

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

OMAR ADNAN,

Respondent.

DEFAULT DECISION AND ORDER

Violation No.: LL5130955

License No.: 1019779 (PS)

Date: September 27, 2010

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

A hearing was scheduled for September 16, 2010. The respondent did not appear.

ORDER

The charge set forth in the Notice of Hearing is incorrectly cited and therefore **dismissed**. However, the respondent is found guilty of violating Title 6 of the Rules of the City of New York Section 1-14 for failing to appear at the duly noticed hearing, and is hereby

Ordered to pay a total fine of \$500 to the Department of Consumer Affairs.

This constitutes the Decision and Order of the Department of Consumer Affairs. Failure to comply with this order within thirty (30) days shall result in the suspension of the license at issue, and may result in the suspension of any other Department of Consumer Affairs license(s) held by the respondent(s).

M. Mirro
Administrative Law Judge

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 Compliance and Fitness 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 Compliance and Fitness Division.

Cc: Megan Roberts, Esq.



THE CITY OF NEW YORK DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF HEARING LL WH IP OL GL HC WO _____ DATE MAILED: **8/4/10** 1 OF 1

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)

1 CH	2 SUBCH	3 SECTION	4 REG./RULE NO.	NATURE OF VIOLATION	COUNTS
			2-236	Failed to report a traverse hearing - see attached.	1
					TOTAL

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

CAMIS ID # **40714772** TAX ID # _____ LICENSE NO. **1019779** START TIME _____ END/SERVED TIME _____ CERT. # **5137955**

NAME (INDIVIDUAL, PARTNERSHIP, CORPORATION) **Omar Adnan** D.B.A. _____ TELEPHONE NO. _____

ADDRESS **1460 Ovington Ave, Apt. 2** BORO **03** ZIP **11219** INSPECTION DATE **/ /** BUS. CODE _____

TYPE OF INSPECTION (CHECK ONE)

PATROL (PTL) REQUEST (REQ) SUSPENSION (SUS) REVOCATION (REV) CONSENT JUDGEMENT ORDER (CJO) POSTING ORDER (POO) POSTING ORDER FOLLOW-UP (POF)

INSPECTION RESULT

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'S NAME **Megan Roberts** INSPECTOR'S SIGNATURE *Megan Roberts* DIV. **L.E.G** UNIT **L.C.F** I.D. **/ /** BADGE **/ /**

INSPECTOR'S NAME _____ INSPECTOR'S SIGNATURE _____ DIV. _____ UNIT _____ I.D. _____ BADGE _____

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

August 31, 2010 AT **9:30** **A.M.** OR **P.M.**

READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION

VENDOR'S NAME (PRINT) _____ VENDOR'S SIGNATURE _____ POSITION _____ DATE **/ /**

PRE-HEARING DISPOSITION

REC'D/MYST 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

CIVIL COURT OF THE CITY OF NEW YORK

County of Kings Part A

Index Number 76806/08

179-183 HAVEMEYER LLC
Petitioner

-against-

REPORT OF A TRAVERSE
HEARING

[Redacted] Respondent

To: New York City Department of Consumer Affairs
Attn: Legal Division
42 Broadway, 9th Floor
New York, NY 10004

From: Hon. John S. Lansden
Civil Court, City of New York
County of Kings

A traverse hearing was held before me in Part A on September 10, 2008

on the sufficiency of service on index number 76806/08

The name of the process server is Adnan OMAN

The license number of the process server is 1019779 (expired)

Traverse was: Sustained (Service was improper)

Overruled (Service was proper)

Comments Process server asserted an invitation was expired and he had letters permitting him to continue making services until a determination was reached.
See copy of decision attached

Date 9/10/08

[Signature]
Judge, Civil/Housing Court
HON. JOHN S. LANSDEN

Civil Court of the City of New York

County of Kings
Part 12

Index Number 76806/08

179-183 HAVEMEYER LLC

Claimant(s)/Plaintiff(s)/Petitioner(s)

against



Defendant(s)/Respondent(s)

DECISION/ORDER

In his traverse hearing, ^{the process server} ~~petitioner~~ asserted that he "served" ^{on June 20, 2008 @ 11:48} a notice of petition and petition on a male individual, blond hair, brown skin, 35, 5'8" and 170 lbs. Thereafter, he mailed a copy of the notice of petition and petition by both first class and certified mail. Petitioner offered into evidence a stamped certified mail slip dated June 20, 2008 in support of the process server's statement ~~regarding~~ ^{of} the mailings.

Respondent denies that anyone matching the physical description set forth in the affidavit of service was in her apartment on June 20, 2008. Respondent asserted no one matching that description resides in the subject apartment or resided in the subject apartment during that time period.

In this matter, the court could find no discrepancies in the process server's testimony, which not exactly overwhelmingly with specificity, it was consistent and forthright. Further, given that it has been almost three months since the alleged service, the lack of personal specific memory is not surprising. The court ^{has reviewed} portions of the log book and again, could find no discrepancies or contradictions.

Date _____
Judge, Civil Court

Civil Court of the City of New York

County of Kings
Part 1

Index Number 76806/04

175-183

Claimant(s)/Plaintiff(s)/Petitioner(s)

against



Defendant(s)/Respondent(s)

DECISION/ORDER

To the contrary, the process server's log book ^{is consistent with and} corroborates the witness' testimony relating to descriptions of the subject building and apartment. It is true that there is an issue with whether the witness was a licensed process server as he testified but there appears to be an administrative investigation ongoing relating to the process server and his status appears to be in some sort of limbo. While this could ~~may~~ have had some effect on credibility, given the testimony offered the Court determines the issue to be more administrative than legal and will not be given great weight. This issue, even if taken in the strongest possible light favoring Respondent, will not, on its own, render the evidence defective. As such, the Court determines that Petitioner met its burden and has thereby shifted the burden of proof to Respondent. Respondent was not present in the subject apartment at the time in question. Nor was anyone Respondent called as a witness. As such, Respondent cannot directly contradict any of the statements made by the process server. Instead, Respondent seeks to use a blanket denial of any and all notices ^{Date} to explain her failure to appear in Court, while Respondent admitted that no one was in the apartment on the day in question, she was not able

Civil Court of the City of New York

County of Kings
Part 1

Index Number 76806/07

175-183 Horwager LLC

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

DECISION/ORDER

Defendant(s)/Respondent(s)

to significantly impeach the proven source's credibility or point out any inconsistencies. Respondent's absence from the apartment on the day in question followed by a two and a half month absence severely hampered her ability to do either.

Further, the Court found unbelievable Respondent's claim that no notice of the proceeding was received by mail, either first class or certified. Upon mailing there is a presumption of receipt. The certified mail slip established one form of mailing and the proven source's testimony ^{relating to first class mailing} established the other. Respondent did nothing to rebut the presumption ^{which} weighed against her credibility.

Based on the foregoing, the Court determines that Respondent was found to meet her burden and tenancy is overruled. Petitioner is stayed from removing or selling through September 18, 2008 for Respondent to make arrangements to remove her belongings or move for other relief.

This constitutes the decision and Order of the Court.

9/10/07
Date

JLS
Judge, Civil Court

HON. JOHN S. LANSDEN