

CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS,

**Complainant,**

ASSURANCE OF  
DISCONTINUANCE

-against-

PROCESS SERVER  
INDIVIDUAL

Harry Torres,

Violation No. LL # 5133470  
Process Server License  
0915257

**Respondent.**

-----X

Harry Torres ("Respondent") consents to this Assurance of Discontinuance ("AOD" or "Agreement") to settle the above captioned violation with the Department of Consumer Affairs ("DCA" or "the Department") and agrees as follows:

**ACKNOWLEDGMENT OF SERVICE**

Respondent acknowledges receipt of the Notice of Hearing in the above captioned matter, which charged him with violating provisions of Title 20 of the Administrative Code of the City of New York (the "Code"), found in: Chapter 1 of the Code, beginning at Section 20-101 (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); Title 6 of the Rules of the City of New York, Chapter 2, Subchapter W, beginning at Section 2-231 (the "Process Servers Rules") in connection with his Process Server license

**BAR TO REAPPLYING FOR A PROCESS SERVER LICENSE IN THE CITY OF NEW YORK**

1. Respondent shall be barred from reapplying for any process server license issued by the Department for a period of five years (5) beginning on October 1, 2008

- 2 During the said five (5) year period, Respondent shall be prohibited from engaging in process serving activity in the City of New York including but not limited to serving, assigning, distributing or delivering process for service to anyone else to serve on his behalf or on behalf of any company in which Respondent owns a ten (10) or more percent share or interest nor conduct any process server business whatsoever in the City of New York
- 3 Should Respondent reapply and be issued a process server license at any time after the expiration of the five (5) year period, Respondent shall comply with all the provisions of this Agreement as condition of the issuance of a process server license to Respondent or on behalf of any company in which Respondent owns a ten (10) or more percent share or interest
- 4 Any time frame imposed by this Agreement shall begin to run as of the date of the subsequent issuance of a process server license to Respondent

L. **DEFINITIONS:**

- A. "Serve" or "service" shall mean the delivery of process in manner prescribed by the laws of the State of New York
- B. "Process" means a summons, notice of petition, order to show cause, subpoena, notice, citation or other legal paper issued under the laws of the State of New York directing an appearance or response to a legal action, legal proceeding or administrative proceeding; provided, however, that if under the laws of the State of New York the mailing of such legal paper is sufficient to effect service, such legal paper shall not be process for the purpose of this Agreement
- C. A "contest to service of process" means a challenge alleged in an answer, motion, or other pleading submitted in a judicial, administrative or other legal proceeding to the service of process effectuated by a process server on the ground that the service did not comply with the requirements of New York State or other applicable law, including a hearing commonly known as a "traverse hearing," whether such challenge is waived, settled by stipulation or decided by court order after a hearing,
- D. "Contemporaneous" with respect to the entry of an event in a record, volume or log book means that each entry shall be made at or about the time as the act with respect to which the entry is made

- E "Chronological" with respect to the notation in the process server record or log means that each notation shall be entered in order of date and time and that no blank spaces shall be left allowing the entry of an additional notations between any two notations
- F "Bound volume" means a book or ledger that at the time of purchase contains a specified number of unfolded sheets of paper or other material that are permanently secured to covers by stitching, glue such other method that is calculated to make readily discernable the removal or inclusion of one or more sheets after the first use of such volume
- G "Paginated" means each page in the volume or log must contain either a page number in sequence starting with the number "1" at the time of purchase or an indelible label stating the number of pages the volume originally contained
- H "Due diligence" in delivering process shall mean that three or more reasonable efforts were made to locate and deliver process personally to the person(s) to be served within the State
- I "Reasonable efforts" means that attempts to serve process is made at a time, date or location the Respondent knows the person to be served could reasonably be found
- J "Reasonable efforts to locate" means that Respondent has made reasonable attempts to locate the person to be served and confirmed the address or location by dependable sources before attempting delivery of process
- K "Reasonable efforts to effectuate service by personal delivery" means that the Respondent shall attempt personal delivery more than once and that he/she shall deliver process by substituted service or by conspicuous place service only after the third attempt to find the person to whom service must be delivered
- L "Same time" with respect to efforts to make delivery means within two hours before and after of an hour
- M "Material breach" means the failure to comply with this Assurance of Discontinuance in whole or in part by commission or omission without legal excuse
- N "Report to the Department" means directing a written communication to the New York City Department of Consumer Affairs, Attn.; Legal Services Division, 42 Broadway, 9<sup>th</sup> Floor, NY, NY 10004
- O "Disposition" of a traverse hearing means the court's final written decision on the traverse hearing

- P. "Affidavit of Service" or "Proof of Service" means a sworn statement in writing made under oath before a public notary in which the process server affirms that service of process in a matter was effectuated, the manner in which service was effectuated and other sworn statements

## II. INJUNCTIVE RELIEF

### A. Duty to Comply With Law:

- 1) Respondent shall strictly and promptly comply with all laws, rules, regulations and requirements of the federal, state and municipal authorities and this Agreement when serving process

### B. Duties When Effectuating Service on a Natural Person:

- 2) When effectuating service of process by conspicuous place service, Respondent shall affix the process to be served to the door of the person to be served and to no other.
- 3) When effectuating service of process by conspicuous place service, Respondent shall at all times attach the process to the dwelling place door of the person to be served with transparent tape on all four corners
- 4) When making diligent efforts to deliver process in accordance with the requirements of CPLR 308, Respondent shall not make all attempts at delivery on the same day or at the same time on different days
- 5) Respondent shall make reasonable efforts to confirm whether the address at which service is attempted is the actual place of business, dwelling place or usual place of abode of the person to be served
- 6) Those efforts shall include, but not be limited to, inquiring of neighbors and other persons present at those locations, checking public and commercial data bases, and requesting information from the owner of the premises, if different from the person to be served
- 7) Respondent shall not deliver process that he knows not to be the actual place of business, dwelling place, or usual place of abode of the person to be served and affirm that service was complete in an affidavit
- 8) When service is effectuated pursuant to CPLR 308(4) or Section 735(1) of the Real Property Actions and Proceedings Law ("RPAPL"), Respondent shall make date and

time stamped digital photographs of the hallway walls adjacent to the door to which process is affixed and the entryway to the building where the conspicuous posting is made

- 9) When mailing is required to complete service, Respondent shall perform the mailing in all instances where he has effectuated the delivery of the process himself
- 10) Respondent shall always write "personal and confidential" on the mailing envelope when delivering service by mail
- 11) Respondent shall insure that any service by mail is mailed to the last known residence of the person to be served
- 12) Respondent shall not indicate on mailing envelopes that the communication is from an attorney or concerning an action against the person sought to be served

**C. Duty to Maintain Proper Records:**

- 13) Respondent shall maintain records of service of process in the City of New York as required by General Business Law 89-cc and 6RCNY § 2-233
- 14) Respondent shall maintain in his logbooks all information required by General Business Law 89-cc and 6 RCNY § 2-233 with respect to every case in which he serves process
- 15) All service of process effectuated by the Respondent in the City of New York shall be entered in a single volume/logbook and entries shall at all times be made contemporaneously with service and in chronological order
- 16) Respondent shall record in his usual process server logbook in chronological order the date and time of each and every attempt of service
- 17) Respondent shall record in his usual process server logbook in chronological order the date and time of each service of process that is attempted but returned as undeliverable.
- 18) Respondent shall describe in affidavits of service the person of suitable age and discretion to whom process is delivered by setting forth the age, height, weight, skin color, eye color and hair color of the person to whom process is delivered.
- 19) Respondent shall always state the place and time of delivery in the affidavits of service

D. **Completion of Affidavits and other Proofs of Service**

- 20) Respondent shall strictly and promptly conform to all federal, state and municipal laws, rules, regulations and requirements relating to the preparation, notarization and filing of affidavits of service required by 6 RCNY § 2-234.
- 21) Respondent's affidavit shall be truthful and contain all information required by law and, in addition, the following facts:
- a) A detailed description of Respondent's efforts to effectuate personal delivery within the State;
  - b) Respondent's source of the information about the whereabouts of the person to be served;
  - c) A description of Respondent's efforts to confirm the information about the whereabouts of the person to be served;
  - d) Whether the Respondent made use of a picture or other physical representations of the person(s) to be served when delivering process;
  - e) A description of the age, height, weight, skin color, eye color and hair color of the person to whom delivery of process was made;
  - f) The location and detailed description of the place where delivery was effectuated;
  - g) The name and description of any witnesses to the delivery of process; and
  - h) Where service of process is accomplished by personal delivery, all information confirming that Respondent knew the person to whom process was delivered to be the actual intended recipient of the process; and
  - i) Where information required is unknown, Respondent shall clearly state so in the affidavit.
- 22) Respondent thoroughly read and shall not sign or notarize or cause to be signed or notarized any affidavit of service until such time as all information pertaining to the specific service has been entered and form language modified where necessary
- 23) Respondent shall not intentionally sign any affidavit that has the capacity, tendency or effect of misleading a reader of the affidavit
- 24) For purposes of this provision any statement in an affidavit by Respondent shall be considered intentional if there are repeated similar acts, including because of the use of canned or form language

- 25) Respondent shall at all times specifically state in the affidavit whether he knows or does not know the name(s) of the person(s) to whom service was delivered.
- 26) Respondent shall not use fictitious names in his affidavit to refer to defendants or persons; except "Jane Doe" and "John Doe" where the party is so named in the case caption and was served as such an unknown party
- 27) Respondent shall always state the process server organization name, address and DCA license number, as well his individual process server name and DCA license number, on all affidavits of service that are filed with a court

**E. Maintenance of Records**

- 28) Respondent shall maintain all photographs, logs, records, affidavits and other documents required by the General Business Law, the Rules of the Commissioner and this Agreement for a period of not less than five years.

**F. Duty to Report Contested Service of Process**

- 29) The Respondent shall notify the Department (attention of Counsel's Office), in writing, by certified mail, within ten days of the conclusion of any traverse hearing court hearing or concerning a contest to service of process in which his service of process is contested in a motion, order to show cause, hearing or trial, and whether such dispute was resolved by settlement of the parties, waiver by defendant or by decision of the court
- 30) The report shall be on a form attached to this Agreement as Exhibit A and shall include the following:
  - a) the index number;
  - b) the caption;
  - c) the court;
  - d) the name of the firm, entity or person on behalf of whom service was effectuated;
  - e) the name and license number of the process server organization that assigned service to Respondent;
  - f) a copy of the affidavit of service or proof of service;
  - g) copies of the mailing receipts;
  - i) the final disposition of the matter; and

- j) shall have attached to it a copy of the court order, stipulation or court file jacket setting forth the final disposition of the matter
- 31) Respondent shall have an affirmative obligation to obtain a copy of the decision, stipulation, statement or other proof of disposition of the traverse hearing
- 32) Respondent shall maintain in a separate bound, paginated volume or logbook, separate from the records required by General Business Law, 6 RCNY § 2-233, where he records every contest to service of process (traverse hearing) setting forth all of the information required by this Agreement to be reported to the Department and the date and certified mail number .

G. **Providing Identification**

- 33) Respondent may not possess, display or wear any badges, insignias, shields, medals or decoration while serving process.
- 34) Respondent shall display his Department identification card upon request of a person upon whom Respondent is attempting service or any other interested person

H. **Training**

- 35) Respondent shall obtain training about the laws and regulations that relate to and govern the service of process in the City of New York upon notice from the Department that that it has determined that there is available within the City of New York one or more programs that provide such training in a satisfactory manner
- 36) Respondent's failure to provide proof of having attended training shall be sufficient grounds for the revocation of his license or denial of a renewal application license until such time as this requirement is met

I. **Inspection of Records:**

- 37) If Respondent obtains a new license in five years, thereafter Respondent shall report to the Department, upon notice, at the Legal Services Division, 42 Broadway, 9<sup>th</sup> Floor, New York, NY 10004, every six months for a compliance review
- 38) The first such review shall occur on or about three months from the date of issuance of the license at a date and time scheduled by the Department
- 39) The Department will provide notice of the date and time of the review to Respondent by regular United States mail sent to Respondent's residential address not later than ten (10) days before the schedule review.

- 40) Respondent shall appear at the review with all photographs, records, affidavits and other documents that this Agreement requires Respondent to maintain for the preceding six months, or as provided by the Department in writing, and with such other materials as the Department by notice shall request
- 41) The Department will conduct a review to assess whether Respondent has complied with the requirements of Article 8-A of the General Business Law, Subchapter W of Chapter 2 of the Rules of the Commissioner, and this Agreement
- 42) Respondent's failure to comply may result in proceedings for license revocation or suspension, fines and such other remedies as provided by law and this Agreement
- 43) Respondent's failure to provide proof of compliance with the review and reporting requirement of this section on or before the application for a license renewal shall be sufficient grounds for the denial of any subsequent license.
- 44) Respondent shall produce all records demanded by the Department within 72 hours of the receipt of a written demand.

### III. FINES

- 45) Respondent shall pay a fine of \$\_\_\_\_**\$1,000.00**\_\_\_\_\_ in three installments in settlement of all the violations to date
- 46) Installment payments shall be made as follows:
  - a) The first installment for three hundred dollars (\$300 00) and is due at the execution of this Agreement
  - b) The second payment is for three hundred dollars (\$300 00) and is due 60 days after the execution of this Agreement
  - c) The third payment is for four hundred dollars (\$400 00) and is due 90 days after the date of the execution of the Agreement
- 47) Payments shall be made in the form of a bank check or money order only and shall be made payable to the "NYC Department of Consumer Affairs."

IV. **RESOLUTION OF CONSUMER COMPLAINTS**

- 48) Respondent shall provide to the Department a reply to all consumer complaints to the Department relating to Respondent's process serving activity within ten (10) business days of the receipt the complaint
- 49) Respondent shall respond to any subsequent communications from the Department concerning the complaint within five (5) business days
- 50) Nothing in this provision waives or diminishes Respondent's obligation to comply with 6 RCNY Section 1-13.
- 51) Respondent shall provide to the Department a copy of every written complaint that Respondent receives from any other governmental body and from any non-governmental entity and Respondent's response thereto within ten days of Respondent's receipt of the complaint Respondent shall report to the Department the resolution of every such complaint and provide a copy of any writing setting forth the resolution within ten (10) business days of such resolution.

V. **RESPONDENT'S DUTY TO REPORT CHANGES OF ADDRESS TO THE DEPARTMENT**

- 52) Respondent affirms that the address and telephone number listed with the Department are current and correct
- 53) Respondent represents that the following is his e-mail address.  

\_\_\_\_\_ @ \_\_\_\_\_
- 54) Respondent acknowledges that the Department intends to use this e-mail address to communicate official matters to the Respondent and Respondent agrees to accept such communications.
- 55) Respondent shall notify the Department when his address, telephone number and or e-mail address change in writing within 10 days of such change
- 56) Respondent shall provide the notification in writing to the Department's Licensing Unit at 42 Broadway, 5<sup>th</sup> Floor, NY, NY 10004 and the Legal Services Unit located at 42 Broadway, 9<sup>th</sup> Floor, NY, NY 10004.
- 57) Respondent's failure to notify the Department of any change in address in a timely manner shall be sufficient grounds for the suspension of the license for a period of not

less than three (3) months, upon proof of the failure to notify the Department of such change and an opportunity to be heard

- 58) Respondent's failure to respond to any Department communication within the period specified in this Agreement or by law shall be deemed Respondent's failure to notify the Department of his/her whereabouts and shall be sufficient grounds for the suspension of the license, upon proof of such failure to respond and an opportunity to be heard

#### **VI. BREACH OF THIS AGREEMENT**

- 59) A finding after notice and 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 and for ineligibility to be licensed for a period of five years
- 60) Specific violations of this Agreement shall constitute independent and separate violations of any applicable law, regulation or rule.
- 61) Violations of law and violations of this Agreement shall be assessed as separate fines, with a maximum penalty of \$1,000.00 each
- 62) The following conduct shall be grounds for denial or revocation of Respondent's DCA licenses:
- a Respondent's failures to pay any restitution or fine ordered by DCA's administrative tribunal; or
  - b Respondent's failure to pay any fine installment payment under this Agreement; or
  - c Respondent's failure to pay any consumer restitution awarded by any other court or administrative body of competent jurisdiction within thirty days of Respondent's receipt of the decision of such court or the exhaustion of all appeals therefrom, whichever is later

#### **VII. WAIVER OF APPEALS**

- 63) Respondent waives any right to a hearing on, appeal of and/or any challenge of the facts alleged by the above-referenced violation (LL#5133470) under Sections 20-104

of the Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806, in any forum.

**VIII. DEPARTMENT'S AUTHORITY**

64) Nothing in this Agreement 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

Agreed to by Respondent

By: Harry Torres 2/26/09  
Signature Date

Accepted for the Department of Consumer Affairs

By: [Redacted]  
Staff Counsel  
Legal Services Division

[Redacted Signature] 2/26/09  
Signature Date

By: Respondent's Attorney  
Leo Weytznier Esq 2/26/09  
Signature Date

By: [Redacted]  
Deputy Director  
Legal Services Division

[Redacted Signature] 2/26/09  
Signature Date

By: Respondent's Attorney,  
Sol Needle, Esq 2/26/09  
Signature Date

Businesses 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 at [www.nyc.gov/consumers](http://www.nyc.gov/consumers).