

City Limits WEEKLY
 Week of: **March 2, 2009**
 Number: 676

PAYING THEIR DEBT TO SOCIETY, AND THEN SOME

Officials say it's time to protect average New Yorkers from suffering at the hands of a growing class of collections agents. > *By Casey Samulski*

Among the numerous financial headaches facing New Yorkers, there's one that routinely afflicts thousands, yet remains obscure to the unaffected: the collections lawsuits filed against accused debtors by third parties who are unregulated.

These burgeoning lawsuits – 320,000 were filed in New York City in 2006, comprising half the Civil Court cases filed that year – reflect the explosive growth of the consumer debt-buying industry. Because the suits often have little merit, defense lawyers, advocates and the city's chief administrative judge assert the “passive debt buyers” who hire lawyers to enforce collections must be licensed – as “debt collection agencies” already are – by the city Department of Consumer Affairs (DCA) as a step toward curbing a host of alleged abuses.

At a City Council committee hearing last week on a proposed **bill** to require such licensing, a stream of witnesses testified to the prevalence of collections actions that, even when baseless, can still scare consumers into paying or result in punitive outcomes like the garnishment of people's wages or lowering their credit ratings. The aggressiveness is driven by explosive growth of a sector that buys debt on credit cards, car loans, utility and medical bills, and more for pennies on the dollar and relies on collections for profit. Much of the collections work is actually carried out by lawyers. DCA Legislative Affairs Director Andrew Eiler testified that nationwide in 1992, there were only five such debt buyers, but by 2005, there were 300. The value of debts sold in 1993 was \$1.3 billion; by 2002, it had reached over \$60 billion.

These figures, Eiler noted, portray the industry well before the current recession struck; now, the numbers likely are much greater. This is part of the reason why Manhattan City Councilman Dan Garodnick, who introduced a **law** to amend the city's administrative code in Dec. 2007, said there is an urgent need for new legislation.

“People are relying on credit much more than they should,” said Garodnick, so it's important to enact “procedures to protect individuals from unscrupulous practices in collections.” His bill has the support of about half the council so far.

Eiler outlined DCA's support for Council action – and for the bill to be strengthened further. “During this time of economic distress, debt collection agencies are plying their trade more vigorously than ever,” he said.

Those on the receiving end of summonses come from all walks of life, but attorneys say those already financially stressed are disproportionately targeted – and disproportionately hurt by the demands of legal proceedings. “Consumer credit cases are often adjourned numerous times, requiring the defendant to miss multiple days of work to attend court appearances,” attorney Matt Schedler of CAMBA Legal Services said in a submitted statement. “This causes not only the loss of a day's wages, but also puts the defendant in fear of losing their job due to too many absences. As a result working poor clients often make settlement agreements on invalid debts out of fear that a prolonged court case will put their job at risk.”

And that's for cases that too often are frivolous to begin with, defendants' attorneys testified. “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, most debt buyers cannot prove their case,” wrote Legal Aid Society attorney Oda Friedheim.

A 2007 **study** by the Urban Justice Center examined a 600-case random sample of the 320,000 collections cases in Civil Court in 2006, and found a legal deck stacked against the accused. Much of the time, the defendants were not notified they were being sued, or never even owed money in the first place – and 93 percent of the time they had no legal representation. That's a big reason why 80 percent of cases resulted in default judgments. Of the sample, 42 percent of cases were brought by the so-called “passive buyers.”

Civil Court Administrative Judge Fern Fisher submitted evidence for the hearing showing the number of consumer debt cases had nearly tripled in the last five years. “The courts,” Fisher said, “are being used as a

means for collection.”

But attorney Eric Berman, president of the Commercial Lawyers Conference, challenged the legitimacy of the proposed bill. His association represents those attorneys hired by creditors and debt buyers to bring cases to court. During the hearing, Berman questioned the constitutionality of the proposed changes, arguing the DCA was “overreaching.”

“As it stands,” he said, “the debtor can approach the Bar Association with a grievance against a law firm acting as a collector on behalf of a debt buyer. This is sufficient regulatory power.”

Garodnick said later this strains credibility, given that many other business operators must be licensed. “If an attorney is driving a carriage horse around Central Park, surely they would be able to be licensed by the DCA. If they opened up a vending table, they would have to be licensed by the DCA,” he said. “Why then should they not have to be licensed for debt collection?”

- Casey Samulski