

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

MARILEE J. KILSHEIMER,

Respondent.

DEFAULT DECISION AND ORDER

Record No.: LL005324948-ADJC

NOH No.: LL005324948

License No.: 1421868 (PROCESS)

Date: December 30, 2013

The respondent is charged with the violations in the attached Notice of Hearing.

A hearing was scheduled for December 4, 2013. 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 in person at the Department to answer the Notice of Hearing.

ORDER

The respondent is therefore **ordered to pay to the Department of Consumer Affairs (DCA) a TOTAL FINE of \$1,500, which is immediately due and owing**, as follows:

6 RCNY Section 2-236(c)(1) (\$500 per count, for 1 count)	\$ 500
6 RCNY Section 2-236(c)(2) (\$500 per count, for 1 count)	\$ 500
6 RCNY Section 1-14	\$ 500
TOTAL	\$ 1,500

The respondent is further **Ordered** to provide to the Department the results of any Traverse Hearings cited in the attached Notice of Hearing that the Respondent has not reported to the Department within ten (10) days of the date of this decision to the following address: "NYC Department of Consumer Affairs, Legal Division, 42 Broadway, 9th floor, New York, New York 10004" or by emailing such proof to: legalattorneys@dca.nyc.gov. 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 the service or assigned or distributed the process of service.

The Department will suspend the respondent's DCA license(s) if the respondent fails to comply with this Decision and Order within thirty (30) days, including payment of the fine. 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. The license(s) will not be reinstated until the respondent has served any suspension period ordered in this Decision and has paid ALL fines owed to the Department.

This constitutes the Decision and Order of the Department.

**M. Nwikpo-Oppong
Administrative Law Judge**

cc: Marilee J. Kilsheimer
401 Broadway
Suite 1201
New York, New York 10013

**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 15 days to file a MOTION TO VACATE this decision. Your motion **must** 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; *and* 3) a sworn statement outlining a meritorious defense to the charge(s) in the Notice of Hearing.

BY EMAIL: Send your motion 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. NOTE: 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.

BY REGULAR MAIL: Mail your motion and the 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 motion to: Legal Division, Department of Consumer Affairs, 42 Broadway, 9th 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 Division.

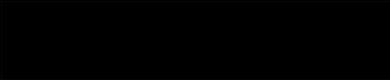
CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF HEARING

Complainant,

-against-

MARILEE J. KILSHEIMER


Violation # LL005324948

License # 1421868

Licensee/Respondent. (Process Server Individual)

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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, NOVEMBER 6, 2013;**

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 1421868.

1522 1ST St. Ave., LLC v. [REDACTED]

5. In or about 2012, process was distributed to Respondent for service in the matter of 1522 1ST St. Ave., LLC v. [REDACTED] (Index Number 86236/12, New York County Civil Court) (“[REDACTED]”) and thereafter an affidavit of service executed by Respondent in which she attested that she had served such process in [REDACTED] was filed with the clerk of the court.
6. The court in [REDACTED] scheduled a traverse hearing for February 5, 2013 concerning the service of process allegedly made by Respondent.
7. Respondent received notice of the scheduling of the traverse hearing in [REDACTED]

8. Respondent did not attempt to learn the result of the traverse hearing in [REDACTED] in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
9. Respondent did not submit a written report to the Department, by certified mail or e-mail, the result of the traverse hearing in [REDACTED] 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(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). [1 count]
2. 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. [1 count]

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: September 3, 2013
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 David Cho, 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 settle the charges in this Notice of Hearing, you **must sign** the enclosed Consent Order and mail it to Shannon Bermingham, NYC Department of Consumer Affairs, 42 Broadway, 9th Floor, New York, New York 10004 by **October 1, 2013**. You must enclose, with the signed Consent Order, a bank check or money order made payable to the "NYC Department of Consumer Affairs" for **\$250**.

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