

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

**DEPARTMENT OF CONSUMER AFFAIRS,**

**Complainant,**

**-against-**

**OMAR AHMED,**

**Respondent.**

**DEFAULT DECISION AND ORDER**

**Record No.: 7633-2015-ADJC**

**NOH No.: LL05349378**

**License No.: 1454767**

**Date: September 3, 2015**

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

A hearing was scheduled for August 5, 2015. The respondent did not appear.

The respondent has one prior violation (See 4223-2015-ADJC; LL05349318).

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 \$22,500, which is immediately due and owing**, as follows:

6 RCNY Section 2-234 (\$1,000 per count, for 12 counts)	\$12,000
6 RCNY Section 2-236(a) (\$1,000 per count, for 3 counts)	\$3,000
6 RCNY Section 2-236(c)(2) (\$1,000 per count, for 3 counts)	\$3,000
6 RCNY Section 2-233(b)(1) (\$1,000 per count, for 2 counts)	\$2,000
6 RCNY Section 2-233(a)(2)(i) (\$1,000 per count, for 1 count)	\$1,000
6 RCNY Section 2-233(b)(8) (\$1,000 per count, for 1 count)	\$1,000
6 RCNY Section 1-14	\$500
<b>TOTAL</b>	<b>\$22,500</b>

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.**

**David Paul  
Administrative Law Judge**

**Mail payment of fine in the enclosed envelope addressed to:**  
NYC Department of Consumer Affairs  
Collections Division  
42 Broadway, 9<sup>th</sup> 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](mailto:myappeal@dca.nyc.gov) and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11<sup>th</sup> 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, 11<sup>th</sup> Floor, New York, NY 10038. You must also mail **a copy** of your motion to: Legal Division, Department of Consumer Affairs, 42 Broadway, 9<sup>th</sup> 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**

Petitioner,

-against-

Violation No. 05349378

OMAR AHMED

License No. 1454767

Respondent.

(Process Server Individual)

-----X

TO THE ABOVE NAMED RESPONDENT:

In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Sections 2203(f) and 2203(h) of Chapter 64 of the Charter of the City of New York and Sections 20-104 and 20-409 of the Administrative Code of the City of New York ("the Code"), **you are hereby ordered to appear for a hearing** at the Adjudication Tribunal of the Department of Consumer Affairs, located at 66 John Street, 11th Floor, New York, New York, on **WEDNESDAY, AUGUST 5, 2015 AT 9:30 A.M.**

**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 based on the grounds specified herein.

**RELEVANT LAW**

***Service of Process Rules***

1. *Civil Practice Law and Rules*. Pursuant to Section 308 of the New York Civil Practice Law and Rules ("CPLR"), service upon a natural person must be made in the following manner:
  1. by delivering the summons within the state to the person to be served; or
  2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of

- suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
3. by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
  4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
  5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.

#### ***Affidavit of Service Filing Requirements***

2. *Civil Court Proceedings.* Pursuant to Section 208.4 of the Uniform Rules for N.Y.S. Trial Courts, "every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required."

#### ***Department of Consumer Affairs Laws and Rules***

3. Pursuant to Code § 20-104(f)(1):

The commissioner shall be authorized, upon due notice and hearing, to suspend, revoke or cancel any license issued by him or her in accordance with the provisions of chapter two and to impose or institute fines or civil penalties for the violation of (i) any of the provisions of chapter two of this title and regulations and rules promulgated under chapter two of this title and (ii) any of the provisions of any other law, rule or regulation, the enforcement of which is within the jurisdiction of the department including but not limited to subchapter one of chapter five of this title (the consumer protection law) subchapter two of chapter five (the truth in-pricing-law); provided that such violation is committed in the course of and is related to the conduct of the business, trade or occupation which

is required to be licensed pursuant to chapter two of this title. Except to the extent that dollar limits are otherwise specifically provided such fines or civil penalties shall not exceed five hundred dollars for each violation.

4. Pursuant to Code § 20-409(a), an individual process server license “may be suspended or revoked or its renewal denied by the commissioner at any time for the failure of the licensee to comply with any rule, regulation or order promulgated by the commissioner.
5. Section 2-231 of Title 6 of the Rules of the City of New York (“6 RCNY”) contains the following definitions:

**Chronological.** “Chronological” with respect to the notation in a process server record or log means that each notation shall be entered sequentially according to the time and date of the activity recorded and without leaving any blank spaces between each entry that would allow for the insertion of any additional notation between any two entries.

**Contemporaneous.** “Contemporaneous” in relation to entries in records means at or near the time of the event as to which an entry is recorded, or within a reasonable time thereafter.

6. 6 RCNY § 2-233(a)(2)(i) requires process servers to record in their logbook entries “the title of the action or a reasonable abbreviation thereof.”
7. 6 RCNY § 2-233(b)(1) requires process servers to make in their logbook “a separate and contemporaneous entry of the date, time and address of every attempted and effected service of process in chronological order in a bound, paginated volume.”
8. Pursuant to 6 RCNY § 2-233(b)(8):

Corrections in records shall be made only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry.

9. Pursuant to 6 RCNY § 2-234:

[Licensed process servers and process serving agencies] shall at all times strictly and promptly conform to all laws, rules, regulations and requirements of the federal, state and municipal authorities relating to the conduct of licensees and the service of process in the State of New York and the preparation, notarization and filing of affidavits of service and other documents now in force or hereafter adopted during any license period.

10. Pursuant to § 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.
11. 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.
12. 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**

13. Omar Ahmed (“Respondent”) is currently licensed by the Department as an individual process server under license number 1454767.
14. Respondent’s current process server license will expire on February 28, 2016.

#### **Sewer Service/False Affidavits of Service**

15. Respondent swore in an affidavit of service that was filed in New York County Civil Court in the matter of *CACH, LLC v. [REDACTED]* that he served a

Summons and Complaint on [REDACTED] on February 22, 2014 at 6:32 p.m. by delivering the Summons and Complaint to [REDACTED]. [REDACTED] never received the Summons and Complaint that Respondent allegedly served on her. On February 22, 2014, [REDACTED] did not have a roommate and no one named [REDACTED]

16. During the period October 1, 2013 through December 31, 2013, Respondent swore falsely in numerous affidavits of service that he asked the person he delivered papers to whether the defendant was in active military service.

**Respondent's Failure to Report Traverse Hearings to the Department**

17. Respondent received notice of the scheduling of a traverse hearing in the following matters:

- a. *CACH, LLC* v. [REDACTED] New York County Civil Court);
- b. *CACH, LLC* v. [REDACTED] New York County Civil Court); and
- c. *CACH, LLC* v. [REDACTED] Bronx County Civil Court).

18. The traverse hearings in these cases all concerned service of process that Respondent allegedly performed.

19. Respondent failed to submit a written report to the Department that the traverse hearings in these cases had been scheduled within ten (10) days of receiving notice of the scheduled hearings.

20. Respondent failed to, within one hundred (100) days of the scheduled hearing dates, submit written reports to the Department stating the results of the traverse hearings in these cases or that Respondent made attempts to learn the results of the hearings but was unable to do so.

### **Respondent's Failure to Keep Proper Records**

21. During the period February 1, 2014 through February 28, 2014, Respondent failed to maintain numerous logbook entries in chronological order, including the entry for a service at [REDACTED] on February 22, 2014 at 5:48 p.m.
22. During the period October 1, 2013 through December 31, 2013, Respondent failed to include in his logbook the title of the action or a reasonable abbreviation thereof for numerous services and attempted services, including the entry for a service at [REDACTED] on September 27, 2013 at 6:17 p.m.
23. In his logbook entry for a service at [REDACTED] that he made on February 6, 2014 at 1:30 p.m., Respondent crossed out the information he had recorded in the title of the action column but failed to clearly print the correct information directly above the information he had crossed out.
24. During the time periods October 1, 2013 through December 31, 2013 and February 1, 2014 through February 28, 2014, Respondent failed to create logbook entries contemporaneously, including the entry for a service at [REDACTED]

## CHARGES

1. As described in Paragraph 15 above, Respondent violated 6 RCNY § 2-234 by swearing falsely in an affidavit of service. [1 count]
2. As described in Paragraph 15 above, Respondent violated 6 RCNY § 2-234 by failing to serve papers in compliance with Section 308 of the CPLR. [1 count]
3. As described in Paragraph 16 above, Respondent violated 6 RCNY § 2-234 by falsely affirming in numerous affidavits of service that he asked the person he delivered papers to whether the defendant was in active military service. [10 counts]
4. As described in Paragraphs 17 through 20 above, Respondent violated 6 RCNY § 2-236(a) by failing to report to the Department the scheduling of three traverse hearings within ten (10) days of receiving notice of the scheduled hearings. [3 counts]
5. As described in paragraphs 17 through 20 above, Respondent violated 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of three traverse hearings, report to the Department either (a) the final results of the traverse hearings; or (b) that he made attempts to learn the final results of the traverse hearings but was unable to do so. [3 counts]
6. As described in paragraph 21 above Respondent violated 6 RCNY § 2-233(b)(1) by failing to maintain all of his logbook entries in chronological order. [1 count]
7. As described in paragraph 22 above, Respondent violated 6 RCNY § 2-233(a)(2)(i) by failing to record the title of the action or a reasonable abbreviation thereof in his logbook entries. [1 count]
8. As described in paragraph 23 above, Respondent violated 6 RCNY § 2-233(b)(8) by making improper corrections in his logbook. [1 count]

9. As described in paragraph 24 above, Respondent violated 6 RCNY § 2-233(b)(1) by failing to create logbook entries contemporaneously. [1 count]

**RELIEF SOUGHT**

**WHEREFORE**, the Department demands that an order issue:

- (1) suspending or revoking Respondent's license pursuant to Code § 20-409(a);
- (2) imposing maximum fines on Respondent of \$1000 per count; and
- (3) granting such other relief as is deemed just and proper.

Dated: July 14, 2015  
New York, New York

For: Julie Menin  
Commissioner

By:   
Alvin A. Liu  
Senior Staff Attorney

## 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](mailto:adjournmentrequests@dca.nyc.gov) (preferred method)** or by mail to DCA Adjudication Tribunal, 66 John Street, 11<sup>th</sup> 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](mailto:process_server@dca.nyc.gov) or by mail to Alvin A. Liu, DCA Legal Division, 42 Broadway, 9<sup>th</sup> 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](mailto: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 Alvin A. Liu at [process\\_server@dca.nyc.gov](mailto: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](http://www.nyc.gov/consumers) or call 311.