

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

-----X
THE DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

MICHAEL LUBIN,

Respondent.

**DETERMINATION OF
MOTION TO VACATE**

**Record Nos.:
623-2014-APPL
LL005324014-ADJC**

**NOH No.:
LL005324014**

Date: June 20, 2014

-----X
The respondent moves to vacate the Decision issued on February 18, 2014.

The motion is **denied**. The respondent neither filed the motion within the required time period,¹ nor submitted the \$25 filing fee.² In addition, the respondent did not offer a satisfactory excuse for his failure to appear at the scheduled hearing. The respondent claims that, prior to the hearing, he emailed a Department attorney that he was “no longer working as a process server in New York City” and therefore assumed he did not have to appear. However, Department records establish, and the respondent admits in his motion, that the hearing remained scheduled for January 2, 2014. In addition, the respondent fails to outline a meritorious defense to the charges cited in the Notice of Hearing, as is required by Title 6 of the Rules of the City of New York (“6 RCNY”) § 6-44(a). In the motion, the respondent’s attorney does not contest the cited violations, but claims that she tried to settle the matter with the Department. However, this claim does not constitute a meritorious defense to the charges cited.

Accordingly, the Decision **remains in effect**.

¹Department records establish that the respondent’s appeal was not filed with the Adjudication Division until May 9, 2014, more than 15 days after the Decision was issued. In the respondent’s motion, the respondent’s attorney acknowledges that the respondent received the Decision in late February 2014.

²Title 6 of the Rules of the City of New York § 6-44(b) states, in pertinent part, “a check or money order for the sum of \$25.00 (twenty-five dollars) payable to the Department of Consumer Affairs, representing a non-refundable appeal fee, must accompany each motion to vacate. Failure to submit the fee will result in the automatic denial of the motion to vacate.”

SO ORDERED:

Steven T. Kelly
Acting Director of Adjudication

This is the final agency action in this matter. There will be no further agency action in this matter. Should the respondents wish to pursue the matter, they may attempt to do so pursuant to Article 78 of the Civil Practice Law and Rules. If the respondents decide 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.

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

MICHAEL LUBIN,

Respondent.

DEFAULT DECISION AND ORDER

Record No.: LL005324014-ADJC

NOH No.: LL005324014

License No.: 1349179

Date: FEBRUARY 18, 2014

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

A hearing was scheduled for January 2, 2014. 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 \$5,000, which is immediately due and owing**, as follows:

6 RCNY Section 2-236(a) (\$500 per count, for 3 counts)	\$1500
6 RCNY Section 2-236(c)(2) (\$500 per count, for 3 counts)	\$1500
6 RCNY Section 2-236(c)(1) (\$500 per count, for 3 counts)	\$1500
6 RCNY Section 1-14	\$500
TOTAL	\$5000

The respondent is further ordered 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.

The respondent's license is **REVOKED effective immediately**. The respondent is **directed to surrender the license document** immediately in person or by

mail to DCA's Licensing Center which is located at 42 Broadway, New York, NY 10004.

If respondent operates while the license is revoked, the respondent will be subject to criminal prosecution and/or civil penalties of at least \$100 per day for each and every day of unlicensed activity, as well as the closing of the respondent's business and/or the removal of items sold, offered for sale, or utilized in the operation of such business, pursuant to Administrative Code Sections 20-105 and 20-106 (the "Padlock Law").

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.

**Shanet Viruet
Administrative Law Judge**

cc: liua@dca.nyc.gov

Mlubin24@aol.com

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**

-----X
DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF HEARING

Complainant,

-against-

Michael Lubin
25121 61st Ave
Little Neck NY 11362

LL # 5324014

License # 1349179

(Process Server Individual)

Licensee/Respondent.
-----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, SEPTEMBER 11, 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), an individual process server must report to the Department in writing, by certified mail or e-mail, when a court schedules a hearing to determine whether service of process made by the process server was effective (known as a "traverse hearing") within ten (10) days of receiving notice of the scheduled hearing.

2. Pursuant to 6 RCNY § 2-236(c)(2), an individual process server must report to the Department in writing, by certified mail or e-mail, 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.
3. If the process server is unable to learn the result within ninety (90) days of the scheduled hearing date, the process server must report to the Department in writing within one hundred (100) days of the scheduled hearing date, by certified mail or e-mail, that the process server made attempts to learn the result but were unable to do so.
4. Pursuant to 6 RCNY § 2-236(c)(1), individual process servers must follow specific procedures to attempt to learn the results of traverse hearings.

FACTS

5. Respondent is licensed by the Department as an individual process server under license number 1349179.

Discover Bank v. [REDACTED]

6. On information and belief, in or about 2011, process was distributed to Respondent for service in the matter of Discover Bank v. [REDACTED] [REDACTED], Queens County Civil Court (“Discover Bank”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Discover Bank was filed with the clerk of the court.
7. The court in Discover Bank scheduled a traverse hearing for August 8, 2012 concerning the service of process allegedly made by Respondent.

8. Respondent received notice of the scheduling of the traverse hearing in Discover Bank.
9. Respondent did not report to the Department in writing, by certified mail or e-mail that a traverse hearing had been scheduled in Discover Bank.
10. Respondent did not attempt to learn the result of the traverse hearing in Discover Bank in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
11. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so in Discover Bank.

American Express Bank, FSB v. [REDACTED]

12. On information and belief, in or about 2012, process was distributed to Respondent for service in the matter of American Express Bank, FSB v. [REDACTED] ([REDACTED], Queens County Civil Court) (“Amex”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Amex was filed with the clerk of the court.
13. The court in Amex scheduled a traverse hearing for September 18, 2012 concerning the service of process allegedly made by Respondent.
14. Respondent received notice of the scheduling of the traverse hearing in Amex.
15. Respondent did not report to the Department in writing, by certified mail or e-mail that a traverse hearing had been scheduled in Amex.
16. Respondent did not attempt to learn the result of the traverse hearing in Amex in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).

17. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so in Amex.

Equable Ascent Financial LLC v. [REDACTED]

18. On information and belief, in or about 2011, process was distributed to Respondent for service in the matter of Equable Ascent Financial LLC v. [REDACTED] Index [REDACTED], Queens County Civil Court) (“Equable”) and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Equable was filed with the clerk of the court.

19. The court in Equable scheduled a traverse hearing for November 21, 2012 concerning the service of process allegedly made by Respondent.

20. Respondent received notice of the scheduling of the traverse hearing in Equable.

21. Respondent did not report to the Department in writing, by certified mail or e-mail that a traverse hearing had been scheduled in Equable.

22. Respondent did not attempt to learn the result of the traverse hearing in Equable in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).

23. Respondent did not report to the Department in writing, by certified mail or e-mail, the result of the traverse hearing or that Respondent made attempts to learn the result of the traverse hearing and was unable to do so in Equable.

CHARGES

24. Respondent violated 6 RCNY § 2-236(a) by failing to report to the Department the scheduling of 3 traverse hearings within ten (10) days of receiving notice of the scheduled hearings. (3 counts)

25. Respondent violated 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of 3 traverse hearings, report to the Department either: (a) the final results of the traverse hearings; or (b) that Respondent made attempts to learn the final results of the traverse hearings but was unable to do so. (3 counts)
26. Respondent violated 6 RCNY § 2-236(c)(1) by failing to attempt to learn the results of 3 traverse hearings in accordance with the procedures specified in 6 RCNY § 2-236(c)(1). (3 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: June 14, 2013
New York, New York

For: **Jonathan Mintz**
Commissioner

By: 
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 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; or by mail to Alvin A. Liu, DCA Legal Division, 42 Broadway, 9th Floor, New York, NY 10004.

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 **July 14, 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 **\$1,500.00**.

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.