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CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS

**CONSENT ORDER**

Complainant,

-against-

DANIEL BATISTA

Licensee/Respondent.  
-----x

NOH # 05333286

License # 0980638

(Process Server Individual)

1. The Department of Consumer Affairs (“DCA” or “the Department”) and Daniel Batista (“Respondent”) enter into this Consent Order (“CO”) to resolve charges that Respondent committed violations of the following rules: 6 RCNY §§ 2-233(b)(1), 2-234, 2-235.
2. Respondent enters into this Consent Order (“CO”) with the Department to resolve these charges without the necessity of a hearing, and waives any right to a hearing, appeal of or any challenge of the facts alleged by the above-referenced violation under Section 20-104 of the New York City Administrative Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806, in any forum.
3. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent’s business practices, and Respondent shall make no representations to the contrary, and nothing in this Consent Order shall be construed to limit in any way the authority of the Department to exercise its regulatory or enforcement powers under Sections 20-104 or 20-409 of the Code.
4. This Consent Order shall in no respect reduce any of Respondent’s obligations under any other Consent Order Respondent has entered into with the Department.

**INJUNCTIVE RELIEF**

5. Respondent agrees to immediately cease serving process in New York City.
6. Respondent agrees to immediately surrender his process server individual license.
7. Respondent agrees that he shall not apply to the Department for a process server license for at least ten years after the date the Department executes this Consent Order.

**BREACH OF THIS AGREEMENT**

8. A finding, after notice and a hearing, that Respondent has committed a material breach of the terms of this Agreement shall be sufficient grounds for the revocation of Respondent’s

license. This provision shall not apply to the Department's consideration of any license or renewal applications.

9. Specific violations of this Agreement shall constitute independent and separate violations of any applicable law, regulation or rule.

Agreed to by Respondent

Accepted for the NYC Department of  
Consumer Affairs

By: Daniel Batista

By:   
Senior Staff Attorney, Legal Division



Signature

1/28/15

Date



Signature

1/30/15

Date

Process server individuals licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24-hour Citizen Service Hotline, or by going online to [www.nyc.gov/ProcessServers](http://www.nyc.gov/ProcessServers).

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

DEPARTMENT OF CONSUMER AFFAIRS,

-----x **NOTICE OF HEARING**

Complainant,

-against-

DANIEL BATISTA



NOH # 05333286

License # 0980638

Licensee/Respondent. (Process Server Individual)

-----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(f) 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 LOCATED AT 66 JOHN STREET, 11TH FLOOR, NEW YORK, NEW YORK 10004 AT 8:30 A.M. ON MONDAY, DECEMBER 29, 2014** to have charges against you heard concerning violations of 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 6 RCNY, Chapter 2, Subchapter W, beginning at Section 2-231 (known as the Process Servers Rules);

**AND SHOW CAUSE** why your license to operate as an individual process server 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.

## FACTS

1. Respondent, Daniel Batista, is licensed by the Department as an individual process server under license number 0980638.
2. Respondent's current process server license will expire on February 28, 2016.

### "Sewer Service" and/or Signing False Affidavits of Service

3. Respondent falsely affirmed in an affidavit of service that was filed in New York County Civil Court in the matter of [REDACTED] v. *Matthew Fondet*, Index No. [REDACTED] that he served a Summons and Complaint on the defendant.

### Failure to Respondent to Department Subpoena

4. On September 8, 2014, the Department served on Respondent a subpoena *duces tecum* ordering Respondent to produce certain required records (the "Subpoena").
5. The Subpoena ordered Respondent to produce the following records:
  - a. For the period May 1, 2013 through July 31, 2013, Respondent's bound logbook(s);
  - b. For the period May 1, 2013 through July 31, 2013, copies of all electronic records that Respondent maintains pursuant to Title 6 of the Rules of the City of New York, Section 2-233a;
  - c. For the period May 1, 2013 through July 31, 2013, all affidavits of service signed by Respondent, prepared by Respondent, or filed by Respondent with a court concerning service of process that Respondent performed;
  - d. Documents sufficient to provide the Department with access to interactive electronic street maps that display the locations where Respondent's digital GPS records were recorded for GPS records Respondent produced in response to the Department's December 16, 2013 subpoena;
  - e. For the period January 1, 2013 through the date that Respondent responds to the Subpoena, documents sufficient to identify all traverse hearings scheduled, whether or not held, concerning service of process by Respondent, and the result(s) of the hearing(s).
  - f. All documents, including communications, work orders/routing sheets, notes, affidavits of service, deposition transcripts and subpoenas, relating to court proceedings in which service of process performed by Respondent was contested (including traverse hearings held or scheduled outside of New York City) during the period January 1, 2013 through the date that Respondent responds to the Subpoena.

6. The Subpoena directed Respondent to respond no later than a deadline of 10:00 a.m. on October 8, 2014.
7. As of the present date, Respondent has not produced any records in response to the Subpoena.

## CHARGES

### Charge 1: "Sewer Service" and/or Signing False Affidavits of Service

1. Respondent violated 6 RCNY § 2-234 by falsely affirming in an affidavit of service that was filed in New York County Civil Court in the matter of [REDACTED] v. *Matthew Fondet*, [REDACTED], that he served a Summons and Complaint on the defendant. [1 count].

### Charges 2-5: Failure to Comply With Subpoena

2. Respondent violated RCNY § 1-14 by failing to appear in person at the Department to answer a subpoena duces tecum served up Respondent. [1 count]
3. Respondent violated RCNY § 1-16 by failing to make available for inspection by the Department the logbook Respondent is required to maintain under 6 RCNY § 2-233. [1 count]
4. Respondent violated RCNY § 1-16 by failing to make available for inspection by the Department the electronic records Respondent is required to maintain under 6 RCNY § 2-233a. [1 count]
5. Respondent violated RCNY § 1-16 by failing to make available for inspection by the Department the affidavits of service Respondent is required to maintain under 6 RCNY § 2-235. [1 count]

### Charges 6-8: Failure to Maintain Records

6. Respondent violated 6 RCNY § 2-233(a)(1) by failing to maintain a logbook for the period of May 1, 2013 through July 31, 2013. [1 count]

7. Respondent violated 6 RCNY § 2-233a(a) by failing to maintain electronic records for the period of May 1, 2013 through July 31, 2013. [1 count]
8. Respondent violated 6 RCNY § 2-235 by failing to maintain copies of signed affidavits of service for the period of May 1, 2013 through July 31, 2013. [1 count]

**LACK OF FITNESS**

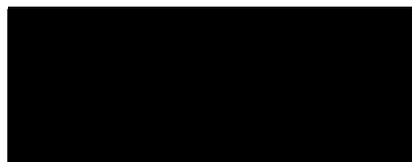
9. By virtue of the activities described above, Respondent violated § 20-101 of the Code by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

**WHEREFORE**, the Department demands that an order issue: 1) revoking Respondent's process server license; 2) finding Respondent unfit to hold any Department licenses; 3) imposing maximum fines on Respondent for each and every charge set forth herein; and 4) granting such other relief as is deemed just and proper.

Dated: November 21, 2014  
New York, New York

For: Julie Menin  
Commissioner

By



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](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 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 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.