



Alba Pico
First Deputy Commissioner

42 Broadway
9th Floor
New York, NY 10004

nyc.gov/consumers

March 16, 2016

BY FIRST-CLASS AND CERTIFIED MAIL

Kenneth P. Wonica


RE: Denial of Application No. 658-2016-RPSI

Dear Mr. Wonica:

You submitted to the Department of Consumer Affairs (the “Department” or “DCA”) an application to renew individual Process Server License Number 1279283. 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

On January 13, 2014, the Department issued an Amended Notice of Hearing (NOH) to you charging you with violating Title 6 of the Rules of the City of New York (“6 RCNY”) § 2-236(a) by failing to report to the Department the scheduling of two traverse hearings; and 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of two 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 was unable to do so. A hearing on the Amended NOH was held at the Department’s Administrative Tribunal on March 13, 2014. On June 3, 2014, the Tribunal issued a Decision and Order finding you guilty of these charges and ordering you to pay a fine of \$800.

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. *HSBC Bank USA v. N.Y. Builders Supply Corp., Arthur Gold and Bernard Gold*

You swore falsely in an affidavit of service that was filed in New York County Supreme Court in the matter of *HSBC Bank USA v. N.Y. Builders Supply Corp., Arthur Gold and Bernard Gold* (Index No. 652570/12) that you served defendant Arthur Gold with a summons and complaint on August 8, 2012 at 4:06 p.m. by “personal service” at [REDACTED]. You also swore falsely in your affidavit of service that you “knew the person served to be the person described as said person therein” and you “asked person spoken to whether [he] was presently in military service of the United States Government or of the State of New York and was informed [he] was not.” In fact, Arthur Gold died on June 23, 2012, two months prior to the date you swore in your affidavit that you personally served him with papers, and that you asked him whether he was presently in military service.

Furthermore, you swore falsely in an affidavit of service that was filed in New York County Supreme Court in *HSBC Bank* that you served defendant Bernard Gold with a summons and complaint on August 8, 2012 at 2:42 p.m. by delivering the papers to “Hank Doe – co-tenant, last name refused a person of suitable age and discretion” at [REDACTED]. You falsely described “Hank Doe” as a male with tan skin, a bald head, 30-40 years old, 5’6” tall, 180 pounds, and a moustache. You also swore falsely in your affidavit of service that you asked Hank Doe “whether [Bernard Gold] was presently in military service of the United States Government or of the State of New York and was informed that [he] was not.” In fact, you did not deliver papers to anyone at [REDACTED]. No one was present at that address on August 8, 2012. In

addition, neither of the two residents at that address match the physical description contained in your affidavit of service.

You, therefore, violated 6 RCNY § 2-234 by failing to serve process in accordance with CPLR § 308 and swearing falsely in two affidavits of service in *HSBC Bank*.

2. *Wells Fargo Bank v. Harold Knowles, 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 *Wells Fargo Bank v. Harold Knowles, et al.* (Index No. 11044/13, Queens Sup. Ct.). In particular, you swore falsely in your affidavit of service that on September 17, 2013 at 2:51 p.m., you served defendant Harold Knowles with a summons and complaint at [REDACTED] by delivering the papers to “CHRISTINA DOE (LAST NAME REFUSED), CO-TENANT, a person of suitable age and discretion.” You falsely described Christina Doe in your affidavit of service as a female with black skin, black hair, 40-50 years old, 5’7” tall, and 150 pounds. You also swore falsely in your affidavit of service that you asked Christina Doe “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.” In fact, you did not deliver papers to anyone at [REDACTED] on September 17, 2013. No one present at [REDACTED] on September 17, 2013 matches the physical description contained in your affidavit of service.

3. *Bank of America N.A. v. Kenneth Brooks, 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 *Bank of America N.A. v. Kenneth Brooks, et al.* (Index No. 11044/13, Queens Sup. Ct.). In particular, you swore falsely in five affidavits of service that on September 10, 2013 at 2:47 p.m., you served defendants Kenneth Brooks, Keith Williams, Audrey Williams, Megan Williams and Natalie Doe with a summons and complaint by delivering the papers to “Natalie Doe” at [REDACTED]. You falsely described Natalie Doe in your affidavits of service as a female with black skin, black hair, age 40-49, 5’4” to 5’7” tall, and weighing 125 – 149 pounds. In fact, you did not deliver papers to anyone at [REDACTED] on September 10, 2013. No one present at [REDACTED] on September 10, 2013 matches the physical description contained in your affidavit of service.

Traverse Hearing Reporting Violations

6 RCNY § 2-236(c)(2) requires licensed process servers 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 ten (10) days of learning the result; or (b) that he or she made attempts to learn the result of the traverse hearing but was unable to do so, within one hundred (100) days of the scheduled date of the hearing.

You violated 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of the following traverse hearings, report to the Department either the final results of the hearings or that you made attempts to learn the final results of the hearings but were unable to do so:

- a) *Citimortgage, Inc. v. Yehuda Gross*, Kings Sup. Ct., Index No. 2138/13 (Scheduled Traverse Hearing Date: 4/23/15);
- b) *Matrix Fin. Servs. Corp. v. Wayne Maurice*, Kings Sup. Ct., Index No. 506417/14 (Scheduled Traverse Hearing Date: 5/14/15); and
- c) *Wells Fargo Bank v. Andre Sulton*, Kings Sup. Ct., Index No. 508595/14 (Scheduled Traverse Hearing Date: 7/21/15).

You were previously found guilty of violating 6 RCNY § 2-236(c)(2) in the Decision and Order issued on June 3, 2014.

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 any Department license and denies your application to renew your process server license.

Sincerely,

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A smaller black rectangular redaction box covering the name of the signatory.

Senior Staff Attorney
Legal Division