

# An Unlikely Rescuer from the Jaws of Debt

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published: June 10, 2009



Tried and true: From the bench, Noach Dear makes an unlikely comeback.



Beverly Smith, one of many saddled with a debt she doesn't owe

By 9:30 a.m., the 11th-floor hallway of a courthouse in downtown Brooklyn is filled with tight huddles made up of people in debt and the lawyers who are after them to pay.

The goal of the conferences is almost always the same: to cut a deal in the hallway before going into the packed courtroom to appear before the judge.

The people who owe money are anxious. They ask legal advice from just about anyone wearing a suit. The attorneys, for their part, talk to them sweetly about how to settle their cases.

Some of the people are angry, and some are confused—they had no idea they were in debt until letters came in the mail announcing they were being sued.

But if there's a dispute, the lawyers are quick to blame the collection agencies—their employers—for not giving them the correct paperwork or enough information. They reassure the debtors that everything will be taken care of quickly. And the people seem to believe them—better to settle things with these nice people in the hall who give them the impression that it's the proper procedure.

Beverly Smith, an African-American woman in her late forties, has already come to court three separate times. She works in the bridal section at Bloomingdale's and found out the hard way that someone believed she owed money—she received a letter stating her wages would be garnished.

Believing she was a victim of identity theft, she went to the police to file a report. But they handed her some forms to fill out and told her there was nothing they could do.

The first time that Smith came to the courthouse, an attorney from a firm called Pressler and Pressler, working for an agency called Palisades Collections, told her that in order to prove she didn't owe the money, she needed to fax them proof of her residency and a copy of her Social Security card. The second time, a different attorney from the same firm told her in another hallway conference that he had never received her fax and didn't have enough information to verify her identity. The third time, in April, the lawyer still didn't have the paperwork he required, so Smith agreed to a fourth court date.

She's tired of taking days off to come back to court. "I told the lawyer: Enough is enough," she says. She's determined to make her fourth court date, in June, her last. It has never occurred to her to ask to see a judge.

Time and again, people in the hallway insist that they've provided the correct documentation, that the debts aren't theirs, and that there's been a mistake. The attorneys, however, explain in reassuring tones that it's best just to settle matters with a payment to make it all go away, or to schedule yet another court date later on. It's better not to get the judge involved.

After the hallway conferences, the people file into the packed and noisy courtroom.

And then, something unusual happens.

A man and an older woman are called up to appear before the bench. They ask for a Russian interpreter. Through the interpreter, the man explains that the woman is being falsely accused of a debt, and that the lawyer suing her can't prove that it was hers. After

some questioning, the collection agency's attorney concedes that, in fact, he doesn't have the documents he needs to prove that she owes the money. He asks for more time.

The judge, a small man with a tight beard and a yarmulke, refuses. With a wave of his hand, he dismisses the case.

"*Dasvedanya*," he says to the couple in Russian, and tells them they can be on their way.

But the couple doesn't budge. Stunned, they can't believe that the ordeal is so suddenly over.

"God bless you, sir," the man says to the judge.

"Have a nice day," he answers.

On the way out of the courtroom, the judge sees the Russian man stopping to say something to the lawyer who sued him and lost.

"*Don't talk to him*," the judge orders.

The couple shuffles out the door.

It's a scene that will be repeated over and over again in the courtroom of Judge Noach Dear, as he repeatedly dismisses lawsuits, denies attorneys seeking payment, and sends people on their way, amazed that they are free from further harassment by collection agencies.

Twice on a recent morning, his rulings are met with standing ovations.

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**The straightforward**, clear-eyed justice being meted out in Dear's debt court sessions is not what many were expecting from a man who, they assumed, would be a disastrous addition to the local judicial system.

In fact, Noach Dear's reputation was so lousy from his years as one of the City Council's most reprehensible members, some predicted calamity once Dear—who had never practiced law—donned judge's robes.

The New York City Bar Association found Dear "unqualified," and the Brooklyn Bar Association refused to endorse his candidacy, but his political connections and name recognition in the district made his election in 2007 all but foreordained.

An Orthodox Jew from Borough Park, Dear was a City Councilman for 18 years, serving for a decade on the Transportation Committee, until, in 2001, term limits forced him to seek a new job. He then served for six years on the city's Taxi & Limousine Commission.

In Borough Park, Dear was known as a fixer with the juice to make things happen, but he's also been ridiculed for his ham-fisted manner. In 1996, for example, Dear was a top fundraiser for Bill Clinton and Al Gore—at a fundraising dinner, Dear walked a *New York Times* reporter over to Clinton and said to him, "Tell her what you think of me."

Time and again, Dear has been criticized for dubious schemes: In the late 1980s, he started a foundation called Save Soviet Jewry, assigned himself a salary, and then proceeded to spend the organization's money flying himself and his family first-class on fact-finding missions to Russia and Israel. In 1993, Attorney General Robert Abrams made him repay the foundation \$37,000. He was prohibited from ever starting a charity again.

And talk about tone-deaf: As chairman of the City Council's Human Rights Commission, Dear organized a trip to South Africa—but the Council's black members pulled out when they found the trip was sponsored by the white pro-apartheid government. Dear also got involved advocating for a group of ethnic Tamils that had fled the violence of their native Sri Lanka. In 1983, he went to Congress to chastise the government for turning a blind eye to the problems there. But he also got the Tamils to send him to Europe and to put \$170,000 into a kosher restaurant he owned in Borough Park. According to the Tamils, he never repaid it: "If I was permitted to hit him, I'd break his head," one Tamil leader told the *Times*.

Taking money and not repaying it also got Dear in trouble with the Federal Election Commission. In 2000, when running for Congress for the second time, Dear's campaign treasurer took out ads in *The Jewish Press* costing \$52,800, but never paid for them. The newspaper told the FEC that they didn't press the matter because of the close-knit religious community, where powerful ties mean a great deal. The Commission cited Dear for not paying for the ads, as well as for receiving illegal contributions from 325 individuals. Dear was never charged, but the money had to be refunded to the donors.

"It's like they rewarded him for being a crook," says Sandy Aboulafia, a longtime Midwood activist and political opponent to Dear.

After so many scandals, two failed runs for Congress, and a futile bid for the State Senate, Dear finally turned to a more attainable goal: municipal judge.

Many court observers predicted disaster.

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**On a recent morning**, a woman and a collection agency attorney approach Judge Dear. The lawyer announces that after working out a deal together in the outside hallway, the woman is prepared to pay her years-old debt. The woman—whose records show a history of mental illness—earns only \$300

a month from disability payments, but the lawyer announces she has agreed to pay a \$100 monthly settlement to the collection agency. The woman, however, begins to have what looks like a panic attack. She starts shaking her head in an erratic way and sobbing uncontrollably. She manages to tell Dear that she never meant to make such an agreement.

"*Look what you have done to this woman!*" Dear says to the lawyer in a voice so loud that it fills the noisy courtroom. The lawyer begins to make excuses. He claims that the woman didn't seem out of sorts when they had cut the deal in the hallway and says he assumed she had other sources of income when she agreed to the payment.

Shaking his head, Dear stops the lawyer in mid-sentence and dismisses the lawsuit. He asks the court officer for an escort for the disoriented woman.

"You mean I can leave now?" the woman ekes out between sobs. "Yes," says Dear, and motions for the next case.

Around the courtroom, the people sitting on benches loosen their grips on their ragged file folders stuffed with credit card statements and Con Ed bills, stand up, and, one by one, break into applause.

"Money-grubbing!" one woman mutters.

"He ain't smiling, now!" another whoops. "Fair is fair!"

The *Voice* was told by numerous people at the courthouse that Judge Dear's sessions in debt court are out of the ordinary.

"He takes the issue seriously," says Sidney Cherubin, who runs a volunteer legal clinic the city created in 2006 to help the growing number of New Yorkers contesting false claims of debt. Dear is one of about a dozen judges who take turns on the debt court rotation.

Collection lawyers dread getting placed with Dear.

"He just rules from his biases, from his heart," lamented a frustrated attorney who preferred not to give his name for fear that it would impact him negatively in court. "He doesn't know the law," the attorney added.

Dear says that he prefers to be assigned to this tiny court, full of small claims with big effects on the lives of people of modest means. He refuses to allow the court to become an arm of the collection agency—which, according to statistics, is what has effectively happened in recent years.

Of the nearly \$1 billion in claims that collectors filed in 2007 against New Yorkers, about \$800 million was won by debt collectors in judgments. That's not surprising when about

80 percent of the people who are accused in such claims don't bother to show up to court. But complaints against collectors are rising so fast that, last year, they outpaced gripes against housing contractors to become New Yorkers' number-one complaint.

Of the fraction of people who do show up in court, nearly all of them represent themselves, which, Dear says, is another part of the problem.

"When you're a referee and someone else doesn't know the rules of the court, it's very hard," he says. In order to illustrate what he sees on the bench, Dear gave the *Voice* unusual access: He allowed a reporter not only to observe his sessions and talk with him about them, but to sit behind the bench with him to see the court operate from his vantage point.

Dear starts most days with a speech: He welcomes people, introduces himself, and then launches into a series of warnings. He tells the people being sued to be careful about asking for legal advice from the attorneys who are suing them.

"Just remember: They are your adversaries," he announces. He explains that when they sign a contract in the hallway, they are admitting to owing their debt. "Come see me," he offers as an alternative.

A typical day has about 80 to 100 cases, all handled before lunchtime. One morning, with the noon meal approaching, Dear deals with another collection agency lawyer who has come to court without the proper documents to prove that the man he is suing actually owes a debt.

"You're telling me that you had one year to do discovery on this case, and you still haven't been able to get documents?" he asks. "Do you think it's fair for you to ask this court to do your job for you?"

The lawyer sheepishly reminds the judge that it is within his power to dismiss the case.

"I will," Dear says, leaning over the bench to see the man more closely. "*Dismissed.*"

Dear tells the *Voice* that he did not know much about the growing problem of debt lawsuits when he first began working on the court. But he learned quickly—taking cues from deputy chief administrative court judge Fern Fisher—and soon wanted to "make a mark."

"I like to shake things up," he says.

Throughout the day, Dear is presented with one tale of financial misery after another.

A middle-aged African-American woman approaches the bench and tells Dear she has come to pay her debt. "Don't you want to know the amount?" he asks. "I just want to pay it," the woman answers. "What was it for?" the judge asks. "Anesthesiology," she replies.

"What happened?" he asks. The woman says she lost her job and, with it, her health insurance. (Dear agreed to let her pay the debt.)

Another middle-aged African-American woman approaches the bench. She is so visibly upset that it is hard to make out her words, but it is clear she is angry because money was taken from her empty bank account. The judge asks her to calm down. "I can't calm down," she replies. "I'm a black female—little people. I'm not a lawyer. I'm a regular citizen. They can do what they want," she says, and pauses. "I wish I could do whatever I wanted." The judge then tries to get her to work out a payment plan with the collection lawyer. The woman says it doesn't matter what plan they come up with—she's broke. (Dear often tries to bargain with the lawyers to get them to lower their demands, sometimes sounding like a haggler in an open-air market.)

One recent college graduate comes to the bench and tells the judge that she was served papers at a wrong address—a frequent complaint. She says that although she has lived in New York for years, the collection agency served her papers at an old address in Wisconsin. She also says that the collection lawyer had threatened her the night before on the phone: He told her that if she didn't settle, "the gloves would come off." When the lawyer doesn't deny that he threatened the woman, Dear becomes enraged. "Telling a defendant, pro se, that now the gloves are off?" he says. "To me, that's a threat."

"It's a euphemism," says the anxious lawyer, and makes another attempt to excuse himself. "It was born out of frustration," he balks. Once again, Dear dismisses the case.

Dear knows that the collection lawyers aren't thrilled with how he runs debt court. "I'm just calling it like it is," he says.

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**Over the past** 10 years, the subprime credit card industry—like the subprime mortgage industry, aimed at lower-income people and larded with hidden fees and variable rates—has exploded and, with it, the number of people in debt. In a place like New York, the problem of credit card debt is particularly acute. New York is a city of people who are highly mobile—their addresses change, and it is harder to track them down, as required by law. It's also a city of renters, and, unlike in other parts of the country, people here often don't have home equity to fall back on when they get into economic trouble. An economic downturn has forced more people than ever into debt court and has turned the Brooklyn Civil Courthouse into one of the busiest in the nation.

That has led to a new kind of gold rush: debt buying. In the past, when a company was owed money by a customer, it would hire a collection agency to get the money back, paying the agency a percentage. But today, the vast majority of collection agencies in debt courts have purchased those debts as a business plan.

Called "third-party debt buyers," companies like Palisades Collections buy consumer debts from major companies—Chase, Citibank, Fingerhut, Sears—long after those

companies have given up trying to get their money back. Buying the debts in multi-billion-dollar bundles for pennies on the dollar, debt buyers are then free to go after the creditors for the full amounts, and, with fees and service charges tacked on, they can collect about twice what the customer originally owed.

Debts can be purchased and repurchased—sometimes, it's even difficult for the attorneys to say how the debts were originally created.

There's plenty of evidence that these debt buyers are using the courts to go after people who don't actually owe the money they're being sued for. In a sample study of 600 cases that the Urban Justice Center conducted for cases brought in 2006, 99 percent didn't hold up to basic legal standards of evidence. Debt collectors frequently neglect to do the simple legwork it would take to verify a person's Social Security number, address, or bank account. Last month, Attorney General Andrew Cuomo sued a debt buyer named Lamont Cooper and shut down two of Cooper's companies. Cuomo alleged that Cooper's firms had routinely failed to serve people court papers where they actually lived and wasn't properly verifying the identities of the people they sued. Last week, Cuomo announced that he was fining three additional collection agencies on similar charges, and was pursuing a dozen more.

Many of the people who come to Dear's courtroom say they never received a summons. They make their way to court on their own after they go to an ATM machine and find that their bank accounts have been frozen, or when they receive a notice that their credit has been ruined. For many, it's the first time they've heard anything about a debt at all.

The Urban Justice Center's 2006 study found that 40 percent of the 600 lawsuits examined were filed by one company, Palisades Collections, and its law firm, Pressler and Pressler—a ratio that suggests Palisades is filing about 125,000 lawsuits each year. In 2004, the city found that two-thirds of defaulted credit card debts had been purchased by only 10 companies.

Palisades has no website of its own. But do a search on its name, and you'll find page after page of horror stories by people claiming they were wrongly sued for debt. (Multiple attempts to speak with someone at Palisades resulted in a manager answering that the volume of calls they receive prevented anyone there from answering questions.)

When Palisades purchases debts, it usually gets little more than a spreadsheet with names, account numbers, and debt amounts. Sometimes, there are addresses and Social Security numbers; sometimes, there aren't. The information is often years old by the time the company gets it.

Yet instead of spending the resources to track down and confirm that information, collection agencies seem to have adopted a different strategy: sue. Assume the defendants won't show up. Then, go after bank assets.

The debt buying industry "is crying out for regulation," says the city's commissioner of consumer affairs, Jonathan Mintz. He describes debt collection agencies as bottom-feeders, an industry that is "far down the food chain."

Recently, there have been some signs that things are shifting. On the national level, President Obama has called for sweeping changes: He recently called credit card executives to Washington and denounced the billing practices that have led Americans ever deeper into debt. (Dear's reaction: "I would say to the President, 'If you want to know how to resolve this issue, come down to 141 Livingston Street.' ")

Besides Cuomo's settlement, Dan Garodnick, the City Councilman who represents Stuyvesant Town, recently pushed through a bill that closed a loophole that allowed third-party agencies to purchase debts without a license. (They do have to be licensed to bring a lawsuit, but the collection agencies were able to exploit a loophole in the law and get around that, says Harvey Epstein of the Urban Justice Center.) The City Council and the city's Consumer Affairs Department have each held hearings about cleaning up the industry. Judge Fern Fisher—whom Dear considers a mentor—created the Thursday-afternoon clinic at the courthouse, one of the first of its kind in the nation. She has commissioned research into why people don't show up to court. As of April 2008, she has been making debt collection agencies send summonses through the court—if the notices comes back "return to sender," the collection agencies are no longer able to bring the suit. Fisher says that that measure alone has eliminated about 10,000 mistaken lawsuits and has brought more people into court.

"I do not believe it's because people are callous and irresponsible," Fisher says, speaking of the many New Yorkers who don't show up. "Some people are afraid. Some people just don't understand the significance. Some people are hopeless."

But the industry is still rife with problems—for one, the firms hire people to drop off the summonses at people's addresses, and they often leave the forms with someone who has no connection to the person actually being sued for debt. This was at the heart of Cuomo's recent lawsuit.

Additionally, in each of these cases, a debt collector has to sign and swear that they have "direct knowledge of the facts of the case." Usually, the companies hire lawyers to do that, too. For instance, in the case of one law firm, Mel S. Harris & Associates, a man named Todd Fabacher has personally signed off that he has "direct knowledge of the facts" of hundreds (and perhaps thousands) of cases. "I don't know how that's humanly possible," says Nasoan Sheftel-Gomes, a lawyer for the Urban Justice Center who works with people being sued by debt collectors. (Calls to Fabacher have not been returned.)

By the late 1990s, subprime was the fastest growing sector of the credit card industry. Today, 400,000 of the city's poorest households pay about 40 percent of their monthly income to credit card and installment plans. Most of the rest goes to rent.

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**While Dear** gave the *Voice* unusual access to his courtroom, he was reticent about his troubled political record. He didn't want to "dredge up what happened 30 years ago," and, he says, "There are people who would like to see me fail."

He recalls, one afternoon, that his life seems to have come full-circle: The first bill he sponsored as a councilman was a bill to license debt collectors. He says he has taken a special liking to pro se court, where defendants represent themselves, and often requests to be placed there on the rotation of judges. "I feel like I'm contributing something," he says.

"I like to fight for the underdog."