

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

MASARO AGENCY INC.,

Respondent.

DECISION AND ORDER

Violation No.: LL005287478

License No.: 1346100

**Respondent's Address:
365 West 116th Street #M
New York, New York 10026**

A hearing on the above-captioned matter was held on April 19, 2012.

Appearances: For the Department: Alvin A. Liu, Esq. For the Respondent: Ilya Maksimov, president.

The respondent is charged with violating the following:

1. Title 6 of the Rules of the City of New York ("6 RCNY") Section 2-234a(c) by failing to submit an affirmation that it has adopted a Compliance Plan within 60 days of the effective date of the Rule; and
2. 6 RCNY Section 2-234a(b) by failing to develop and implement a process server agency Compliance Plan.

Based on the evidence in the record, the following is **RECOMMENDED**:

Findings of Fact

The respondent dissolved as a process server agency corporation with the New York Department of State on July 28, 2010. The respondent vacated its office at 124 Avenue O in Brooklyn upon dissolution.

On March 21, 2011, approximately 8 months after the respondent dissolved, 6 RCNY § 2-234a became effective with respect to Process Service Agencies. On May 21, 2011, 60 days after the rule became effective, the respondent had not submitted an affirmation that it had adopted a written Compliance Plan, and had not developed and/or implemented a Compliance Plan.

The respondent was not operating a process server agency on May 21, 2011.

Opinion

The Department has not established the violations by a preponderance of the credible evidence.

6 RCNY Section 2-231 defines a “process serving agency” to mean “any person, firm, partnership, association or corporation, other than an attorney or a law firm located in this state, or city marshal, who maintains an office, bureau or agency, one purpose of which is to assign or distribute process to individual process servers for actual service in the City of New York.”

6 RCNY Section 2-234a(c) states: “A process serving agency in possession of a license issued by the Department on the effective date of this Rule shall submit an affirmation to the Department that it has adopted a written Compliance Plan within sixty (60) days of such effective date. After the effective day of this Rule, no license shall be issued or renewed until the process serving agency files with the Department an affirmation that it has adopted a Compliance Plan.”

6 RCNY Section 2-234a(b) states: “A process serving agency shall develop and implement policies and procedures set forth in a written Compliance Plan to ensure that an individual process server acts with integrity and honesty and complies with the recordkeeping requirements applicable to process servers.”

Mr. Maksimov established through detailed and consistent testimony, and supporting documentation, that he dissolved the respondent on July 28, 2010, which has not since been active as a process server agency at 124 Avenue O in Brooklyn, the business address indicated on the license application, or at any other address since July 28, 2010. He explained that he went to physically surrender the license after dissolving the corporation, but the Licensing Division could not accept the surrender without the actual physical document. Mr. Maksimov testified that he was unable to locate the original document and let the license expire.

Mr. Liu’s argument, that the respondent was required to submit an affirmation and Compliance Plan simply because it was issued a license from the Department, even if true, is inapplicable in these unique circumstances. The facts presented in this case are distinguishable from a prior decision (see *DCA v. Anthony Stone Investigative & Security Services, LLC*, dated April 4,

2012). In *Stone*, the respondent, although not operating a process server agency business, maintained an office and corporate entity. The Deputy Director of Adjudication held that “licensees must comply with all laws and regulations pertaining to the licenses they currently hold”.

As previously stated, a “process server agency” is defined in part to mean “any person, firm, partnership, association or corporation who maintains an office, bureau or agency...” In this case, however, although there had been a license issued to the respondent in 2010, there was no corporate entity, no business office and no process server agency as defined by 6 RCNY Section 2-231 in existence on May 21, 2011. In effect, there was no licensee, and accordingly, the charges shall not be sustained.

RECOMMENDED DECISION AND ORDER:

The respondent is found **not guilty** of the charges, and they are hereby **dismissed**.

This constitutes the recommendation of the Administrative Law Judge.

**Esther Simon
Administrative Law Judge**

DECISION AND ORDER

The recommendation of the Administrative Law Judge is not approved.

This constitutes the Decision and Order of the Department of Consumer Affairs.

Date: 4 May 2012



**James M. Plotkin
Deputy Director of Adjudication**

cc: Alvin A. Liu, Esq.
aliu@dca.nyc.gov

Ilya Maksimov
Willyam0007@gmail.com

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

-----X
DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

MASARO AGENCY INC
365 WEST 116TH STREET # M
NEW YORK, NY 10026

Licensee/Respondent.
-----X

NOTICE OF HEARING

Violation No. LL 005287478

License # 1346100

(Process Server Agency)

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 WEDNESDAY, JANUARY 4, 2012 AT 8:30 AM** 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), and Title 6 of the Rules of the City of New York, beginning at Section 2-231 (known as the Process Servers Rules);

AND SHOW CAUSE why your license to operate as a Process Server Agency (“PSA”) 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, Alvin A. Liu, Esq., as and for its complaint upon information and belief alleges the following:

APPLICABLE LAW

1. 6 RCNY Section 2-234a became effective on March 21, 2011.
2. Pursuant to 6 RCNY Section 2-234a(b), a Process Server Agency (“PSA”) licensed by the Department must develop and implement policies and procedures set forth in a written Compliance Plan to ensure that an individual process server acts with integrity and honesty and complies with the recordkeeping requirements applicable to process servers.
3. Pursuant to 6 RCNY Section 2-234a(c), every PSA licensed by the Department on the effective date of the rule was required to submit to the Department within sixty (60) days of the effective date of the rule (i.e., by May 20, 2011) an affirmation that it has adopted a written Compliance Plan.

FACTS

1. Respondent, MASARO AGENCY INC , holds a current PSA license issued by the Department and was licensed by the Department prior to March 21, 2011.
4. Respondent has not submitted to the Department an affirmation that it has adopted a written Compliance Plan.

5. Upon information and belief, Respondent has not developed and implemented policies and procedures set forth in a written Compliance Plan as required by 6 RCNY Section 2-234a(b).

CHARGES

FAILURE TO SUBMIT COMPLIANCE PLAN AFFIRMATION

Count #1

1. Respondent failed to submit an affirmation that it has adopted a Compliance Plan within 60 days of the effective date of the Rule, in violation of 6 RCNY § 2-234a(c).

FAILURE TO DEVELOP AND IMPLEMENT PSA COMPLIANCE PLAN

Count #2

2. Respondent has failed to develop and implement a PSA Compliance Plan in violation of the 6 RCNY § 2-234a(b).

WHEREFORE, the Department demands that an order issue: (1) imposing maximum fines on Respondent for each and every charge set forth herein; (2) directing Respondent to adopt a written Compliance Plan in conformance with 6 RCNY § 2-234a(b) and submit it, together with an affirmation in conformance with 6 RCNY § 2-234a(c), to the Department within fifteen (15) days of the date of the order; and (3) granting such other relief as is deemed just and proper.

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 on the scheduled hearing date, a default decision will be issued in which you will be found guilty of the charges and 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);** by fax to 212-361-7766; or by mail to: DCA Administrative 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 aliu@dca.nyc.gov; by fax to (212) 487-4390; or by mail to Alvin A. Liu, Esq., 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.

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

Dated: November 2, 2011
New York, New York

For: **Jonathan Mintz**
Commissioner

By: *Alvin A. Liu*
Alvin A. Liu, Esq.
Staff Counsel
Legal Division

CERTIFICATE OF MAILING

I, David Cho, do hereby declare that on Wednesday, November 2, 2011, I caused the attached Notice of Hearing LL 005287478 to be served on the following:

MASARO AGENCY INC
365 WEST 116TH STREET # M
NEW YORK, NY 10026

by providing it to the NYC Department of Consumer Affairs' Mailroom and directing that it be placed into an envelope and mailed first-class.



Signature

David Cho

Print