

Testimony of The Legal Aid Society Before a Hearing on
Proposed Rule Regarding Debt Collectors
held by the
New York City Department of Consumer Affairs

June 26, 2009

We want to thank the Commissioner of the Department of Consumer Affairs, its General Counsel Marla Tepper and its Director of Legislative Affairs Andrew Eiler for giving The Legal Aid Society the opportunity to comment today on the proposed rule regarding debt collectors, in furtherance of the purposes of the licensing legislation enacted by the City Council in 2009. We believe that the proposed rule will carry out the legislative intent to place reasonable controls on the debt buying and collection industry so that working families with children, senior citizens and the disabled do not fall victim to misrepresentation and fall short when the time comes to pay their rent, utilities and even their grocery bills.

Our Experience

As part of its Civil Practice, The Legal Aid Society counsels and represents low income clients who have been contacted by various debt buyers for credit card debts they allegedly owed at one time in the past. We have been part of the planning committees which advanced the

CLARO1 *pro bono* advice projects now operating in the boroughs of Brooklyn, Manhattan and Queens, and organized the first citywide Consumer Debt Conference held at Fordham law School in June, 2008, at which the Debt Buyer Licensing Bill was discussed at length. We then were part of the consumer advocate coalition which strongly advocated for its passage before the City Council.

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 \$3,000.00, 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 collecting the debt becomes highly profitable for them.

The rule proposed today would inject fairness into the collection process by requiring debt buyer collectors to itemize the charges they claim are due and prove their source. We believe this requirement will demonstrate that debt collectors most often cannot produce true evidence of the debt, and do not have the legal right to collect the debt.

The proposed rule will confer on the Department of Consumer Affairs (DCA), the power to prevent debt buyers from manipulating the court system to their own advantage. DCA would have detailed records of collection efforts and consumer credit litigation, and be able to monitor debt collectors' files for patterns of abuse in the service of papers and the overreaching provisions of settlement agreements. As the Department knows, the overburdened Civil Court is ill-equipped to police these practices despite the best efforts of some judges and the Civil Court administration.

Our clients

There is a great need for licensing and the oversight that the licensing agency could exercise. Debt buying is a high volume business which we have observed over time 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. For example, Ms. S was sued last year by a debt buyer based on alleged credit card debt of \$7,000.00. There were no documents from the original creditor evidencing the debt and there was no breakdown of the amount owed. Approximately half of the amount demanded was the alleged debt, the remainder consisted of default interest charges and late charges. Ms. S only found out about the case against her when her employer received an income execution notice. Ms. S 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 Ms. S 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.

Required reporting will also cut down on the unlawful collection of resold debts which have been declared invalid. Ms. D was sued by an unlicensed debt buyer for \$2,440.00 in payments allegedly due on a credit card dating back to 2001. Ms. D remembered owing a balance of under \$1,000.00 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 \$1,500.00. 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. Many other clients have been re-sued for the same debts when their court cases have been dismissed or discontinued.

Suggested changes to clarify the rule

- 2-190** (a) must specify what is meant by "written confirmation evidencing the indebtedness". Debt collectors routinely submit a boilerplate affidavit to fulfill this requirement in litigation. The rules should specify what writing would suffice, and we believe there must be an itemized statement from the original creditor.
- (b) must include the date(s) on which the alleged balance and additional charges were incurred. This will help verify the legitimacy of the debt and whether it falls within the statute of limitations.

The notice should be in Spanish as well as English and indicate that the consumer may call '311' for assistance. A warning may alarm the consumer and have the opposite effect intended. We adopt the following suggested language:

"We are required by law to give you the following information:

The statute of limitations has expired on this debt and a creditor is barred from taking legal action, including using arbitration, to make you pay this debt. You may, if you choose, make voluntary payments. If you make a payment, you may restart the creditor's right to take legal action for the entire debt."

- 2-191** There should be a required warning if the debt is past the statute of limitations that the consumer may choose to pay but making a payment may revive the debt collector's right to sue in court to collect the debt.

2-192 Sec. 2-192 Notwithstanding (c), there should be a way for the consumer to send back an agreement that does not conform to the consumers' understanding, perhaps a check-off "in agreement/not in agreement" that they can return to the creditor or DCA.

Enforcement needed

Now that Local Law 15 of 2009 has mandated licensing, DCA has the tools to shine a light on debt collectors and allow the Department of Consumer Affairs the power to sanction the abusers. DCA must exercise that power more forcefully than it has in the past in order to make the legislation and this proposed rule truly effective. DCA must conduct regular and meaningful

review of the data it will collect and revoke licenses of both process servers and debt collectors who disregard legal requirements.

Finally, we urge DCA to work with the advocacy community to coordinate resources so that together we may better serve distressed consumers.

Very truly yours,

The Legal Aid Society
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