

Testimony of The Legal Aid Society Before a Hearing on
Proposed Legislation to License Debt Buyers
held by the
New York City Council
Committee on Consumer Affairs

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We want to thank the Committee on Consumer Affairs and Councilmember Comrie for giving The Legal Aid Society the opportunity to testify today in favor of Intro 660, and we want to thank Councilmember Garodnick for introducing this much needed legislation. Debt buyers have siphoned millions of dollars out of the poorest residents of our City through illegal means. They have used 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. Many people who receive a summons from a debt buyer 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.

Our Experience

As part of its civil practice, The Legal Aid Society represents low income clients who have been sued 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 Councilmember Garodnick spoke about the Debt Buyer Licensing Bill.

We having 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 this 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 clients 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 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. 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 300,000 cases, most of which are brought by debt buyers against

¹ Civil Legal Advice and Referral Office

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.

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 sued. 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.

Another abusive tactic debt buyers use is to utilize out-of court discovery to interrogate defendants about their entire debt history and their credit card accounts to find out facts about their claims which they do not have from the original creditors. Debt buyers serve defendants with “notices to admit” facts which would prove their case, because if the unsophisticated defendant does not answer the notice, or does not answer in time, he or she is deemed to have admitted the debt buyers’ claims. 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. 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.

Our clients

For example, Ms. S 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. 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 virtually 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.

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. Ms. D'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. Many other clients

have been re-sued for the same debts when their court cases have been dismissed or discontinued.

A licensing requirement would shine a light on debt buyers and allow the Department of Consumer Affairs the power to sanction the abusers. The last time City Council addressed the issue of licensing and regulation of debt collection agencies was in 1984, prior to the growth of third party debt buyers as collectors of consumer debt. When requiring licensing of debt collectors, the City Council did not intend to relieve a debt collection agency of its obligation to obtain a license simply because it engaged a licensed debt collection law firm as its counsel. The same reasoning should apply to debt buyers. No meaningful distinction between companies whose only business is to buy the discharged debts of others and try to obtain payment through the courts to generate their revenue, and companies calling themselves debt collectors who take others' debts and use collection tactics to generate revenue.

The City Council can make a critical contribution toward curtailing abusive debt buyer practices by enacting the licensing bill. If not all debt buyers abuse the court system, the Department of Consumer Affairs will prove that by monitoring and prosecuting only those which do not operate legally. We also urge the City Council 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 City agencies along with elected officials and the advocacy community coordinate resources so that together we may better serve distressed consumers.

Very truly yours,

The Legal Aid Society
By: Oda Friedheim, Esq.

