



Testimony of The Legal Aid Society Before a Hearing on  
Consumer Protection in the Debt Collection and  
Debt Management Industries

New York State Assembly  
Committee on Consumer Affairs and Protection  
Committee on Judiciary  
Committee on Banks

May 14, 2009

We thank the Assembly Standing Committees on Consumer Affairs and Protection, Judiciary and Banks, and their respective Chairs, for giving The Legal Aid Society the opportunity to testify today on behalf of low income consumers, particularly our clients who were among the 300,000 consumers subjected to collection lawsuits in the New York City courts last year. We commend Assemblymember Weinstein for introducing A. 7558, the Consumer Credit Fairness Act, which proposes needed reforms in civil court procedures to correct the imbalance that currently exists in favor of debt buyers. Debt buyers have siphoned millions of dollars out of the poorest residents of our City by using our overworked courts as their private collection agency, forcing working families with children, senior citizens and the disabled to fall

short when the time comes to pay their rent, utilities and even their grocery bills. We also strongly support the licensing and bonding of debt buyers throughout the State as proposed by Assemblymember Pheffer in A.3926. Finally, laws which aim to protect consumers from abusive debt collection practices can be more effective if they provide for a meaningful private right of action to redress private consumers' claims and deter unlawful behavior on the part of collectors, and we urge that such a provision be included in the licensing legislation.

### **Our Experience**

As part of its comprehensive citywide civil practice, The Legal Aid Society represents low income clients who have been sued by debt buyers for credit card debts they allegedly owed at one time in the past. We are part of the planning committees which advanced the CLARO<sup>1</sup> pro bono advice projects now operating in the boroughs of Brooklyn, Manhattan and Queens and the first citywide Consumer Debt Conference at Fordham Law School in June, 2008.

We have assisted hundreds of clients sued by debt buyers and observed that in the vast majority of cases, the amount of the debt being sued on was under \$3000.00, but the claimed default interest rates and the fees associated with these old credit card debts doubled or tripled the original sum the debt buyer alleged was owed. Debt buyers typically purchase bundles of discharged debt for less than five cents on the dollar, and together with the potential interest and fee multiplier, and the fact that a large percentage of debtors default, the investment in litigation becomes highly profitable for them.

In several years of representing consumers against debt buyers in the Civil Court, we have never lost a case against a debt buyer—why? Because when put to the test, debt buyers

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<sup>1</sup> Civil Legal Advice and Referral Office

cannot prove their case. They have no true evidence of the debt, and most often, they do not have the legal right to collect the debt. When challenged by our attorneys, they have either asked to discontinue the case, made a favorable settlement for our clients, or at our request the case was dismissed by the court. Yet they obtain judgments most of the time. The problem is that The Legal Aid Society and other civil legal services programs can only represent an extremely small fraction of the debt buyers' targets. The Civil Court is clogged with thousands of cases, most of which are brought by debt buyers against unrepresented ("pro se") defendants without the resources to hire attorneys. In general, Legal Aid is forced to turn away six clients for every one we can assist. In the consumer debt area, the problem is magnified and only stands to worsen given the present state of the economy.

When the debtors do file answers, the debt buyers' counsel may slap together a motion for summary judgment, using evidence which could not prove their claim at trial but which forces the unrepresented defendants to respond in writing to unfamiliar legal terms. Most unrepresented debtors like the many immigrants we see in New York City lack the English skills and legal sophistication needed to adequately respond on paper. Debt buyers know that the overburdened Civil Court is ill-equipped to police these kinds of practices despite the best efforts of some judges and the Civil Court administration.

The Consumer Credit Fairness Act as proposed by A. Weinstein would level the playing field for consumers by requiring that consumer credit actions be filed within two years of the last payment. It also would give the judiciary much needed oversight of defaulted cases that are now being handled by clerks, who are not equipped to decide whether the creditors' documents really

show any liability on the part of the consumer, and whether service was proper.

A further safety provision contained in the bill is the additional notice to the debtor's last known address. The Civil Court in New York City currently sends this notice and it has prevented thousands of consumers from defaulting on claims against them.

Both the Consumer Credit Fairness Act and the debt licensing and bonding bill are necessary to protect New York consumers. Without the oversight that the licensing process would afford, debt buyers use the court system to their own advantage. They serve legal papers at old addresses and obtain default judgments against the alleged debtors before the defendants know they are being pursued. If a debtor does answer the summons, the debt buyers' courthouse-savvy lawyers aggressively pursue them to make one-sided payout settlements, using crowded court hallways to pressure defendants into agreeing to pay more than they can possibly afford. The settlements provide that when they miss a payment, the entire sum becomes due and their wages can be garnished or their bank accounts restrained.

Many people who are victims of identity theft or do not believe they owe a creditor react with fear and capitulate when they receive a summons because they believe they will face imprisonment if they do not pay. It is the right time to put some reasonable controls on this unregulated part of collection industry so debt buyers cannot operate unchecked to prey on our communities. New York City recently recognized this need by enacting its own debt buyer licensing bill and the legislation proposed here would greatly augment that initiative.

## **Our Clients**

For example, one of our clients, an low wage earning immigrant, was sued last year by a debt buyer based on alleged credit card debt of \$7000.00. Approximately half of this amount was the alleged debt, the remainder consisted of default interest charges and late charges. Our client only found out about the case against her when her employer received an income execution notice. She obtained representation from The Legal Aid Society and challenged the jurisdiction of the court because she had not been served with the summons and was unaware of the debt. The process server's affidavit contained so many errors that it was almost patently false, including stating that our client lived in a private, two family house when in fact she resides in a large apartment building. In opposition to our motion, the plaintiff did not even submit an opposing affidavit by the process server and the case was dismissed.

Even for debt buyers which purchase valid claims, there is great need for licensing and the oversight that the licensing agency could exercise. Debt buying is a high volume business which we have observed is prone to mistake as well as outright abuse. More than the monetary burden if our clients choose to use their subsistence income or savings to pay back a debt, there are the added unseen costs of their needless frustration and worry, and the time away from work and family commitments. One client's case perfectly illustrates why this is so. In 2007, Ms. D was sued by an unlicensed debt buyer for \$2440.00 in payments allegedly due on a credit card dating back to 2001. Ms. D remembered owing a balance of under \$1000.00 when she could no longer afford to make payments on this card. During 2006, while Ms. D was recovering from an illness at home, she started receiving frequent calls from a debt buyer representative regarding

the alleged balance. Finally, Ms. D agreed to settle the disputed debt for \$1500.00. She promptly sent the funds and received confirmation of receipt from the debt buyer's attorneys. She was then astonished when the Summons arrived in the mail for the same claim.

Ms. D's case is unfortunately all too common. Many of our clients have been re-sued for the same debts when their court cases have been dismissed or discontinued. Today with us we have a client who is being sued by a company alleging to be the fourth assignee of the original debt, with no proof of the assignments five years after the last activity on the account. Because the default interest rate is a sky high 24 percent, our client is being sued for double the amount she is claimed to have owed in 2002.

In other states, such as Delaware where many national credit card companies are located, the statute of limitations for consumer debt transactions is three years. In New York the statute of limitations for consumer credit debt is the same as any other contract, at six years. Our longer statute allows, and perhaps even encourages creditors to let high default interest rates accumulate and memories fade before a subsequent debt buyer surprises the consumer by filing suit. The passage of time also means the consumer may have moved and the debt buyer can obtain a judgment by default because the consumer never answers.

The Legislature can make a critical contribution toward curtailing abusive debt buyer practices. If it is true that not all debt buyers abuse the court system, the judgments they obtain will be supported by reliable evidence as in any other court case, and the licensing requirement will

allow the State to monitor and prosecute only those debt buyers who do not operate legally. Finally, we urge the distinguished sponsors to consider providing more resources for legal representation and advocacy so we do not have to turn away so many clients whose economic situation is threatened by the burden of debts they may not owe but which compound and follow them for years. In addition, we urge that the state agencies along with the advocacy community coordinate resources so that together we may better serve distressed consumers.

Very truly yours,

The Legal Aid Society

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