing for May 2, 2013 concerning the service of process allegedly made by Respondent.
13. Respondent received notice of the scheduling of the traverse hearing in Deutsche Bank.
14. Respondent did not submit a written report to the Department, by certified mail or e-mail, that a traverse hearing had been scheduled in Deutsche Bank within ten (10) days of receiving notice of the scheduled hearing.
15. Respondent did not attempt to learn the result of the traverse hearing in Deutsche Bank in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).

16. Respondent did not submit a written report to the Department, by certified mail or e-mail, the result of the traverse hearing in Deutsche Bank or that Respondent made attempts to learn the result of the hearing but was unable to do so, within one hundred (100) days of the hearing.

CHARGES

1. Respondent violated 6 RCNY § 2-236(a) by failing to report to the Department the scheduling of a traverse hearing within ten (10) days of receiving notice of the scheduled hearing. [2 counts]
2. Respondent violated 6 RCNY § 2-236(c)(1) by failing to attempt to learn the result of a traverse hearing in accordance with the procedures specified in 6 RCNY § 2-236(c)(1). [2 counts]
3. Respondent violated 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of a traverse hearing, report to the Department either:
(a) the final result of the hearing; or (b) that Respondent made attempts to learn the final result of the hearing but was unable to do so. [2 counts]

WHEREFORE, the Department demands that an order issue: 1) imposing maximum fines on Respondent for each and every charge set forth herein; 2) suspending or revoking Respondent's license; 3) ordering Respondent to report to the Department, within 10 days, the results of any traverse hearings cited in this Notice of Hearing that Respondent has not reported to the Department; and 4) granting such other relief as is deemed just and proper.

Dated: January 13, 2014
New York, New York

For: **Jonathan Mintz**
Commissioner

By: *Alvin A. Liu*
Alvin A. Liu
Senior Staff Attorney
Legal Division

IMPORTANT INFORMATION FOR RESPONDENTS

You have been charged with violating Laws and Rules of the New York City Department of Consumer Affairs.

FAILURE TO APPEAR AT THE HEARING: If you do not appear at the DCA Adjudication Tribunal on the scheduled hearing date, you will be found guilty of the charges, you will be ordered to pay a fine, and your DCA license(s) may be revoked.

ADJOURNMENTS: Requests for adjournments must be received at least three (3) business days prior to the hearing date. **You may submit your request by e-mail to adjournmentrequests@dca.nyc.gov (preferred method)** or by mail to DCA Adjudication Tribunal, 66 John Street, 11th Floor, New York, NY 10038. Make sure to include the violation number in your request. In addition, you must send a copy of your request to process_server@dca.nyc.gov or by mail to Alvin Liu, DCA Legal Division, 42 Broadway, 9th Floor, New York, NY 10004.

REPRESENTATION: Although it is not required, you may choose to bring a lawyer or authorized representative to the hearing.

TRANSLATION SERVICES: DCA will provide translation services at the hearing for you and your witnesses. You may not use your own interpreter at the hearing.

REASONABLE ACCOMMODATION: If you have a disability and require a reasonable accommodation on the day of the hearing, you must send a request, with proof, before the hearing date to the Adjudication Tribunal at mycase@dca.nyc.gov or call 311 (212-NEW-YORK outside NYC) and ask for “Consumer Affairs Hearing - Reasonable Accommodation.”

SETTLEMENTS: If you wish to discuss a possible settlement of the charges in this Notice of Hearing, you may contact Shannon Bermingham at process_server@dca.nyc.gov at least five (5) business days prior to the hearing date.

For additional information, visit DCA’s website at www.nyc.gov/consumers or call 311.