

70 N.Y.2d 821  
Court of Appeals of New York.

In the Matter of Stephen BARR, Respondent,  
v.  
DEPARTMENT OF CONSUMER AFFAIRS OF  
the CITY OF NEW YORK et al., Appellants.

Nov. 12, 1987.

Process server brought Article 78 proceeding to challenge determination of the Department of Consumer Affairs of the City of New York which revoked his license and imposed a fine of \$4,900, for record-keeping violations. The Supreme Court, New York County, Baer, J., granted the petition to the extent of reducing the penalty to a one-year suspension, and Department appealed. The Supreme Court, Appellate Division, 127 A.D.2d 1012, 511 N.Y.S.2d 455, affirmed. City appealed by permission. The Court of Appeals held that penalty of license revocation was not so disproportionate to the offense as to be shocking to one's sense of fairness.

Reversed.

Attorneys and Law Firms

\*822 \*\*\*436 \*\*1322 Peter L. Zimroth, Corp. Counsel (Fay Ng, Larry A. Sonnenshein and Noreen M. Giusti, New York City, of counsel), for appellants.

Albert Kostrinsky, Great Neck, for respondent.

Robert Abrams, Atty. Gen. (O. Peter Sherwood, Peter Bienstock, Stephen Mindell, Herbert Israel and Sean Delany, New York City, of counsel), amicus curiae.

OPINION OF THE COURT

MEMORANDUM.

The order of the Appellate Division, 127 A.D.2d 1012, 511 N.Y.S.2d 455, should be reversed, with costs, and the determination of the Department of Consumer Affairs reinstated.

After a hearing, petitioner, a licensed process server since 1971, was found guilty of failing to comply with the rules and regulations of the licensing agency, the Department of Consumer Affairs. Specifically, petitioner was found guilty of several counts of failing to keep records in the form mandated by law because of his maintenance of illegible records, his omission of necessary information about process served and his failure to record the type of service effectuated. Additionally, he had filed affidavits of service averring service at a time different from the time recorded in his log and had log notations purporting to record service at different locations at times too close to be true. The Department assessed a fine of \$4,900, representing \$350 per violation, and revoked petitioner's license. Petitioner then brought this article 78 proceeding to review the penalty imposed (CPLR 7803[3]). The Supreme Court held that although the fine was justified, the revocation of petitioner's license was too severe. The Appellate Division affirmed.

The record-keeping provisions petitioner violated were designed to combat a continuing and pervasive problem of unscrupulous service practices by licensed process servers. These practices deprive defendants of their day in court and lead to fraudulent default judgments. Often associated with \*823 consumer debt collection and landlord-tenant litigation, questionable service practices have their greatest impact on those who are poor and least capable of obtaining relief from the consequences of an improperly imposed default judgment. Accordingly, the Department of Consumer Affairs must depend on the accurate record-keeping practices of its licensees as a means of monitoring the industry and uncovering wrongful practices. Petitioner's repeated disregard for the strictures of the agency's record-keeping provisions was a direct violation of the terms of his license and, further, was antithetical to the regulatory goal of assuring honest service practices.

Furthermore, civil litigants must depend on the accuracy of process servers' records to prove that proper service was or was not made (*see*, Siegel, N.Y.Prac. § 79). A process server whose records were illegible, inaccurate and otherwise plainly unreliable lacks credibility. The likely result is that many of the clients of such process servers will be unfairly penalized when they are called upon to prove proper service in traverse hearings. Finally, any attempt by petitioner to suggest that his violation of the licensing agency's rules was insignificant or a mere "technical" infraction must be

**Barr v. Department of Consumer Affairs of City of New York, 70 N.Y.2d 821 (1987)**

517 N.E.2d 1321, 523 N.Y.S.2d 435

deemed unpersuasive in light of the clear regulatory mandate that “[t]he licensee shall at all times strictly and promptly conform to all laws, rules, regulations and requirements \* \* \* relating to the conduct of licensees and the service of process in the State of New York” (New York City Department of Consumer Affairs, reg. IV). Petitioner's inaccurate and evidently false records plainly contravened this rule of strict compliance.

Under this analysis, the penalty of license revocation was not so disproportionate to the offense as to be shocking to one's sense of fairness (*Matter of Pell v. \*\*\*437 Board of Educ.*, 34 N.Y.2d 222, 237, 356 N.Y.S.2d 833, 313 N.E.2d 321). Hence, the determination of the Department of Consumer

**\*\*1323** Affairs imposing that penalty should not have been disturbed.

WACHTLER, C.J., and SIMONS, KAYE, ALEXANDER, TITONE, HANCOCK and BELLACOSA, JJ., concur in memorandum.

Order reversed, etc.

**Parallel Citations**

70 N.Y.2d 821, 517 N.E.2d 1321, 523 N.Y.S.2d 435

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