



Alba Pico
First Deputy Commissioner

42 Broadway
9th Floor
New York, NY 10004

nyc.gov/consumers

March 22, 2016

BY FIRST CLASS AND CERTIFIED MAIL

Michael Ballato


RE: Denial of Application No. 364-2016-RPSI

Dear Mr. Ballato:

You submitted to the Department of Consumer Affairs (the “Department” or “DCA”) an application to renew Process Server License Number 0976185. This letter is to inform you that **the Department denies your application**. As explained below, the Department’s denial is based on its determination that you are not fit to be licensed, pursuant to New York City Administrative Code (“Code”) § 20-101, due to your failure to maintain standards of integrity, honesty and fair dealing required of licensees.

Prior Violations and Settlements

On June 11, 2010, the Department issued a Notice of Hearing (“NOH”) to you (Violation Number LL 5130938) charging you with violating Title 6 of the Rules of the City of New York (“6 RCNY”) § 2-233(a)(6) by failing to maintain your log book(s) for 2 years; 6 RCNY § 2-233(b)(5) by failing to maintain service records in bound and paginated log books; 6 RCNY § 2-233(a)(1) by failing to maintain “legible” log book records; 6 RCNY § 2-233(a)(2)(vii) by failing to record the index number of actions in your log books; 6 RCNY § 2-233(a)(2)(v) by failing to record the nature of papers served in your log books; and 6 RCNY § 2-233(a)(4) by failing to record the dates, times and addresses of attempted services in your log books. In July 2010, you signed an Assurance of Discontinuance with the Department to settle these charges (“July 2010 AOD”), in which you agreed to comply with all applicable laws and rules.

On March 27, 2013, the Department issued a NOH to you (Violation Number LL 5307560) charging you with violating 6 RCNY § 2-236(a) by failing to report to the Department the scheduling of 4 traverse hearings within 10 days of learning about the hearings; 6 RCNY § 2-236(c)(2) by failing to, within 100 days after the scheduled date of 11 traverse hearings, report to the Department either: (a) the final results of the hearings; or (b) that you made

attempts to learn the final results of the hearings but were unable to do so; 6 RCNY § 2-236(c)(1) by failing to attempt to learn the results of 11 traverse hearings in accordance with the procedures specified in the process server regulations; 6 RCNY § 2-233b(a)(2)(i) by failing to create a GPS record for 31 services or attempted services; 6 RCNY § 2-233a(d) by failing to create an electronic record for 31 services or attempted services; 6 RCNY § 2-233a(b) by failing to record 30 required pieces of information in your electronic records; 6 RCNY § 2-233(a)(1) by failing to create a log book entry for 11 services or attempted services; 6 RCNY § 2-233(b)(1) by failing to record 10 log book entries in chronological order; and 6 RCNY § 2-233(b)(6) by failing to record the process serving agency's license number in 10 log book entries. The NOH also charged you with violating various terms of the July 2010 AOD. In June 2013, you entered into a Consent Order with the Department to settle these charges in which you again agreed to comply with all applicable laws and rules.

Failure to Keep Proper Records

6 RCNY § 2-233b(a)(2)(i) requires that “[o]n every occasion that a process server attempts or effects service of process, the process server must ensure that the mobile device makes an electronic record of the GPS location, time and date of the attempted or effected service immediately after attempting or effecting service.” Despite your agreement in 2010 and 2013 to comply with all applicable rules, a review of your records shows that you violated 6 RCNY § 2-233b(a)(2)(i) by failing to create a GPS record for the following 60 services or attempted services in 2015:

- a. 1/2/15 @ 7:56 a.m., *U.S. Bank v. Lee Principe*;
- b. 1/2/15 @ 12:00, *SRP 2012-4, LLC v. Christos Argyros, et al.*;
- c. 1/3/15 @ 7:50 a.m., *Esposito Solutions v. Florencio Navarro*;
- d. 1/3/15 @ 8:00 a.m., *Hone Fond Ins. v. Mohamed Abdelrahman*;
- e. 1/3/15 @ 8:15 a.m., *Haydee Macropolous v. Robert Macropolous*;
- f. 1/3/15 @ 8:15 a.m., *Haydee Macropolous v. Christopher Macropolous*;
- g. 1/3/15 @ 8:43 a.m., *U.S. Bank v. Jeoung Cho*;
- h. 1/3/15 @ 8:43 a.m., *U.S. Bank v. Dung Kim*;
- i. 1/3/15 @ 9:07 a.m., *Alejandro Blanco v. Ramen Toppa*;
- j. 1/7/15 @ 8:00 a.m., *Wilmington Savings v. Steven Abreu*;
- k. 1/7/15 @ 9:28 a.m., *Diamond Comic Distributors v. Tabent Cowie*;
- l. 1/7/15 @ 9:35 a.m., *SRP 2012-4, LLC v. Christos Argyros, et al.*;
- m. 1/7/15 @ 9:52 a.m., *JPMorgan Bank v. Claiten Smith*;
- n. 1/8/15 @ 11:13 a.m., *Bank of America v. Casey Mack*;
- o. 1/9/15 @ 8:00 a.m., *U.S. Bank v. Jennifer Tucker*;
- p. 1/9/15 @ 8:35 a.m., *Euualie Greene v. Eloise Daley*;
- q. 1/9/15 @ 8:35 a.m., *Euualie Greene v. Eddie Lunsford*;
- r. 1/9/15 @ 8:57 a.m., *Ershwen Persaud v. Avoy Brother Construction*;
- s. 1/9/15 @ 9:20 a.m., *Aida Valdivieso v. P.O. John Perkins*;
- t. 1/10/15 @ 6:44 a.m., *Jefferson Capital v. Susan Marsion*;

- u. 2/3/15 @ 8:23 a.m., *CACH LLC v. Sayeda Begum*;
- v. 2/3/15 @ 9:13 a.m., *Green Tree Servicing v. Willie Robinson*;
- w. 2/3/15 @ 10:10 a.m., *Brooklyn Union Gas v. Cecil Seecoomar*;
- x. 2/4/15 @ 7:17 a.m., *Keyspan Gas v. Penmaul Povenora*;
- y. 2/4/15 @ 8:27 a.m., *Midland Funding v. Ruxandra Vilciu*;
- z. 2/4/15 @ 8:42 a.m., *Midland Funding v. Kaywatie Jagnanan*;
- aa. 2/4/15 @ 8:52 a.m., *Midland Funding v. Amancia Mezarina*;
- bb. 2/4/15 @ 9:00 a.m., *MSW Capital v. Luisa Cardona*;
- cc. 2/5/15 @ 8:36 a.m., *Midland Funding v. Robert Holder*;
- dd. 2/6/15 @ 7:20 a.m., *Aurora Loan v. Andrea Jimenez*;
- ee. 2/7/15 @ 8:16 a.m., *Aurora Loan v. Andrea Jimenez*;
- ff. 2/7/15 @ 9:30 a.m., *Brooklyn Union Gas v. Cecil Seecoomar*;
- gg. 2/7/15 @ 10:53 a.m., *The Bank of New York v. Savitry Harris*;
- hh. 2/9/15 @ 6:33 a.m., *Discover Bank v. Anthony Lopez*;
- ii. 2/9/15 @ 6:49 a.m., *Monarch Anesthesia v. Theresa Stenbridge*;
- jj. 2/9/15 @ 7:54 a.m., *M&T Bank v. Maria Martinez*;
- kk. 2/9/15 @ 8:02 a.m., *Jasmine Cardona v. Kareem Thomas*;
- ll. 2/9/15 @ 8:47 a.m., *New Century v. Le Baron Bowman*;
- mm. 2/9/15 @ 9:36 a.m., *Wells Fargo Bank v. Simax Properties Inc.*;
- nn. 2/9/15 @ 9:50 a.m., *U.S. Bank v. Mitchell Velkas*;
- oo. 3/2/15 @ 7:17 a.m., *Cascade Capital v. Chu Van Tran*;
- pp. 3/2/15 @ 7:55 a.m., *Fairview Check Corp. v. Spiros Katsonopoulos*;
- qq. 3/2/15 @ 7:55 a.m., *Fairview Check Corp. v. Diner Solutions LLC*;
- rr. 3/2/15 @ 8:12 a.m., *N.Y. Medical v. Nydia Celis*;
- ss. 3/2/15 @ 8:45 a.m., *Danielle Keller v. Jean Barry*;
- tt. 3/2/15 @ 9:40 a.m., *Midland Funding v. Christopher Slocombe*;
- uu. 3/3/15 @ 6:45 a.m., *New Century v. Ira Futterman*;
- vv. 3/3/15 @ 7:10 a.m., *New Century v. Sioim Sun*;
- ww. 3/3/15 @ 8:12 a.m., *N.Y. Medical v. Georgia Brisita*;
- xx. 3/3/15 @ 8:26 a.m., *New Century v. Mohamed Rahman*;
- yy. 3/3/15 @ 9:00 a.m., *New Century v. Javier Gutierrez*;
- zz. 3/5/15 @ 7:37 a.m., *The Brooklyn Union Gas v. Tovi Semple*;
- aaa. 3/6/15 @ 10:22 a.m., *Marlene Jacques v. Jeun Ji*;
- bbb. 3/6/15 @ 2:11 p.m., *HSBC Bank v. Giuseppe Genna*;
- ccc. 3/7/15 @ 6:32 a.m., *Brooklyn Union Gas v. Lionel May*;
- ddd. 3/7/15 @ 7:55 a.m., *Brooklyn Union Gas v. Kay Cato*;
- eee. 3/7/15 @ 8:35 a.m., *HSBC Bank v. Manuel Utteras*;
- fff. 3/11/15 @ 10:27 a.m., *Westlake Services Inc. v. Banik Babaosanov*;
- ggg. 3/12/15 @ 7:40 a.m., *Flushing Building Supply v. Yang Jian Zhang*; and
- hhh. 3/14/15 @ 7:10 a.m., *Trump Taj Majal v. Xiao Han*.

6 RCNY § 2-233(b)(1) requires that process servers “make 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,” which is typically referred to as a log book. Despite your agreement in 2010 and 2013 to comply with all applicable rules, a review of your affidavits of service and GPS records shows that you violated 6 RCNY § 2-233(b)(1) by failing to create a log book record for the following 6 services or attempted services:

- a. 1/2/15 @ 5:35 a.m., *CACH, LLC v. Ana M. Clausell*;
- b. 1/2/15 @ 12:00, *SRP 2012-4, LLC v. Christos Argyros, et al.*;
- c. 1/3/15 @ 5:31, *CACH, LLC v. Mark Choi, et al.*;
- d. 1/3/15 @ 6:01, *American Express Centurion Bank v. Laurence Cavaliere*;
- e. 2/2/15 @ 8:28, *In the Matter of Gunwant Singh*; and
- f. 2/2/15 @ 9:05, *Jennifer G. Ramos v. Thomas G. Ramos*.

6 RCNY § 2-233b(4)(vii) require process servers to record and maintain in their GPS records the date and time each service was attempted or effected according to both their mobile device and GPS or cellular signals. Despite your agreement in 2010 and 2013 to comply with all applicable rules, you violated 6 RCNY § 2-233b(a)(2)(i) by failing to record the date and time according to both your mobile device and GPS or cellular signals in 369 GPS records that you created from January 1, 2015 through March 31, 2015.

Failure to Report Results of Traverse Hearings

6 RCNY § 2-236(c)(2) requires process servers and process serving agencies to 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 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 100 days of the hearing. Despite your agreement in 2010 and 2013 to comply with all applicable rules, you violated 6 RCNY § 2-236(c)(2) by failing to, within 100 days after the scheduled date of the following 6 traverse hearings, report to the Department either: (a) the final results of the hearings; or (b) that you made attempts to learn the final results of the hearings but were unable to do so:

- a. *Deutsche Bank National Trust Company v. Joed M. Rosario*, Index No. 25788/08, Queens Sup. Ct. (Traverse Hearing Date: July 23, 2013);
- b. *Wells Fargo Bank, N.A. v. Reuben Awuni*, Index No. 7071/09, Kings Sup. Ct. (Traverse Hearing Date: October 29, 2013);
- c. *Deutsche Bank National Trust v. Sara Linan, et al.*, Index No. 10585/09, N.Y. Sup. Ct. (Traverse Hearing Date: July 22, 2014);
- d. *JPMorgan Chase Bank v. Maria Cruz, et al.*, Index No. 23820/09, Queens Sup. Ct. (Traverse Hearing Date: July 31, 2014);

- e. *Suntrust Mortgage, Inc. v. Constantine Birica*, Index No. 13685/07, Kings Sup. Ct. (Traverse Hearing Date: January 15, 2015; and
- f. *Condor Capital Corp. v. Mitchell Celpi*, Index No. 705780/14, Queens Sup. Ct. (Traverse Hearing Date: October 15, 2015).

Service of Process Rules and Laws

6 RCNY § 2-234 states: “[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.”

In civil proceedings, 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 . . . ; 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 . . . ; 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

Improper Services/False Affidavits of Service

1. *JPMorgan Chase Bank, N.A. v. Hazarie Roopnarine, et al.*

You violated 6 RCNY § 2-234 by failing to serve process in accordance with CPLR § 308, and by swearing falsely in an affidavit of service, in the matter of *JPMorgan Chase Bank, N.A. v. Hazarie Roopnarine, et al.* (Index No. 13752/12, Queens Sup. Ct.). You swore in your affidavit of service that you served defendant Gandie J. Roopnarine with a summons and complaint on July 6, 2012 at 7:26 a.m., by delivering the papers to “[REDACTED], CO-OCCUPANT, , a person of suitable age and discretion” at [REDACTED]” (emphasis in original). You described [REDACTED] as a male with brown skin, black hair, age 40-49, 5’8” to 5’11” tall, and weighing 175 to 199 pounds. You also swore in your affidavit of service that “Said premises is defendant’s place of

residence within the state,” “RECIPIENT STATED THAT HE IS A FAMILY MEMBER OF GANDIE J. ROOPNARINE A/K/A GANDIE ROOPNA” (emphasis in original), and “Your deponent asked the above mentioned recipient whether the defendant was active in the military service and received a negative reply.”

In fact, you did not deliver papers to anyone at Ms. Roopnarine’s residence on July 6, 2012. No one in her household matches the physical description of the individual described in your affidavit of service, and she does not know anyone named [REDACTED].” In addition, Ms. Roopnarine’s residence was unoccupied on July 6, 2012. She and her five children, the only individuals residing at [REDACTED] Jamaica, New York, left the United States for Trinidad on June 27, 2012, and did not return home until July 27, 2013. After a traverse hearing, the court granted Ms. Roopnarine’s motion to vacate the default judgment and dismissed the complaint against her.

2. *Deutsche Bank National Trust Company v. Sara Linan, et al.*

You violated 6 RCNY § 2-234 by failing to serve process in accordance with CPLR § 308, and by swearing falsely in an affidavit of service, in the matter of *Deutsche Bank National Trust Company v. Sara Linan, et al.* (Index No. 10585/09, Queens Sup. Ct.). You swore in your affidavit of service that on April 28, 2009 at 5:13 p.m., you served defendant Sara Linan with a summons and complaint by personal service at [REDACTED]. You described Sara Linan as a female with olive skin, brown hair, 25 to 30 years of age, 5’0” to 5’3” tall, and weighing 125 to 149 pounds. You also swore in your affidavit of service that you “asked the indicated person whether the defendant and/or present occupant was presently in the military service of the United States Government or on active duty in the military service in the State of New York or a dependant of anybody in the military and was told the defendant and/or present occupant was not.”

In fact, you did not deliver papers to anyone at Ms. Linan’s residence on April 28, 2009. Although you alleged personal service, Ms. Linan does not match the physical description contained in your affidavit of service. Moreover, as confirmed by her employer, Ms. Linan was at work at the time of the alleged service. After a traverse hearing, the court granted Ms. Linan’s motion to vacate the default judgment and dismissed the complaint against her, ruling that “Sara Linan was not served by the plaintiff.”

3. *Chase Home Finance LLC. v. Esther Adetula, et al.*

You violated 6 RCNY § 2-234 by failing to serve process in accordance with CPLR § 308, and by swearing falsely in an affidavit of service, in the matter of *Chase Home Finance LLC v. Esther Adetula, et al.* (Index No. 5943/09, Queens Sup. Ct.). You swore in your affidavit of service that you served defendant Esther Adetula with a summons and complaint on March 13, 2009 at 5:25 p.m., by delivering the papers to [REDACTED], COUSIN, a person of suitable age and discretion” at [REDACTED] (emphasis in original). You described [REDACTED] as a male with black skin, black

hair, age 45, height 5'9", and weighing 180 pounds. You also swore in your affidavit of service that you asked [REDACTED] "whether said premises was the defendant's RESIDENCE and the reply was affirmative," and that you "asked the person spoken to whether defendant was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply" (emphasis in original).

In fact, you did not deliver papers to anyone at Ms. Adetula's residence on March 13, 2009. Ms. Adetula does not have any cousins, aunts or uncles. No one in her household matches the physical description of the individual described in your affidavit of service, and she does not know anyone named [REDACTED]. After a traverse hearing, the Court sustained traverse and granted Ms. Adetula's Cross Motion to Dismiss.

4. *U.S. Bank National Association v. Michael D. Jacobs, et al.*

You violated 6 RCNY § 2-234 by failing to serve process in accordance with CPLR § 308, and by swearing falsely in an affidavit of service, in the matter of *U.S. Bank National Association v. Michael D. Jacobs, et al.* (Index No. 20359/07, Kings Sup. Ct.). You swore in your affidavit of service that you served defendant Michael D. Jacobs with a summons and complaint on June 18, 2007 at 6:00 p.m. by affixing a copy of the summons and complaint to Mr. Jacobs's residence at [REDACTED]. You also swore that [REDACTED] "is defendant's Residence within the state."

In fact, on June 18, 2007, Michael D. Jacobs did not live at [REDACTED] so you could not have properly served him there. Following a traverse hearing, the court sustained traverse and ruled that "service of process is invalid."

Fitness to Hold a Process Server License

Based on the foregoing, you fail to maintain standards of integrity, honesty and fair dealing and, pursuant to section 20-101 of the Code, the Department determines that you are not fit to hold a process sever license and denies your application to renew your process server license.

Sincerely,

[REDACTED]
[REDACTED]
Senior Staff Attorney
Legal Division