STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of –

Alleged Violations of Article 17 of the New York Environmental Conservation Law and Part 750 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York,

- by -

JOHN IOANNOU,

Respondent.

DEC Case No. R1-20061018-260

RULING OF THE COMMISSIONER

June 24, 2011

RULING OF THE COMMISSIONER

By letter dated May 20, 2011, counsel for respondent John Ioannou filed a motion to "vacate the default judgment" that was entered against him by a Commissioner's order dated November 19, 2009 (order). A copy of the order is attached to this ruling.

By the terms of the order, respondent was adjudged to have violated sections 17-0505 and 17-0803 of the Environmental Conservation Law (ECL) and section 750-1.4 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR). These violations arose from respondent's construction activities at 1257 Plandome Road, Plandome Manor, New York (see Order, at 4, par. III). The order imposed a civil penalty of one hundred twelve thousand, five hundred dollars ($112,500) upon respondent (see id., par. IV).

In accordance with 6 NYCRR 622.15(d), the motion was filed with Administrative Law Judge Daniel P. O'Connell (ALJ) of the Office of Hearings and Mediation Services of the New York State Department of Environmental Conservation (Department).

Assistant Regional Attorney Kari E. Wilkinson, Esq., of the Department's Region 1 office, filed an attorney affirmation dated May 26, 2011, together with the affidavits of Department staff David F. Gaspar dated May 26, 2011, and Sara H. Dorman dated May 25, 2011, with various attached exhibits, in opposition to respondent's motion.

ALJ O'Connell prepared the attached report on the motion. As the ALJ notes, the applicable administrative enforcement regulations provide for consideration of a motion to reopen a default, and respondent's motion was considered in that context. As set forth in 6 NYCRR part 622, a motion to reopen a default may be granted "upon a showing that a meritorious defense is likely to exist and that good cause for the default exists" (see 6 NYCRR 622.15[d] [emphasis added]). The ALJ recommends that I deny the motion, and I hereby adopt the ALJ's recommendation.

The ALJ, based on his review of respondent's arguments relative to liability and civil penalty, correctly determined that respondent failed to demonstrate the likelihood that a meritorious defense exists. Because the likelihood of a meritorious defense has not been demonstrated, it is not necessary to determine whether good cause exists for the default. The ALJ, however, did consider respondent's arguments relative to good cause, specifically, respondent's claim of

alleged deficiencies in the service of Department staff's notice and amended notice of hearing and complaint and related papers in the underlying proceeding. The ALJ appropriately concluded that respondent's mere denial of receipt of service was insufficient to overcome Department staff's proof that service was properly made (see, e.g., General Motors Acceptance Corp. v Grade A Auto Body, Inc., 21 AD3d 447, 447 [2d Dept 2005]).

Accordingly, respondent's motion is denied, and the Commissioner's order dated November 19, 2009 will continue in full force and effect.

New York State Department
of Environmental Conservation

By: _____/s/_____
Joseph J. Martens
Commissioner

Dated: Albany, New York
June 24, 2011

Attachment: Order of the Commissioner
Matter of John Ioannou,
November 19, 2009

NEW YORK STATE:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of the New York State Environmental Conservation Law Article 17, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York Part 750 - by - John Ioannou, Respondent.	Report on Motion to Reopen Default Order DEC Case No. R1-20061018-260

Summary

This report recommends that the Commissioner deny John Ioannou's motion to reopen the default judgment taken against him in the Order dated November 19, 2009.

Background

Under cover of a letter dated October 2, 2008, Staff from the Department's Region 1 Office (Department staff) filed a notice of motion for default judgment and order, a motion for default judgment and order, and an affirmation with attached exhibits with the Office of Hearings and Mediation Services (OHMS). In the motion for default judgment, Department staff alleged that John Ioannou (Respondent) did not file an answer to an amended notice of hearing and complaint dated May 1, 2008. By letter dated October 15, 2008, Chief Administrative Law Judge (ALJ) James T. McClymonds advised the parties that the matter was assigned to the undersigned ALJ.

Subsequently, I prepared a summary hearing report for the Commissioner's review. On November 19, 2009, former Commissioner Alexander B. Grannis signed an order granting a motion for a default judgment against Respondent. The Commissioner determined, among other things, that Respondent violated Environmental Conservation Law (ECL) §§ 17-0505 and 17-0803, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) 750-1.4 with respect to construction activities at 1257 Plandome Road, Plandome Manor, New York. The Commissioner assessed a total civil penalty of $112,500.

OHMS served a copy of the Commissioner's November 19, 2009 order and summary hearing report upon Respondent by certified mail return receipt requested. The US Postal Service delivered the Commissioner's November 19, 2009 order to Respondent's home address (1257 Plandome Road, Plandome Manor, New York 11030) on November 23, 2009.

With a cover letter dated March 5, 2010, Michael H. Sahn, Esq. (Sahn, Ward & Baker, PLLC, Uniondale, New York), as Respondent's legal counsel, asked me to reduce the civil penalty assessed in the Commissioner November 19, 2009 order from $112,500 to $5,000. With the March 5, 2010 letter, Mr. Sahn included an affidavit by John Ioannou sworn to February 25, 2010, and Exhibit A. Exhibit A is a copy of an acknowledgment dated May 3, 2006 of the notice of intent for coverage under SPDES general permit for storm water discharges from construction activity (General Permit No. GP-02-01) from the Department's Division of Water, Bureau of Water Permits.

With the March 5, 2010 filing, Respondent did not expressly move to reopen the default pursuant to 6 NYCRR 622.15(d). Consequently, in a letter dated March 10, 2010, I denied the request on the basis that I lacked authority to adjust any order issued by the Commissioner.

With service of a summons and a verified complaint dated February 1, 2011 (Supreme Court, Nassau County [Index No. 2018/11]) upon Respondent, the current Commissioner (Joe Martens) seeks a judgment enforcing the November 19, 2009 order, and the assessment of additional penalties.

With a notice of motion dated May 19, 2011, Respondent's counsel, Claudio DeBellis, Esq. (Walsh, Markus, McDougal & DeBellis, LLP, Garden City, New York), moves, on behalf of Respondent, to dismiss the February 1, 2011 verified complaint concerning the civil action.

Proceedings

In a letter to me dated May 20, 2011, Mr. DeBellis requests that I "vacate the default judgment which was entered against Mr. Ioannou" pursuant to the Commissioner's November 19, 2009

order. With his May 20, 2011 letter, Mr. DeBellis enclosed the following:

1. An affidavit by John Ioannou sworn to May 20, 2011;

2. A copy of the summons and verified complaint dated February 1, 2011 by Assistant Attorneys General Marie Chery-Sekhobo and Andrew Gershon;

3. A copy of the Commissioner's November 19, 2009 order and the default summary report prepared by the undersigned ALJ; and

4. A copy of Mr. DeBellis's May 19, 2011 notice of motion and supporting papers concerning the civil action. The supporting papers consist of an affirmation by Mr. DeBellis dated May 20, 2011, and an affidavit by John Ioannou sworn to May 20, 2011.[1]

On May 23, 2011, OHMS received Respondent's May 20, 2011 motion. In a letter dated May 23, 2011, I acknowledged receipt of Respondent's May 20, 2011 motion. Upon review of Respondent's papers, I could not find any indication that Mr. DeBellis had provided Department staff with a copy of his papers, and directed him to do so immediately. I set May 31, 2011 as the return date for Department staff's response. The May 31, 2011 letter stated that no further submissions would be authorized.

With an email dated May 27, 2011, Assistant Regional Attorney Kari E. Wilkinson, Esq., filed Department staff's response. Department staff's response consists of the following:

1. An affirmation by Ms. Wilkinson dated May 26, 2011 with Exhibits A through E;

[1] Respondent's May 20, 2011 motion to reopen the default includes two affidavits by Mr. Ioannou sworn to May 20, 2011. The first affidavit consists of 15 paragraphs, and references the captioned administrative enforcement matter including the case number (*i.e.*, DEC File No. R1-20061018-260). The second consists of 12 paragraphs, and references the civil action, and includes the Supreme Court (Nassau County) Index No. 2018/11. The second affidavit is part of Mr. Ioannou's motion to dismiss the civil action. Unless otherwise stated, all references to Mr. Ioannou's May 20, 2011 affidavit in this report are to the first one.

a. Exhibit A is a copy of a letter dated March 19, 2007 from Ms. Wilkinson to Mr. Ioannou, and a copy of a draft order on consent;

b. Exhibit B is a copy of the envelope returned by the US Postal Service, and the enclosed May 31, 2007 notice of hearing and verified complaint that Department staff sent to Mr. Ioannou's 1257 Plandome Road address;

c. Exhibit C is a copy of the envelope returned by the US Postal Service on March 3, 2008 as "unclaimed" that Department staff sent to Mr. Ioannou's 1257 Plandome Road address on February 5, 2008;

d. Exhibit D consists of copies of a cover letter from Ms. Wilkinson to Mr. Ioannou with enclosed notice of hearing and verified complaint, all dated February 5, 2008. The exhibit also includes a copy of the track and confirm receipt from the US Postal Service sent to Mr. Ioannou's business address at 414 East 59th Street, New York, New York 10022, and the domestic return receipt signed by Erika Hernandez; and

e. Exhibit E consists of copies of a cover letter from Ms. Wilkinson to Mr. Ioannou with enclosed amended notice of hearing and verified complaint, all dated May 1, 2008. The exhibit also includes a copy of the track and confirm receipt from the US Postal Service sent to Mr. Ioannou's business address at 414 East 59th Street, New York, New York 10022, and the domestic return receipt signed by Shanell Thomas;

2. An affidavit by David F. Gaspar sworn to May 26, 2011 with Exhibit 1, which is a copy of his curriculum vitae;

3. An affidavit by Sarah H. Dorman sworn to May 25, 2011 with Exhibits 1 though 8;

a. Exhibit 1 is a copy of Ms. Dorman's resume;

b. Exhibit 2 is a copy of Mr. Gaspar's March 22, 2006 inspection report for the 1257 Plandome Road property with 12 photographs;

c. Exhibit 3 consists of copies of a cover letter dated April 10, 2006 with enclosed notice of violation, a cease and desist directive, and a draft order on consent;

d. Exhibit 4 is a copy of Mr. Gaspar's April 25, 2006 inspection report for the 1257 Plandome Road property with photographs;

e. Exhibit 5 is a copy of a cover letter dated May 1, 2006 from Mr. Ioannou to Department staff with enclosed notice of intent for the SPDES General Permit GP-02-01;

f. Exhibit 6 is a copy of Department staff's May 3, 2006 acknowledgment of notice of intent for the SPDES General Permit GP-02-01;

g. Exhibit 7 is a copy of Department staff's case summary concerning the captioned matter; and

h. Exhibit 8 photographs of the storm drain.

By email dated May 31, 2011, Respondent's counsel inquired whether Respondent may reply to Department staff's May 26, 2011 response. In an email response dated June 9, 2011, I denied the request citing 6 NYCRR 622.6(c)(3).

I. Respondent's Motion to Reopen the Default Judgment

With reference to his May 20, 2011 affidavit (¶¶ 5 and 6), Mr. Ioannou states that in 1999 he purchased the property located at 1257 Plandome Road in Plandome Manner (Town of Hempstead, Nassau County), and began building a house at the location in January 2003. Construction continued until December 2006.

Mr. Ioannou states further, in his May 20, 2011 affidavit, that he did not receive a copy of Department staff's notice of violation dated April 10, 2006 (¶ 8); a copy of the February 5, 2008 notice of hearing and complaint (¶ 9); a copy of the May 1, 2008 amended notice of hearing and complaint (¶ 10); and Department staff's September 26, 2008 motion for default judgment (¶ 10). According to Mr. Ioannou, he would have

answered the February 5, 2008 complaint and May 1, 2008 amended complaint, and responded to Department staff's September 26, 2008 motion for default judgment if he had received them (¶ 12).

With reference to CPLR 3211(a)(8) and civil case law, Respondent argues that an action is properly dismissed when the court lacks jurisdiction over the defendant. Respondent argues further that the lack of proper service of a motion is a "sufficient and complete excuse for a default on a motion…" (*Bianco v Ligreci*, 298 AD2d 482 [2d Dept 2002]).

Given the lack of notice of the complaints and motion for default judgment, Mr. Ioannou requests that the Commissioner's November 19, 2009 order be vacated. Mr. Ioannou notes that he spent about $100,000 to install catch basins on his property during the construction of his house in an effort to "avoid stormwater runoff from the Property." When he learned that he needed a SPDES permit, Mr. Ioannou states that he applied for and obtained one. According to Mr. Ioannou, no damage occurred as a consequence of any delay in obtaining the SPDES permit. (¶ 13 Mr. Ioannou's May 20, 2011 affidavit.)

In the alternative, Mr. Ioannou states that he would agree to pay a reduced civil penalty in the amount of $5,000, and notes that he has no history of any DEC violations. Mr. Ioannou contends that the reduced amount is reasonable because the alleged "wrongdoing" was cured soon after he learned that he needed a SPDES permit, and that no "damage" resulted as a result of the delay in obtaining the SPDES permit. (¶¶ 14 and 15 Mr. Ioannou's May 20, 2011 affidavit.)

II. Department Staff's Response

Department staff opposes Respondent's motion to reopen the default. In his May 26, 2011 affidavit (¶ 3), Mr. Gaspar states that in 2006 he was assigned to this case as the Stormwater Control Specialist from the Department's Region 1 Division of Water. Mr. Gaspar states further that he inspected Mr. Ioannou's property on March 22, 2006 (¶¶ 4i and 5), and April 25, 2006 (¶¶ 4iii and 7), and took pictures to document his observations. These photographs are attached to Ms. Dorman's affidavit as Exhibits 2 and 4.

After his March 22, 2006 inspection, Mr. Gaspar prepared an inspection report (¶ 4i Mr. Gaspar's May 26, 2011 affidavit, *also see* Exhibit 2 to Ms. Dorman's May 25, 2011 affidavit). On April 10, 2006, Department staff sent a notice of violation, cease and desist directive, and a proposed order on consent to Mr. Ioannou (¶ 4ii Mr. Gaspar's May 26, 2011 affidavit, *also see* Exhibit 2 to Ms. Dorman's May 25, 2011 affidavit).

According to his May 26, 2011 affidavit (¶ 9), Mr. Gaspar states that he received a telephone call from Mr. Ioannou on May 2, 2006 about Mr. Ioannou's notice of intent for the SPDES General Permit. Mr. Gaspar also states that Mr. Ioannou intended to discuss the proposed order on consent with William Spitz, the Regional Water Manager (¶ 9 Mr. Gaspar's May 26, 2011 affidavit, *also see* Exhibit 7 to Ms. Dorman's May 25, 2011 affidavit).

Ms. Dorman is an Environmental Specialist in the Department's Region 1 Division of Water, where she maintains the Division's files (¶¶ 1 and 3 Ms. Dorman's May 25, 2011 affidavit). Ms. Dorman notes, among other things, that the Department received an application for SPDES General Permit GP-02-01 from the Respondent on May 1, 2006, and that prior to this date, Mr. Ioannou did not have any SPDES permit from the Department (¶¶ 5iv and 6 Ms. Dorman's May 25, 2011 affidavit).

In her May 26, 2011 affirmation (¶¶ 7, 9 and 15), Ms. Wilkinson explains how she or other members of Department staff sent documents concerning the activities at 1257 Plandome Road to Mr. Ioannou by certified mail, and refers to the exhibits attached to her affirmation. Department staff had previously provided this information with the September 26, 2008 motion for default judgment.

In addition to this documentary evidence, Ms. Wilkinson affirms (¶¶ 7, 11 and 12) that she spoke with Mr. Ioannou between March 19-27, 2007 about this matter, and with his staff on March 11, 2008 and April 9, 2008.

III. Discussion and Rulings

The applicable default proceedings are outlined at 6 NYCRR 622.15. Pursuant to 6 NYCRR 622.15(d), a respondent may file a motion with the ALJ to reopen a default. Such a motion is the

administrative equivalent of a motion made pursuant to CPLR 5015 to vacate a judgment or order.

The ALJ may grant a motion to reopen a default upon a showing that a meritorious defense is likely to exists and that good cause for the default exists (*see* 6 NYCRR 622.15[d]). In order to reopen a default judgment, the Commissioner has determined (*see e.g.*, *Matter of Chris Blenman, d/b/a French National Cleaners*, Ruling of the Acting Commissioner dated February 14, 2011) that a respondent must demonstrate that both a meritorious defense is likely and good cause exists for the default.

Therefore, if the motion to reopen a default is granted, the ALJ would convene a hearing to develop a record about the charges alleged in a complaint, and the meritorious defense asserted by a respondent. Subsequently, the Commissioner would review the ALJ's hearing report, and issue a final determination on the merits.

When, as here, the motion to reopen a default should be denied, the ALJ prepares a report explaining how respondent's motion failed to satisfy the criteria to reopen the default. Upon review of the ALJ's report, the Commissioner would rule on the motion.

A. Meritorious Defenses

1. Liability

As discussed in the default summary report attached to the Commissioner's November 19, 2009 order, the May 1, 2008 amended complaint alleged three violations of ECL article 17 and implementing regulations at 6 NYCRR part 750. On or before March 22, 2006, and on or before April 25, 2006, Respondent allegedly failed to obtain a SPDES permit before commencing construction activities at the Plandome Road property (*see* ECL 17-0505). Subsequently, Respondent discharged pollutants without the required permit (*see* ECL 17-0803). In the November 19, 2009 order, the Commissioner determined that Respondent violated ECL 17-0505 and 17-0803 and 6 NYCRR 750-1.4 with respect to construction activities at 1257 Plandome Road, Plandome Manor, New York.

Mr. Ioannou states in his May 20, 2011 affidavit (¶ 13) that he obtained the required SPDES permit after he learned that one was required. However, Mr. Ioannou does not provide any details about when he applied and, subsequently, obtained the required SPDES permit.

In an earlier submission, Mr. Ioannou did provide such details. As noted above, Respondent's counsel, in a letter dated March 5, 2010, asked me to reduce the civil penalty assessed in the Commissioner's November 19, 2009 order. To support this request, Respondent filed an affidavit sworn to February 25, 2010. In his February 25, 2010 affidavit (¶ 7), Mr. Ioannou states that

> [O]nce I was advised that one was required, I applied for a SPDES permit, and paid the required fees. In this regard, I received a letter from the DEC, dated May 3, 2006, acknowledging my Notice of Intent for Coverage under SPDES. The DEC's assigned permit number was: NYR10K773.

Attachment A to Mr. Ioannou's February 25, 2010 affidavit is a copy of the Department's May 3, 2006 acknowledgment and notice of intent (NOI). According to the May 3, 2006 NOI, the effective date of the SPDES General Permit No. GP-02-01 was five business days from May 2, 2006. (*Also see* Exhibits 5 and 6 to Ms. Dorman's May 25, 2011 affidavit.)

Rather than establish a meritorious defense to the violations alleged in the May 1, 2008 amended complaint, Respondent's affidavits dated February 25, 2010 and May 20, 2011, and Exhibit A to the February 25, 2010 affidavit demonstrate that Mr. Ioannou commenced construction activities on his property in January 2003, which continued until December 2006, but did not obtain the required SPDES permit until May 2, 2006. By his own admission, Respondent did not have a SPDES permit on March 22, 2006 and April 25, 2006, as alleged in the May 1, 2008 amended complaint. Department staff correctly notes that ignorance of the law excuses no one (¶ 24 Ms. Wilkinson's May 26, 2011 affirmation).

With respect to liability, I conclude that Respondent failed to establish a meritorious defense that would warrant a reopening of the default. Because Respondent has a burden to

meet both criteria outlined in 6 NYCRR 622.15(d), Respondent's failure to establish a meritorious defense is sufficient to deny Respondent's May 20, 2011 motion.

2. Relief

The default summary report (at 6) discusses the rationale for the civil penalty that Department staff requested in the May 1, 2008 amended complaint and its September 26, 2008 motion for default judgment. Staff requested the maximum single day civil penalty (*i.e.*, $37,500 [*see* ECL 71-1929]) for each of the three violations alleged in the May 1, 2008 amended complaint.

In his February 25, 2010 affidavit (¶ 13), Mr. Ioannou states that he is not able to pay the $112,500 civil penalty assessed in the Commissioner's November 19, 2009 order, "[b]ecause of the current economic climate." With his March 5, 2010 request, Mr. Ioannou offered nothing further to substantiate this statement. In his May 20, 2011 motion, Respondent does not restate his claim that he is not able to pay the assessed civil penalty or offer any additional information to further substantiate the claim initially asserted in his March 5, 2010 request.

Mr. Ioannou states in his May 20, 2011 affidavit (¶ 13) that he installed catch basins on his property to capture stormwater runoff at a cost of $100,000. Other than this statement, Respondent offers nothing to substantiate the cost of the catch basins. Furthermore, Respondent does not argue why this expenditure should be a mitigating factor that would reduce the assessed civil penalty.

Department staff contends that installing catch basins are not an acceptable method for controlling sediment and preventing erosion during construction activities. Rather, acceptable practices include using straw bale dikes, silt fences or vegetative buffer strips. (¶ 12 Ms. Dorman's May 25, 2011 affidavit.)

With respect to relief, I conclude that Respondent failed to establish a meritorious defense that would warrant a reopening of the default to adjust the assessed civil penalty. Because Respondent has a burden to meet both criteria outlined in 6 NYCRR 622.15(d), Respondent's failure to establish a

meritorious defense is sufficient to deny Respondent's May 20, 2011 motion.

For the reasons outlined above, Respondent has failed to demonstrate there is a meritorious defense to reopen the default. Therefore, it is not necessary to consider whether good cause exists for the default (*see Blenman, supra*). Nevertheless for completeness, Respondent's arguments concerning good cause are considered below.

B. Good Cause for the Default

In order to commence an administrative enforcement proceeding, Department staff must serve a notice of hearing and complaint (*see* 6 NYCRR 622.3[a][1]).[2] Service of the notice of hearing and complaint must be by personal service consistent with the CPLR or by certified mail. Where service is by certified mail, service shall be complete when the notice of hearing is received. (*See* 6 NYCRR 622.3[a][3].)

When Department staff attempts to commence an administrative enforcement proceeding, and the respondent fails either to appear at the scheduled pre-hearing conference or to answer the complaint, there is a threshold question of whether Department staff properly served the notice of hearing and complaint. The default procedures (*see* 6 NYCRR 622.15) recognize this threshold question. The first required element of any motion for a default judgment is proof of service of the notice of hearing and complaint (*see* 6 NYCRR 622.15[b][1]). A respondent cannot be expected to appear at a pre-hearing conference or answer a complaint if the respondent did not receive the notice of hearing and complaint. Consequently, Department staff's failure to properly serve a notice of hearing and complaint would constitute good cause for a respondent's default.

The default summary report (at 2-3) attached to the Commissioner's November 19, 2009 identifies the documents filed with Department staff's September 26, 2008 motion for default judgment, and evaluates the proof offered by Department staff to

[2] Section 662.3(b) of 6 NYCRR provides two alternative methods to commence an administrative enforcement proceeding not applicable here. They are with service of either a motion for order without hearing (*see* 6 NYCRR 622.12), or a summary abatement order (*see* 6 NYCRR 622.14).

demonstrate service of the May 1, 2008 amended complaint upon Mr. Ioannou. The evaluation of Department staff's proof of service in the default summary report (at 3) references Department staff's documents. Based on the proof offered with the September 26, 2008 motion for default judgment, I found that Department staff served the May 1, 2008 amended notice of hearing and complaint upon Mr. Ioannou by certified mail, and concluded that service was in a manner consistent with the requirements outlined at 6 NYCRR 622.3(a)(3) (*See* Default Summary Report at 3.)

In his May 20, 2011 affidavit, Mr. Ioannou states (¶ 10) that he did not receive the May 1, 2008 amended notice of hearing and complaint. Mr. Ioannou states further (¶¶ 7-9) that he did not receive any of the documents that Department staff sent to him such as the April 10, 2006 notice of violation, and the February 5, 2008 notice of hearing and complaint.

With reference to the exhibits attached to Ms. Wilkinson's May 26, 2011 affirmation, Department staff argues that the February 5, 2008 notice of hearing and complaint, and the May 1, 2008 amended notice of hearing and complaint were served upon Mr. Ioannou in a manner consistent with 6 NYCRR 622.3(a)(3). Department staff argues further that Respondent's statement that he did not receive these complaints is disingenuous given the telephone contacts between Respondent or his staff, and Department staff.

Mr. Ioannou's bare denial is insufficient to overcome Department staff's proof. I conclude that Mr. Ioannou has failed to show that he did not receive notice of the captioned enforcement matter. The evidence included with Department staff's May 27, 2011 response is the same evidence that Department staff provided with the September 26, 2008 motion for default judgment. This evidence demonstrates that Department staff duly commenced the captioned administrative enforcement matter with service of the February 5, 2008 notice of hearing and complaint by certified mail. In addition, the evidence shows that Department staff subsequently served the May 1, 2008 amended notice of hearing and complaint upon Mr. Ioannou in a manner consistent with 6 NYCRR 622.3(a)(3).

Therefore, Mr. Ioannou failed to meet his burden to demonstrate that good cause exists for the default.

Accordingly, I deny his May 20, 2011 motion to reopen the default.

Recommendation

For the reasons outlined above, I conclude that Mr. Ioannou's May 10, 2011 motion fails to meet the criteria outlined at 6 NYCRR 622.15(d) to reopen the default. I recommend that the Commissioner conclude the same.

_____/s/_____
Daniel P. O'Connell
Administrative Law Judge