

CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS,

CONSENT ORDER

Complainant,

-against-

Violation No. LL005324074

SID MARKS NY INC.  
20 VESEY STREET  
NEW YORK, NY 10007

License No. 1126802

Respondent.

(Process Serving Agency)

1. The Department of Consumer Affairs (“DCA” or “the Department”) and Sid Marks NY Inc. (“Respondent”) enter into this Consent Order (“CO”) to resolve charges that Respondent engaged in violations of the following rules: Title 6 of the Rules of the City of New York (“6 RCNY”), Sections, 2-234a(b), 2-234a(b)(1), 2-234a(b)(2)(i), 2-234a(b)(2)(ii), 2-234a(b)(2)(iii), 2-234a(b)(2)(iv),
2. This CO shall apply to Respondent and any other directors, officers, employees, agents, assignees, successors, or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by Respondent.
3. Respondent enters into this CO to resolve these charges without the necessity of a hearing.
4. 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.
5. 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**

6. Respondent shall, in accordance with 6 RCNY § 2-234a(b), develop and implement policies and procedures set forth in a written Compliance Plan to ensure that individual process servers to whom it distributes process for service act with integrity and honesty and comply with the recordkeeping requirements applicable to process servers. This includes adopting and implementing the following policies:

**Confirmation of Process Servers' License Status**

- A. Respondent shall check the Department's website at least once each month to ensure that all individuals to whom it assigns or distributes process for service in New York City have an active individual process server license, provided, however, that this shall not apply in any month in which the Department's website is not available on three (3) or more days.

**Screening of New Process Servers**

- B. Prior to assigning or distributing process to an individual process server who has not attempted or effected service of process on Respondent's behalf previously, Respondent shall use the Process Server Screening Protocol available on the DCA Process Server Website ([nyc.gov/processserver](http://nyc.gov/processserver)) as a guide to determine whether the process server is fit to serve process in New York City.
- C. Respondent shall attach a copy of the completed Process Server Screening Protocol with each updated roster of process servers that it submits to the Department pursuant to Title 6 of the Rules of the City of New York, Section 2-234a(d)(2). The roster and screening protocol shall be mailed to the following address:

NYC Department of Consumer Affairs  
42 Broadway, 1st Floor  
New York, NY 1000  
Attention: Licensing Division

**Confirmation of Integrity of Affidavits of Service**

- D. Respondent shall ensure that each affidavit of service signed by a process server who attempted or effected service of process on Respondent's behalf in New York City is accurate and includes the case caption and index number (if they exist), the name and license number of the process server, and the name and address of the process serving agency.
- E. Respondent shall ensure that no affidavit of service will be signed by a process server who effected service of process on Respondent's behalf in New York City, notarized, or filed with a court unless the process server has created an electronic record of the location, date and time of service as determined by Global Positioning System ("GPS") technology or Assisted-Global Positioning System ("A-GPS") technology.
- F. Respondent shall maintain electronic copies of all signed affidavits of service relating to service of process that Respondent assigned or distributed to an individual process server for service in New York City for at least seven (7) years. Each affidavit of service shall be maintained as a separate electronic file and the electronic files shall be maintained chronologically and named in the following manner:

*Process Server Last Name and First Initial (no spaces)-  
Date of Service (YYYYMMDD)-  
Unique Identifying Number (to distinguish between multiple services on the same date).*

Example: smithj-20120101-1

### **Conducting of Record Reviews**

- G. At least once each month, Respondent shall review the records of each individual process server to whom it assigns or distributes process for service in New York City for completeness and accuracy.
- H. Respondent shall prepare a monthly report of its review of the records maintained pursuant to 6 RCNY § 2-233 (concerning bound logbooks), 6 RCNY § 2-233a (concerning electronic logbooks), 6 RCNY § 2-233b (concerning GPS), and 6 RCNY § 2-235 (concerning affidavits of service), of each individual process server to whom it assigns or distributes process using the “Monthly Compliance Report” available on the DCA Process Server Website. Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years.
- I. Respondent shall answer each and every question contained in the Monthly Compliance Report, including all subsequent updates to the report, truthfully, accurately and completely. This shall include identifying all record entries that are non-compliant.
- J. Each month, Respondent shall, for each individual process server to whom it assigns or distributes process for service in New York City, prepare a “GPS Investigation Report” using the review instrument available on the DCA Process Server Website. Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years.
- K. Respondent shall follow each and every instruction contained in the GPS Investigation Report and shall complete the report, including all subsequent updates to the report, truthfully, accurately and completely.
- L. Respondent understands that the Department may, from time to time, notify Respondent of GPS records showing that a process server was not at an address that he or she claimed to have attempted or effected service of process. When such a notification is sent to Respondent by the Department, Respondent shall investigate the service in accordance with Instructions 3 and 4 of the “GPS Investigation Report” and submit the completed report to the Department within thirty (30) days of receiving the notification. Respondent is not required to conduct any reviews, as set forth above, in any month in which it does not assign or distribute process for service in New York City.

### Implementing Disciplinary Actions

- M. Respondent shall take appropriate disciplinary action against all individual process servers who fail to comply with the process server rules and laws, including, but not limited to, suspending or terminating the process server's employment, agency or other relationship with Respondent.
- N. Respondent shall document all disciplinary actions taken against individual process servers contemporaneously with the actions.
- O. Respondent shall report to the Department in writing the name and license number of each individual licensed process server who does not comply with the rules or law governing process servers within ten (10) days of learning of such non-compliance using the "Disciplinary Actions and Non-Compliance Report" available on the DCA Process Server Website. This includes reporting any failure to comply with the requirements of 6 RCNY § 2-233 (concerning bound logbooks), the requirements of 6 RCNY § 2-233a (concerning electronic logbooks), the requirements of 6 RCNY § 2-233b (concerning GPS), the requirements of 6 RCNY § 2-235 (concerning affidavits of service), or the requirements of 6 RCNY § 2-236 (concerning traverse hearings). The report to the Department shall be sent via e-mail to **process\_server@dca.nyc.gov** in Microsoft Excel format.
- P. Respondent shall maintain electronic records of any disciplinary actions taken against individual process servers and reports of non-compliance with the process server rules and laws for at least seven (7) years.

### Traverse Hearings

- Q. Whenever Respondent receives any type of notice, including an oral communication, that a court has scheduled a hearing to determine whether service of process assigned by Respondent to a licensed individual process server was effective (a.k.a. a "traverse hearing"), Respondent shall submit a report to the Department, within ten (10) days of receiving such notice, using the "Traverse Report Form for Process Servers/Agencies Who Signed a Consent Order" available on the DCA Process Server Website. Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.
- R. Each traverse report form notifying the Department of a scheduled traverse hearing shall minimally include the following information:
  - (i) The date(s) of the hearing;
  - (ii) The name of the court, county, and judge before whom the hearing is scheduled;
  - (iii) The index number of the action or proceeding;
  - (iv) The name of the petitioner or plaintiff;
  - (v) The name of the respondent or defendant;
  - (vi) The process server's name;

- (vii) The process server's license number;
  - (viii) The name of the process serving agency on behalf of whom service was effectuated;  
and
  - (ix) The name and license number of every individual process server that you notified of the hearing and date of the notification(s).
- S. Respondent shall learn the final result of each **scheduled** traverse hearing that concerns service of process by Respondent, including any judicial order, cancellation of the hearing or settlement resolving the challenge to service of process. "Decision reserved" is not a final result.
- T. Within ten days of learning the final result of a traverse hearing, Respondent shall notify the Department of the result by submitting a traverse report to the Department using the traverse report form titled "Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order," available on the DCA Process Server Website. Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.
- U. If Respondent fail to learn the final result of the traverse hearing and obtain a copy of the court's decision within sixty (60) days of the scheduled hearing date, Respondent shall send a written communication to the plaintiff/petitioner or the plaintiff/petitioner's attorney to obtain the final result and a copy of the court's decision.
- V. If Respondent fail to learn the final result and obtain a copy of the court's decision within sixty (60) days of the scheduled hearing date, Respondent shall search the court file for such information.
- W. If Respondent fail to learn the final result and obtain a copy of the court's decision within ninety (90) days of the scheduled hearing date, Respondent shall search the court file again for such information.
- X. Within 100 days of the scheduled hearing date, Respondent must submit to the Department, by e-mail to **TraverseReports@dca.nyc.gov** either (a) the final result of the hearing and a copy of the court's decision; or (b) a written explanation of why Respondent was unable to learn the final result of the hearing or obtain a copy of the court's decision.
- Y. Respondent and the individual process server whose service is being challenged must each submit a completed Traverse Report Form upon learning of the scheduling of a traverse hearing and learning the result of a traverse hearing. Process serving agencies may not submit traverse reports on an individual process server's behalf.
- Z. Respondent shall maintain, for seven (7) years, a single report concerning all traverse hearings that Respondent investigated and electronic copies of all documents gathered or created pursuant to its investigations into traverse hearings, including all written

communications with individual process servers and notes concerning communications with individual process servers.

**Maintaining Electronic Records**

- AA. Respondent shall maintain electronic records in accordance with 6 RCNY § 2-233(c)(1)(i)-(vii) and 6 RCNY § 2-233a(b), including electronic records of daily activity and electronic copies of all affidavits of service, work orders, routing sheets, instructions to individual process servers and notes submitted by individual process servers.
- BB. Respondent shall maintain for seven (7) years electronic image files of the logbooks of each individual process server to whom Respondent has assigned or distributed process for service in New York City.
- 7. Respondent shall maintain all records that it is required to maintain pursuant to the Department's rules and this Consent Order at the address where Respondent is licensed to conduct business as a process serving agency.
- 8. Respondent shall make all records that it is required to maintain pursuant to the Department's rules and this Consent Order available to the Department's inspectors, upon reasonable notice, between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding holidays.
- 9. Upon written demand or subpoena by the Department, Respondent shall:
  - (i) provide to the Department, within ten (10) days of the demand, any documents or records that the Department deems necessary to ascertain compliance with this Consent Order; and
  - (ii) provide a written response to each specific demand for records, including the identification of the records produced in response to each numbered demand and, if no records are submitted in response to a particular numbered demand, a detailed explanation of why such records are not being produced.

**MISCELLANEOUS**

- 10. Respondent affirms that the address and telephone number listed with the Department are current and correct.
- 11. Respondent appoints Harvey Tawber as its designated agent who may be contacted regarding this CO and any consumer complaints and represents that the following is his/her e-mail address:



12. Respondent acknowledges that the Department intends to use this e-mail address to communicate official matters to Respondent and Respondent agrees to accept such communications.
13. Respondent shall notify the Department in writing when its address, telephone number and/or e-mail address change within 10 days of such change.
14. Respondent shall notify the Department within ten (10) days of receipt of any (i) complaints, actions or proceedings filed against Respondent by consumers in any forum, including state and federal courts, the Better Business Bureau, the Office of the Attorney General of the State of New York, or any other agency or association, (ii) actions, proceedings or investigations by any government agency against Respondent; and (iii) results of any actions, proceedings or investigations against Respondent that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea, or a conviction.

#### **FINES**

15. Prior to or upon execution of this CO, Respondent shall pay a fine of \$300.00 in settlement of all the violations to date in the above-referenced matter.

#### **NON-COMPLIANCE WITH THIS ORDER**

16. Any violation of federal, state or city process server laws or rules shall constitute a violation of this Consent Order.
17. Specific violations of this Consent Order shall constitute independent and separate violations of any applicable law, regulation or rule.
18. Violations of laws and rules and violations of this Consent Order shall be assessed as separate violations with separate fines.

#### **WAIVER OF APPEALS**

19. Respondent waives any right to a hearing, appeal of and/or any challenge of the facts alleged by the above-referenced violation under Code § 20-104 or under Article 78 of the New York State Civil Practice Law and Rules (CPLR), §§ 7801–7806, in any forum.

#### **EFFECTIVE DATE OF CONSENT ORDER**

20. The Effective Date of this Consent Order shall be the date that it is signed by the Department.

#### **EXPIRATION OF CONSENT ORDER**

21. This Consent Order shall expire two (2) years from the Effective Date of this Consent Order.

**DEPARTMENT'S AUTHORITY**

22. 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 Code §§ 20-104 or 20-409.

Sid Marks NY Inc.

Accepted for the Department of Consumer Affairs

By: *Harvey Taubman*

By: [Redacted]

Title: *Senior Staff Attorney*

*Harvey Taubman*  
Signature

*4/17/15*  
Date

[Redacted]  
Signature

*4/17/15*  
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 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).

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

**NOTICE OF HEARING**

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DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

AAA Attorney Service Co. of New York Inc.  
20 Vesey Street, Room #1110  
New York, NY 10007

Violation No. LL005307508  
License No. 0836963

and

Sid Marks NY Inc.  
20 Vesey Street  
New York, NY 10007

Violation No. LL005324074  
License No. 1126802

Licenseses/Respondents. (Process Serving Agencies)

-----x  
**TO THE ABOVE NAMED LICENSEES:**

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 ADJUDICATION TRIBUNAL OF THE DEPARTMENT OF CONSUMER AFFAIRS, 11TH FLOOR, 66 JOHN STREET, NEW YORK, NEW YORK 10038 AT 8:30 A.M. ON JANUARY 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 Server 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 Title 6 of the Rules of the City of New York, Chapter 2, Subchapter W, beginning at Section 2-231 (known as the Process Server Rules);

**AND SHOW CAUSE** why your licenses to operate as Process Serving Agencies 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 AND APPLICABLE LAW

1. AAA Attorney Service Co. of New York Inc. (“Respondent AAA”) has been licensed by the Department as a process serving agency (“PSA”) since on or about March 16, 1994.
2. Sid Marks NY Inc. (“Respondent Sid Marks”) has been licensed by the Department as a PSA since on or about December 10, 2002.
3. Betty Tauber is the President and a fifty percent owner of both Respondent AAA and Respondent Sid Marks (together “Respondents”).
4. Harvey Tauber is the Secretary and a fifty percent owner of both Respondent AAA and Respondent Sid Marks.
5. On or about December 7, 2011, Respondent AAA entered into a Consent Order with the Department, agreeing to certain injunctive relief and penalty provisions in exchange for resolving the pending charges in Notice of Hearing LL005287412 (the “AAA Consent Order”)
6. On or about December 7, 2011, Respondent Sid Marks entered into a Consent Order with the Department, agreeing to certain injunctive relief and penalty provisions in exchange for resolving the pending charges in Notice of Hearing LL005287520 (the “Sid Marks Consent Order”).
7. The AAA Consent Order and Sid Marks Consent Order are referred to hereinafter collectively as the “Consent Orders.”

### Violations of Compliance Plan Requirements

8. Pursuant to 6 RCNY § 2-234a(b) and Section II(1) of the Consent Orders, Respondents are required to develop and implement policies and procedures set forth in written Compliance Plans to ensure that individual process servers act with integrity and honesty and comply with the recordkeeping requirements applicable to process servers.
9. Respondents' Compliance Plans must, according to 6 RCNY § 2-234a(b)(2)(i)-(vi) and Section II(2) of the Consent Orders, contain language requiring them to do the following:
  - (i) at least once each month, review for completeness and accuracy the records of each individual process server to whom they assign or distribute process;
  - (ii) prepare a monthly written report of their reviews of the records maintained pursuant to 6 RCNY § 2-233 by each individual process server to whom they assign or distribute process during that month;
  - (iii) maintain each monthly record review report for at least seven (7) years;
  - (iv) maintain records of any disciplinary actions taken against individual process servers;
  - (v) report to the Department in writing the name and license number of each licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance; and
  - (vi) make available to the Department, upon request, a copy of their record review procedures, any written reports of the review they maintain, and copies of any referrals of individual process servers to the Department.
10. Respondents' Compliance Plans do not contain language requiring them to do the following:
  - (i) at least once each month, review for completeness and accuracy the records of each individual process server to whom they assign or distribute process;
  - (ii) prepare a monthly written report of their reviews of the records maintained pursuant to 6 RCNY § 2-233 by each individual process server to whom they assign or distribute process during that month;
  - (iii) maintain each monthly record review report for at least seven (7) years;
  - (iv) maintain records of any disciplinary actions taken against individual process servers;

- (v) report to the Department in writing the name and license number of each licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance; and
- (vi) make available to the Department, upon request, a copy of their record review procedures, any written reports of the reviews they maintain, and copies of any referrals of individual process servers to the Department.

11. On November 4, 2011, Respondents submitted affirmations to the Department which falsely stated that they had “adopted a written compliance plan to ensure that each individual serving process on behalf of the Agency acts with integrity and honesty and complies with the record-keeping requirements applicable to process servers.”

**Failure to Comply with Monthly Record Review Requirements**

12. Pursuant to 6 RCNY §§ 2-234a(b), 2-234a(b)(2)(i) and Section II of the Consent Orders, Respondents must, at least once a month, review for completeness and accuracy the records of each individual process server to whom they assign or distribute process for service in New York City.

13. Respondent AAA failed to review for completeness and accuracy the records of each individual process server to whom it assigned or distributed process for service in New York City, including:

- (i) Willem Joseph (November 2011)
- (ii) Willem Joseph (December 2011)
- (iii) Willem Joseph (January 2012)

14. Pursuant to 6 RCNY §§ 2-234a(b), 2-234a(b)(2)(ii) and Section II of the Consent Orders, Respondents must prepare a monthly written report regarding their reviews of the records maintained by individual process servers to whom they assigned or distributed process for service in New York City using the “Monthly Compliance Report” template created by the Department.

15. Respondent AAA did not prepare monthly written reports regarding the records of:

- (i) Willem Joseph (November 2011)
- (ii) Willem Joseph (December 2011)
- (iii) Willem Joseph (January 2012)

16. Pursuant to 6 RCNY § 2-234a(b) and Section II(1) of the Consent Orders,

Respondents must implement record review procedures adequate to ensure that individual process servers comply with recordkeeping requirements.

17. Respondent AAA failed to implement such policies and procedures.

18. As a result of Respondent AAA's inadequate record review procedures, Respondent AAA failed to identify the following inadequate recordkeeping by process servers in its monthly record reviews:

- (i) Rebecca Roth's failure to record PSA license numbers, court names and the color of the skin of individuals she served in her December 2011 logbook;
- (ii) Rebecca Roth's failure to record PSA license numbers, court names and the color of the skin of individuals she served in her January 2012 logbook;
- (iii) Howard Clarke's failure to record PSA names in his May 2012 logbook;
- (iv) Howard Clarke's failure to record PSA names in his June 2012 logbook;
- (v) Howard Clarke's failure to record PSA names in his July 2012 logbook;
- (vi) Andre Meisel's failure to record PSA license numbers and complete addresses in his May 2012 logbook;
- (vii) Andre Meisel's failure to record PSA license numbers and complete addresses in his June 2012 logbook;
- (viii) Andre Meisel's failure to record PSA license numbers and complete addresses in his July 2012 logbook;

19. Pursuant to 6 RCNY § 2-234a(b) and Section II(1) of the Consent Orders,

Respondents must implement policies and procedures adequate to ensure that individual process servers acts with integrity and honesty.

20. Respondent AAA failed to implement such policies and procedures.

21. As a result of Respondent AAA's inadequate record review procedures, Respondent AAA failed to identify in its monthly record reviews the following act by process servers that showed a lack of integrity and honesty :

- (i) Gerald Murray's logbook records reporting that he performed thirty-seven (37) consecutive conspicuous services in seventeen (17) different buildings between 7:00 p.m. and 8:57 p.m. on March 1, 2012,;
- (ii) Gerald Murray's logbook record reporting that he was in both Bronx and Brooklyn on April 30, 2012 at 11:32 a.m., which is impossible;
- (iii) Gerald Murray's logbook records reporting that he was in both Bronx and Brooklyn on April 30, 2012 at 12:13 p.m.;
- (iv) Gerald Murray's logbook records reporting that he was in both Bronx and Brooklyn on April 30, 2012 at 1:04 p.m., which is impossible;
- (v) Gerald Murray's logbook records reporting that he was in both Bronx and Brooklyn on April 30, 2012 at 1:35 p.m., which is impossible;
- (vi) Gerald Murray's logbook records reporting that he was at two different addresses in the Bronx on April 30, 2012 at 3:56 p.m., which is impossible;
- (vii) Gerald Murray's logbook records reporting that he was in both Bronx and Brooklyn on April 30, 2012 at 4:36 p.m., which is impossible;
- (viii) Gerald Murray's logbook records reporting that on May 2, 2012, he was in Bronx at 2:51 p.m. and Brooklyn at 2:54 p.m., which is impossible;
- (ix) Gerald Murray's logbook records reporting that that on May 7, 2012, he was in Bronx at 11:06 a.m. and Brooklyn at 11:13 a.m., which is impossible;
- (x) Gerald Murray's logbook records reporting that on May 7, 2012, he was in Brooklyn at 11:35 a.m. and Bronx at 11:39 a.m., which is impossible;
- (xi) Gerald Murray's logbook records reporting that on May 7, 2012, he was in Brooklyn at 12:06 p.m. and Bronx at 12:10 p.m., which is impossible;
- (xii) Gerald Murray's logbook records reporting that on May 7, 2012, he was in Brooklyn at 12:27 p.m. and Bronx at 12:28 p.m., which is impossible; and
- (xiii) Gerald Murray's logbook records reporting that on May 22, 2012, he was in Bronx at 12:24 p.m. and Brooklyn at 12:30 p.m., which is impossible.

**Failure to Take Disciplinary Actions and Report Non-Compliance with Process Server Laws**

22. Pursuant to 6 RCNY § 2-234a(b)(1) and Section II(3) of the Consent Orders, Respondents must take appropriate disciplinary action against individual process servers who fail to comply with the law, including, but not limited to, suspending or terminating their employment, agency or other relationship with the individual process server.

23. Respondent AAA failed to:

- (i) take any disciplinary action against process server Chester Christian even though it discovered that Mr. Christian had logbook recordkeeping violations for the months of November 2011, December 2011 and January 2012;
- (ii) take any disciplinary action against process server Howard Clarke even though it discovered that Mr. Clarke had logbook recordkeeping violations for the months of November 2011, December 2011 and January 2012;
- (iii) take any disciplinary action against process server William Henderson even though it discovered that Mr. Henderson had logbook recordkeeping violations for the months of November 2011, December 2011 and January 2012;
- (iv) take any disciplinary action against process server Andre Meisel even though it discovered that Mr. Meisel had logbook recordkeeping violations for the months of November 2011, December 2011 and January 2012;
- (v) take any disciplinary action against process server Gerald Murray even though it discovered that Mr. Murray had logbook recordkeeping violations for the months of November 2011, December 2011 and January 2012;
- (vi) take any disciplinary action against process server Renier Pellot even though it discovered that Mr. Pellott had logbook recordkeeping violations for the months of December 2011 and January 2012; and
- (vii) take any disciplinary action against process server Rebecca Roth even though it discovered that Ms. Roth had logbook recordkeeping violations for the months of December 2011 and January 2012.

24. Pursuant to 6 RCNY §§ 2-234a(b), 2-234a(b)(2)(v) and Sections II(1) and II(2)(e) of the Consent Orders, Respondents must report to the Department in writing the name and license number of each process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance.

25. Respondent AAA failed to report:

- (i) Chester Christian's logbook recordkeeping violations, identified in monthly record review reports for November 2011, December 2011 and January 2012;
- (ii) Howard Clarke's logbook recordkeeping violations, identified in monthly record review reports for November 2011, December 2011 and January 2012;
- (iii) William Henderson's logbook recordkeeping violations, identified in monthly record review reports for November 2011, December 2011 and January 2012;
- (iv) Andre Meisel's logbook recordkeeping violations, identified in monthly record review reports for November 2011, December 2011 and January 2012;
- (v) Gerald Murray's logbook recordkeeping violations, identified in monthly record review reports for November 2011, December 2011 and January 2012;
- (vi) Renier Pellot's logbook recordkeeping violations, identified in monthly record review reports for December 2011 and January 2012; and
- (vii) Rebecca Roth's logbook recordkeeping violations, identified in monthly record review reports for December 2011 and January 2012.

**Failure to Investigate Traverse Hearings**

26. According to 6 RCNY § 2-234a(b) and Section II(1) of the Consent Orders,

Respondents must ensure the integrity and honesty of their process servers by investigating whether service was properly effected in all cases in which service of process has been challenged (known as “traverse hearings”).

27. Respondent AAA failed to investigate whether service was properly effected in the following cases:

- (i) American Express Centurion Bank v. Kenneth Chow (21713/09, Queens Supreme);
- (ii) FIA Card Services v. Damion D. Douglas (57454/11, Bronx Civil);
- (iii) 7 West 34<sup>th</sup> St, LLC v. La Collina Tosca, LLC (76732/11, New York Housing);
- (iv) Chase Bank v. Boris Kupershmid (32824/10, Kings Civil);
- (v) American Express Bank v. George Fuchs (49779/10, New York Civil);
- (vi) FIA Card Services v. Harvey Geisler (65486/08, New York Civil);
- (vii) Samuel Ranson v. Victor Grullon (300013/11, Bronx Supreme);
- (viii) American Express Bank v. George Fuchs (49779/10, New York Civil);
- (ix) Citibank v. Moses Goldberger (36277/10, Kings Civil);
- (x) American Express Bank v. George Fuchs (27490/10, Queens Supreme);

- (xi) Based Anesthesia v. Aurora Fleming (50803/10, Kings);
- (xii) FIA Card Services v. Hei Chang (4498/10, Queens Supreme);
- (xiii) American Express v. Michael Fischbein (100824/10, Kings Civil);
- (xiv) American Express v. Albert Smith (24450/10, Queens Civil);
- (xv) Clara Giorgio v. Christina Parthucek (18421/12, Bronx Civil).
- (xvi) Patricia Montemarano v. Timothy Costello (10578/10, Kings Supreme);  
and
- (xvii) Discover Bank v. Deidre Mahoney (84480/10, Kings Civil).

**Distribution of Process to An Unlicensed Process Server**

28. Pursuant to 6 RCNY 2-234a(a)(1), a PSA “shall not assign or distribute process for service to an individual process server who [] is not licensed to serve process.”
29. During the period November 1, 2011 through January 31, 2012, Respondent AAA distributed process to unlicensed process server Willem Joseph for service in New York City on at least eighty (80) occasions.

**Distribution of Process to Process Servers Who Failed to Act with Integrity and Honesty or Comply With Recordkeeping Requirements**

30. Pursuant to 6 RCNY 2-234a(a)(3), Respondent “shall not assign or distribute process for service to an individual process server who [] does not display integrity and honesty in his or her process serving activities.”
31. Respondent distributed process to the following process servers even though the process server(s) failed to display integrity and honesty in his or her process serving activities:
- (i) Howard Clarke (admitted during *Discover Bank v. Deidre Mahoney* traverse hearing that he lied on his affidavit of service by inventing a relative that did not exist).
  - (ii) Gerald Murray (lied on affidavit of service in *New York City Housing Authority v. Margie Lewis* case and lied during the traverse hearing in the same case).

32. Pursuant to 6 RCNY 2-234a(a)(4), a PSA “shall not assign or distribute process for service to an individual process server who [] does not comply with the

recordkeeping requirements applicable to the service of process in the City of New York.”

33. Respondent AAA distributed process to the following process servers even though they failed to comply with recordkeeping requirements contained in 6 RCNY § 2-233 for multiple months (as stated in paragraph 14 above):

- (i) Howard Clarke (failed to record PSA names in his logbook entries from May 2012 through July 2012);
- (ii) Andre Meisel (failed to record PSA license numbers and complete addresses in his logbook entries from May 2012 through July 2012); and
- (iii) Gerald Murray (recorded incorrect logbook entries on March 1, 2012, April 30, 2012, May 2, 2012, May 7, 2012 and May 22, 2012).

#### **Failure to Report Traverse Hearings**

34. Pursuant to 6 RCNY § 2-236(a), a PSA and individual process server must each 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 within ten (10) days of receiving notice of the scheduled hearing.

35. Pursuant to 6 RCNY § 2-236(c)(2), a PSA and individual process server must each 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.

36. If the licensee is unable to learn the result within ninety (90) days of the scheduled hearing date, it must, within one hundred (100) days of the scheduled hearing date, report to the Department in writing, by certified mail or e-mail, that it made attempts to learn the result but was unable to do so.

37. Pursuant to 6 RCNY § 2-236(c)(1), PSAs and individual process servers must follow specific procedures to attempt to learn the results of traverse hearings.

38. Respondent AAA did not report to the Department in writing, by certified mail or e-mail, within ten (10) days of receiving notice, that the following traverse hearings had been scheduled:

- (i) Citibank v. [REDACTED] Kings Civil);
- (ii) Discover Bank v. I [REDACTED] Queens Civil); and
- (iii) American Express Bank v. [REDACTED] Kings Civil).

39. Respondent AAA did not report to the Department by certified mail or e-mail the results of the following traverse hearings, or that it made attempts to learn the results of the hearings and was unable to do so, within one hundred (100) days of the scheduled hearing dates:

- (i) American Express Centurion Bank v. [REDACTED], Queens Supreme);
- (ii) FIA Card Services v. [REDACTED] Bronx Civil);
- (iii) 7 West 34<sup>th</sup> St, LLC v. [REDACTED], New York Housing);
- (iv) Chase Bank v. [REDACTED] Kings Civil);
- (v) American Express Bank v. [REDACTED] New York Civil);
- (vi) FIA Card Services v. [REDACTED] New York Civil);
- (vii) Samuel Ranson v. [REDACTED] Bronx Supreme);
- (viii) American Express Bank v. [REDACTED] New York Civil);
- (ix) Citibank v. [REDACTED] Kings Civil);
- (x) American Express Bank v. [REDACTED] Queens Supreme);
- (xi) Based Anesthesia v. [REDACTED] Kings);
- (xii) FIA Card Services v. [REDACTED] Queens Supreme);
- (xiii) American Express v. [REDACTED] Kings Civil);
- (xiv) American Express v. [REDACTED] Queens Civil); and
- (xv) Clara Giorgio v. [REDACTED] Bronx Civil).

**Failure to Comply with Electronic Recordkeeping Requirements**

40. Pursuant to 6 RCNY §§ 2-233a(b), 2-233(c)(1)(iii)-(vi), a PSA shall maintain electronic copies of:

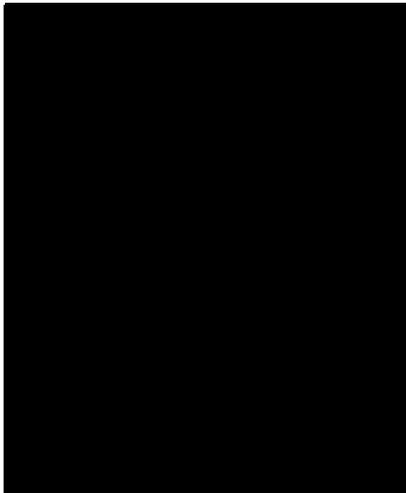
- (i) the logbooks of each process server to whom it assigns or distributes process for service in New York City;
- (ii) a copy of every routing sheet, work order or other written instruction given to each process server to whom it assigns or distributes process for service in New York City;

- (iii) copies of any notes, memoranda or other writings submitted by each process server to whom it assigns or distributes process for service in New York City containing information related to the attempted or effected service of process; and
- (iv) a copy of every affidavit of service signed by each process server to whom it assigns or distributes process for service in New York City.

41. During the period November 1, 2011 through January 31, 2012, Respondent AAA

failed to maintain electronic copies of the logbooks of the following process servers:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (ix)
- (x)
- (xi)



## CHARGES

### Charges 1-13: Violations of Compliance Plan Requirements

1. Respondents violated 6 RCNY § 2-234a(b)(2)(i) by failing to include language in their Compliance Plans requiring them to at least once each month, review for completeness and accuracy the records of each individual process server to whom they assign or distribute process. [1 count per Respondent]
2. Respondents violated Section II(2)(a) of the Consent Orders by failing to include language in their Compliance Plans requiring them to at least once each month, review for completeness and accuracy the records of each individual process server to whom they assign or distribute process. [1 count per Respondent]
3. Respondents violated 6 RCNY § 2-234a(b)(2)(ii) by failing to include language in their Compliance Plans requiring them to prepare a monthly written report of their reviews of the records maintained pursuant to 6 RCNY § 2-233 by each individual process server to whom they assign or distribute process during that month. [1 count per Respondent]
4. Respondents violated Section II(2)(b) of the Consent Orders by failing to include language in their Compliance Plans requiring them to prepare a monthly written report of their reviews of the records maintained pursuant to 6 RCNY § 2-233 by each individual process server to whom they assign or distribute process during that month. [1 count per Respondent]
5. Respondents violated 6 RCNY § 2-234a(b)(2)(iii) by failing to include language in their Compliance Plans requiring them to maintain each monthly record review report for at least seven (7) years. [1 count per Respondent]

6. Respondents violated Section II(2)(c) of the Consent Orders by failing to include language in their Compliance Plans requiring them to maintain each monthly record review report for at least seven (7) years. [1 count per Respondent]
7. Respondents violated 6 RCNY § 2-234a(b)(2)(iv) by failing to include language in their Compliance Plans requiring them to maintain records of disciplinary actions taken against individual process servers. [1 count per Respondent]
8. Respondents violated Section II(2)(d) of the Consent Orders by failing to include language in their Compliance Plans requiring them to maintain records of disciplinary actions taken against individual process servers. [1 count per Respondent]
9. Respondents violated 6 RCNY § 2-234a(b)(2)(v) by failing to include language in their Compliance Plans requiring them to report to the Department in writing the name and license number of each licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance. [1 count per Respondent]
10. Respondents violated Section II(2)(e) of the Consent Orders by failing to include language in their Compliance Plans requiring them to report to the Department in writing the name and license number of each licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance. [1 count per Respondent]
11. Respondents violated 6 RCNY § 2-234a(b)(2)(vi) by failing to include language in their Compliance Plans requiring them to make available to the Department, upon request, a copy of their record review procedures, any written reports of the reviews they maintain, and copies of any referrals of individual process servers to the Department. [1 count per Respondent]

12. Respondents violated Section II(2)(f) of the Consent Orders by failing to include language in their Compliance Plans requiring them to make available to the Department, upon request, a copy of their record review procedures, any written reports of the reviews they maintain, and copies of any referrals of individual process servers to the Department. [1 count per Respondent]
13. Respondents violated 6 RCNY § 1-01.1(b) by submitting affirmations to the Department which falsely stated that they had “adopted a written compliance plan to ensure that each individual serving process on behalf of the Agency acts with integrity and honesty and complies with the record-keeping requirements applicable to process servers.” [1 count per Respondent]

**Charges 14-19: Failure to Comply with Monthly Record Review Requirements**

14. Respondent AAA violated 6 RCNY § 2-234a(b) by failing to, at least once a month, review for completeness and accuracy the records of each individual process server to whom it assigned or distributed process for service in New York City. [3 counts]
15. Respondent AAA violated Sections II(1) and II(2)(a) of the AAA Consent Order by failing to, at least once a month, review for completeness and accuracy the records of each individual process server to whom it assigned or distributed process for service in New York City. [3 counts]
16. Respondent AAA violated 6 RCNY § 2-234a(b) by failing to, at least once a month, prepare monthly written reports regarding its review of the records maintained by individual process servers to whom it assigned or distributed process for service in New York City. [3 counts]
17. Respondent AAA violated Sections II(1) and II(2)(b) of the AAA Consent Order by failing to, at least once a month, prepare monthly written reports regarding its review

of the records maintained by individual process servers to whom it assigned or distributed process for service in New York City. [3 counts]

18. Respondent AAA violated 6 RCNY § 2-234a(b) by failing to implement adequate policies and procedures to identify recordkeeping violations committed by process servers to whom it distributed process. [1 count]

19. Respondent AAA violated Section II(1) of the AAA Consent Order by failing to implement adequate policies and procedures to identify recordkeeping violations committed by process servers to whom it distributed process. [1count]

**Charges 20-23: Failure to Take Disciplinary Actions and Report Non-Compliance with Process Server Laws**

20. Respondent AAA violated 6 RCNY § 2-234a(b)(1) by failing to take appropriate disciplinary action against individual process servers who failed to comply with process server laws. [7 counts]

21. Respondent AAA violated Section II(3) of the AAA Consent Order by failing to take appropriate disciplinary action against individual process servers who failed to comply with process server laws. [7 counts]

22. Respondent AAA violated 6 RCNY § 2-234a(b) by failing to report to the Department in writing the name and license number of each process server who did not comply with the law governing process servers within ten (10) days of learning of such non-compliance. [7 counts]

23. Respondent AAA violated Sections II(1) and II(2)(e) of the AAA Consent Order by failing to report to the Department in writing the name and license number of each process server who did not comply with the law governing process servers within ten (10) days of learning of such non-compliance. [7 counts]

**Charges 24-25: Failure to Investigate Traverse Hearings**

24. Respondent AAA violated 6 RCNY § 2-234a(b) by failing to investigate whether service was properly effected in cases in which service of process was challenged.

[17 counts]

25. Respondent AAA violated Section II(1) of the AAA Consent Order by failing to investigate whether service was properly effected in cases in which service of process was challenged. [17 counts]

**Charge 26: Distribution of Process to An Unlicensed Process Server**

26. Respondent AAA violated Code § 20-406.2 by distributing process to an individual who is not licensed to serve process. [80 counts]

**Charges 27-28: Distribution of Process to Process Servers Who Failed to Act with Integrity and Honesty or Comply With Recordkeeping Requirements**

27. Respondent AAA violated 6 RCNY § 2-234a(a)(e) by distributing process to a process server who failed to act with integrity and honesty. [2 counts]

28. Respondent AAA violated 6 RCNY § 2-234a(a)(4) by distributing process to process servers who failed to comply with logbook recordkeeping requirements contained in 6 RCNY § 2-233. [3 counts]

**Charges 29-31: Failure to Report Traverse Hearings**

29. Respondent AAA violated 6 RCNY § 2-236(a) by failing to report to the Department by certified mail or e-mail the scheduling of 3 traverse hearings within ten (10) days of receiving notice of the scheduled hearings. [3 counts]

30. Respondent AAA violated 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of 15 traverse hearings, report to the Department, by certified mail or e-mail, either: (a) the final results of the traverse hearings; or (b) that Respondent AAA made attempts to learn the final results of the traverse hearings but was unable to do so. [15 counts]

31. Respondent AAA violated 6 RCNY § 2-236(c)(1) by failing to attempt to learn the results of 15 traverse hearings in accordance with the procedures specified in 6 RCNY § 2-236(c)(1). [15 counts]

**Charge 32: Failure to Comply With Electronic Recordkeeping Requirements**

32. Respondent AAA violated 6 RCNY § 2-233(c)(1)(iii) by failing to maintain electronic copies of the logbooks of the process servers to whom it distributed process for service in New York City. [11 counts]

**LACK OF FITNESS**

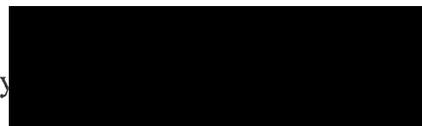
33. By virtue of the activities described above, Respondents violated § 20-101 of the Code by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

**WHEREFORE**, the Department demands that an order issue: (1) revoking Respondents' process serving agency licenses; (2) imposing maximum fines on Respondents for each and every charge set forth herein; and (3) granting such other relief as is deemed just and proper.

Dated: November 22, 2013  
New York, New York

For: **Jonathan Mintz**  
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](mailto:process_server@dca.nyc.gov) or by mail to Shannon Bermingham, 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.”

For additional information, visit DCA’s website at [www.nyc.gov/consumers](http://www.nyc.gov/consumers) or call 311.