

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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B E F O R E: LEROY G. COMRIE, JR.
Chairperson

COUNCIL MEMBERS:
G. Oliver Koppell
John C. Liu
Daniel R. Garodnick

A P P E A R A N C E S

Andrew Eiler
Director of Legislative Affairs
Department of Consumer Affairs

Eric M. Berman
President
Commercial Lawyers Conference of NY

Arthur Winston
Attorney
American Collectors Association

Barbara A. Sinsley
General Counsel
DBA International

Robert A. Martin
Associate Director
District Council 37

Melvin Billings
Resident
New York

Harvey Epstein
Project Director
Community Development Project
Urban Justice Center

HaQuyen Pham
On Behalf of:
Maria V. Ferrer
Resident
New York

Janet Ray Kalson
Chair
Civil Court Committee
NYC Bar Association

A P P E A R A N C E S (CONTINUED)

Oda Friedheim
Staff Attorney
Legal Aid Society

Claudia Wilner
Senior Staff Attorney
NEDAP

Janet Araya
On Behalf of:
Josefina Araya
Resident
New York

Carolyn E. Coffey
Staff Attorney
Consumer Rights Project
MFY Legal Services

Matt Schedler
Attorney
CAMBA Legal Services

CHAIRPERSON COMRIE: Good morning.

My name is Leroy Comrie. I'm the chair of the Committee on Consumer Affairs. I'd like to thank everyone for coming to today's hearing. I'd also like to acknowledge Council Member Dan Garodnick, who was the prime sponsor on the bill that we'll be hearing today. This troubling economic climate has created hardship for many residents of our city. These fiscal challenges have led some to an increased reliance on credit and ultimately a descent into debt. For some, however, the business of debt can be very profitable. Debt buyers purchase debt owed to credit card companies and other financial institutions at a discount and then engage in heavy-handed collection campaigns and earn a profit by collecting the original value of the debt. In fact, it is estimated that 90% of consumer credit collection actions are not actually filed by credit card companies or financial institutions, but by debt buyers or other third party collection agencies. In New York, many debt buyers go directly to the New York City Civil Court to pursue consumer debt lawsuits. Unfortunately, over 90% of debtors are not aware

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2 that such an action has been taken and do not
3 attend their own hearing. Failure to appear in
4 court, often attributed to inadequate notice of
5 the lawsuit, invariably results in a default
6 judgment in favor of the plaintiff, which then
7 allows the debt collector to acquire payment of
8 the debt by garnishing wages or freezing bank
9 accounts. Some New Yorkers only discover that
10 they were involved in a claim once some of their
11 assets have been seized. The few defendants that
12 do appear in court are often unrepresented by
13 counsel. The City of New York requires that any
14 debt collection agency be licensed by the
15 Department of Consumer Affairs prior to engaging
16 in any collection activities. Despite this, a
17 report by the Urban Justice Center found that less
18 than one-third of the debt buyers referenced in
19 the report were actually licensed. The debt
20 buyers claim that since they outsource the
21 collection duties to other parties, such as debt
22 collection law firms, they were exempt from the
23 licensing requirements. Intro. 660 smartly seeks
24 to close this loophole by amending the definition
25 of debt collection agency to include debt buyers

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2 who use third party agencies or attorneys to
3 collect such debt from a debtor. I'll limit my
4 remarks on the bill so that my esteemed colleague,
5 Council Member Dan Garodnick, can go into greater
6 depth on the bill that he's presenting today. I
7 want to first thank my committee staff and
8 Councilman Garodnick's staff and all of the people
9 that put together today's hearing. With that,
10 we'll turn it over to Council Member Dan
11 Garodnick. Thank you.

12 COUNCIL MEMBER GARODNICK: Thank
13 you, Chairman Comrie and the Consumer Affairs
14 Committee for allowing me to participate in the
15 hearing today on Intro. 660, which as you
16 perfectly noted, is a bill to strengthen and
17 clarify the licensing requirements for debt
18 collectors. Every year in New York there are
19 about 300,000 cases filed against New Yorkers in
20 Civil Court for consumer debt. That's roughly the
21 equivalent to all of the cases filed in United
22 States District Courts for criminal and civil
23 cases nationwide during the course of a year. Too
24 frequently the cases are filed against New Yorkers
25 by entities that are wholly unrecognizable by the

1 target of the lawsuit. Imagine receiving a notice
2 from a company that you've never heard of, a
3 company that was hired by an entity that bought
4 the debt from another entity, and because of
5 escalating late fees or simply the long period of
6 time that has passed, you may not even recognize
7 the amount. You get a frightening legal notice
8 and you have no attorney. Too many New Yorkers
9 simply throw up their hands as a result. Some are
10 never notified at all. Over 80% of defendants in
11 consumer credit litigation cases don't even appear
12 in court to defend themselves. Of those who do,
13 less than 4% of the defendants are even
14 represented by a lawyer. In 2006 alone, debt
15 collectors filed almost a billion dollars worth of
16 lawsuits against alleged debtors and obtained
17 judgments against New Yorker for almost \$800
18 million. Too many New Yorkers find themselves in
19 these exact situations every day. The effects, as
20 Chairman Comrie noted, wages getting garnished,
21 bank accounts frozen credit history ruined,
22 especially for those of low incomes, can be
23 devastating. The Urban Justice Center did this
24 very, very thorough report in 2007 entitled, "Debt
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1 Weight, the Consumer Credit Crisis in New York
2 City and its Impact on the Working Poor." It
3 dealt with and highlighted a number of the issues
4 that are involved in the system, including the
5 fact that the debt collection industry over the
6 last 20 years has ballooned. There are new
7 players and there are new practices, many of which
8 are not governed by the existing debt collection
9 regulations today. Into. 660 is going to amend
10 the administrative code to clarify the definition
11 of a debt collection agency to include debt
12 buyers, those people who are buying debt from a
13 creditor with the intent and goal to recover it.
14 It will make sure that lawyers and law firms that
15 are engaging in debt collection activities and not
16 just litigation are also registered with the
17 Department of Consumer Affairs. This is not going
18 to address all of the challenges within the
19 industry. It will, however, ensure that all
20 entities that are engaged in debt collection are
21 subject to the same regulations, oversight and
22 enforcement by the Department of Consumer Affairs.
23 This was one of the recommendations made by the
24 Urban Justice Center. It is by no means all of
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2 the recommendations they made. Some of them were
3 within our jurisdiction like this one and some
4 require action at either the state level or
5 beyond. I certainly do hope that they make
6 progress at the other levels of government as
7 well. The industry here has changed and our
8 administrative code and its definitions of the
9 debt collection industry are now outdated. It is
10 time to amend our current regulations to keep pace
11 and to provide adequate protections to all New
12 Yorkers from unnecessary and illegal and improper
13 practices, which unfortunately are too common in
14 this city. Again, I want to thank Chairman Comrie
15 as well as my staff and everybody in my office for
16 all of their hard work on this. I look forward to
17 hearing the testimony today. Thank you, Mr.
18 Chairman.

19 CHAIRPERSON COMRIE: Thank you,
20 Councilman Garodnick. I want to thank you again
21 for creating the bill and bringing it to the
22 committee. I want to thank everyone at the Urban
23 Justice Center for working with you on this issue.
24 During the tax season, the issues of debt and
25 people trying to get out of debt are critical.

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2 Just reminding people during this time it was
3 important that we had this hearing as quickly as
4 possible. I'm fighting a head cold, so I'm going
5 to try to let you do all the talking today. First
6 we're going to hear from the administration. We
7 have Andrew Eiler from the Department of Consumer
8 Affairs. Do you have written testimony with you
9 so you can give it to the sergeant?

10 ANDREW EILER: Good morning,
11 Chairman Comrie and committee members. I'm Andrew
12 Eiler, Director of Legislative Affairs for the
13 Department of Consumer Affairs. Commissioner
14 Mintz asked me to thank you for the opportunity to
15 appear before you at your hearing on Intro. 660
16 that seeks to strengthen the collection agency
17 licensing law. First, the bill seeks to expand
18 the type of businesses the law covers by amending
19 the definition of debt collection agency to
20 include debt buyers who refer debts to another for
21 collection or to an attorney for litigation.
22 Second, the bill seeks to expand the business the
23 law covers by revising the exemption regarding
24 attorneys to specify more exactly the activities
25 that trigger the exemption. During this time of

1 economic distress, debt collection agencies are
2 plying their trade more vigorously than ever. The
3 department currently licenses 1,092 debt
4 collection agencies. The number of docketed
5 consumer complaints about their practices jumped
6 from 760 in Fiscal Year 2007 to 1,286 in Fiscal
7 Year 2008, an almost 70% increase that catapulted
8 them into first place in the department's top five
9 complaint categories. The committee and the
10 sponsor of this bill have accurately highlighted
11 debt buyers as the newest segment of the industry
12 greatly in need of more stringent regulation
13 because of the added pressure such businesses put
14 upon consumers. According to the testimony that
15 the Consumer Law Center submitted to the Federal
16 Trade Commission in 2007, the debt buyer industry
17 has ballooned from just 5 players in 1992 to over
18 300 major sellers of delinquent debts by 2005.
19 The face value of debt sold was only \$1.3 billion
20 in 1993. By 2002 the estimated sale of debts by
21 original creditors had skyrocketed to over \$60
22 billion. It was expected to exceed \$110 billion
23 in 2005. That was before the massive economic
24 downturn we now face. SEC filings also show that
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2 the revenues and profits of the largest debt
3 buyers have multiplied four to six times from 2001
4 to 2005. Most of the debt sold to debt buyers are
5 credit card debts, but also include phone bills,
6 medical bills, water bills, car loans, as well as
7 other consumer credit. The age of debt sold
8 creates a fundamental problem for consumers.

9 Typically the debts sold range from a few months
10 to more than a decade. The collection of old
11 debts poses problems for consumers. There may be
12 a failure to validate the debt. Key information
13 about the account is often not provided to debt
14 buyer by the original creditor. Missing data
15 includes complaints about billing errors, payments
16 not credited, settlement agreements not honored,
17 identity theft and mistaken account listings.

18 Failure to identify at the time of the initial
19 contact either the original creditor or the
20 itemization of the debt. Without adequate
21 identifying information, consumers are at a loss
22 to address the issue. Collecting stale debts,
23 especially debts beyond the statute of
24 limitations, often occurs without informing
25 consumers they cannot be required to pay.

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2 Reselling of debts by debt buyers. The reselling
3 to other debt buyers of debts that one buyer was
4 unable to collect leads to an endless stream of
5 debt collectors harassing consumers in attempts to
6 collect the same debt. This creates an unending
7 nightmare for consumers who then have to re-fight
8 the same issues over and over again with different
9 debt buyers. A report released by the Urban
10 Justice Center in October, "Debt Weight: The
11 Consumer Credit Crisis in New York City and its
12 Impact on the Working Poor" indicates how these
13 collection efforts impact New Yorkers. The report
14 found that in 2006 alone, approximately 320,000
15 consumer debt cases for almost \$1 billion in
16 claims were filed in the five boroughs, resulting
17 in judgments against consumers for almost \$800
18 million. The starkest findings, however, are that
19 89.3% of these cases were filed by debt buyers who
20 had no prior relationship with the consumer and
21 that over 80% of these cases result in default
22 judgments. Although plaintiffs were technically
23 required to submit proof to support their claims,
24 a review of cases found that the materials
25 provided almost always constituted inadmissible

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2 hearsay that fails to meet the standard of proof
3 specified in Civil Practice Law and Rules section
4 3215(f). The council is to be commended for
5 tackling the issue of strengthening the law that
6 regulates the practice of debt collection
7 agencies. The department is concerned, however,
8 that the proposed amendments will not provide the
9 relief that is needed. For example, the proposed
10 change in the definition of debt collection agency
11 requires some discussion. On the one hand it is
12 too far reaching by including as a collection
13 agency anyone who bought a debt that was later
14 referred to another for collection. However, some
15 companies, like financing agencies, purchase
16 consumer credit contracts that were current at the
17 time of the purchase but become delinquent
18 thereafter and are then referred for collection.
19 Thus the proposed language would inappropriately
20 cover such players. On the other hand, the
21 proposed definition change falls short by
22 requiring debt collectors to have referred the
23 debt to another for collection or to an attorney
24 for litigation. This raises doubt about whether
25 debt buyers who collect themselves rather than

1 referring it to others or to attorneys would be
2 included. The department strongly supports the
3 objective of including debt buyers as collection
4 agencies regardless of how they seek to collect
5 debts, be it directly or indirectly, by litigation
6 or otherwise, and suggest that some tweaking of
7 the proposed definition would accomplish this
8 goal. The key distinction regard debt buyers is
9 that they purchase debts after they are already in
10 default while other financing agencies purchase
11 them while the consumers are still current with
12 their payments. The department is also concerned
13 that the more specifically defined activities for
14 triggering the attorney exemption could exclude
15 attorneys who failed to engage in the particular
16 practices described, but who still act primarily
17 as collections agencies rather than attorneys.
18 The department believes that the current exemption
19 is sufficiently specific yet flexible enough to
20 exclude only attorneys engaged in the actual
21 practice of law while still including attorneys
22 who are actually operating as debt collection
23 agencies. The department also suggests that the
24 bill be revised to include provisions that address
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2 debt buyer practices that create especially acute
3 problems for consumers. These provisions should
4 address the following issues. Specify the
5 required documentation of the debt that debt
6 collectors must provide to consumers in the
7 initial communication. They should be a written
8 statement required of inability to verify debt
9 when a consumer requires such verification in
10 writing. They should require that any machine-
11 generated calls relating to debt must leave a call
12 back number to a phone that is answered by a
13 natural person and leave a message for the
14 consumer that identifies the name of the agency,
15 the date of the call, the name of the person to
16 call back and the identity of the originating
17 creditor of the debt, unless there has been a
18 preexisting contact with the consumer and such
19 information has been furnished to the consumer.
20 They should provide information to be required by
21 the commissioner regarding the collection of any
22 debts on which the statute of limitations for
23 initiating legal action has expired. Confirmation
24 in writing should be required for any debt payment
25 schedule or settlement agreement reached about the

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2 debt and a prompt updating of credit reporting
3 agencies about the current status of the debt and
4 payment status on the debt the agency is
5 collecting. There should be an offer to provide
6 written and oral consumer translation services
7 when seeking to collect debts non-English speaking
8 consumers. The sale or assignment of debts that
9 have benefit fully satisfied should be barred.
10 The sale or assignment of debts without disclosing
11 the information contained in the documentation
12 required to be furnished with the initial contact
13 as well as the information identifying the current
14 status and information provided by the consumer
15 about the debt should be barred. Adding such
16 provisions to the bill would significantly
17 strengthen the law to enable the department to
18 curb abusive collection practices. In closing,
19 let me reiterate the commissioner commends the
20 council for seeking to address the issues the debt
21 buyer industry has created for consumers. The
22 department looks forward to working with the
23 committee to strengthen its bill to ensure it
24 delivers the full measure of relief consumers
25 demand. I will be glad to answer your questions.

2 CHAIRPERSON COMRIE: Thank you, Mr.
 3 Eiler. You raised a lot of points on the bill.
 4 We'll start with those last five or six bullet
 5 points that you talked about. Those are things
 6 that you would like to see added to this bill?

7 ANDREW EILER: Yes.

8 CHAIRPERSON COMRIE: Aren't these
 9 items part of the Federal Consumer Law now?

10 ANDREW EILER: Some of them are,
 11 but not all of them. We'd like to have them
 12 specified so that we can effectively deal with
 13 them here in New York City. It would clarify what
 14 debt collectors would have to do and the
 15 information that would have to be supplied.

16 CHAIRPERSON COMRIE: But isn't it
 17 part of DCA's mission to follow the federal laws
 18 and regulations?

19 ANDREW EILER: Yes.

20 CHAIRPERSON COMRIE: But you still
 21 want them?

22 ANDREW EILER: The compliance of
 23 the federal requirements can be piggybacked to our
 24 Consumer Protection Law against licensees. The
 25 compliance can be required under that. We've gone

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2 through it and we believe that these additional
3 more clearly specified standards on the content of
4 the information required to be disclosed and the
5 barring of the resale. This is a really important
6 issue regarding when a debt collector is not able
7 to collect. What happens is instead of just
8 terminating further collections, very often
9 consumers will end up hearing from another debt
10 collector and then another debt collector and
11 still a third debt collector. They fight the
12 battle over and over and over again. This issue
13 is not addressed. If the debt buyer ceases to
14 collect then he should not be able to just turn
15 this debt around and keep churning it. This is an
16 issue that we need to specifically address to be
17 able to deal with it.

18 CHAIRPERSON COMRIE: So you want to
19 have all of these things codified in the city law
20 so that you don't have to refer to the state law.

21 ANDREW EILER: We don't have to
22 piggyback and we don't have to do a lot of other
23 things. We would have it right here in the New
24 York City Administrative Code.

25 CHAIRPERSON COMRIE: Can you

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explain to me what the standard of proof in the Civil Practice Laws and Rules section of 3215 in layperson terms?

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ANDREW EILER: I'm not an attorney able to go through all of the details of that, but I think they're required to provide proof of the debt, the amount and so forth and so on.

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Affirmations have to be made. The question is whether or not all the necessary affirmations to substantiate the claim are provided when there's a default judgment and before the court stamps the papers and says to pay it. There is information that needs to be supplied. The finding of the Urban Justice Center is that apparently the kind of information that's necessary is not there.

CHAIRPERSON COMRIE: A company can just claim a debt, go to the court, file the debt with the court and then go after collecting it without providing substantial proof?

ANDREW EILER: Well, there's an issue of what is adequate documentation. For example, where is the credit contract, where is the credit application, what is the proof that there is even a contract. What happens in a lot

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2 of these cases is you have business records, which
3 has the name of a person, a computer printout and
4 one creditor says that the person owes us this
5 money and that basically becomes the basis for the
6 debt. What you need really is a little bit more
7 proof that there is actually a debt owing. You
8 need more proof in terms of documentation of the
9 billing, what the consumer has paid, any disputes
10 that have arisen and so forth. That may result in
11 a consumer not owing the money. Like billing
12 disputes on a credit card. The billing dispute
13 may have been raised and the consumer might have
14 been entitled not to pay. This wasn't written off
15 by the original creditor and then it comes back in
16 terms of the debt buyer trying to collect money
17 the consumer really shouldn't have to pay.
18 Basically the kind of evidence necessary to
19 substantiate the claims just isn't really done in
20 the courts.

21 CHAIRPERSON COMRIE: Unless the
22 debtor is there or the creditor is there, which
23 they never are, these things are just
24 automatically assumed to them.

25 ANDREW EILER: If the debtor

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doesn't show up it's just stamped to pay. That's what happens.

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CHAIRPERSON COMRIE: Can you make

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the distinction as far as DCA is concerned as to

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the difference between debt buyers and financing

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agencies?

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ANDREW EILER: Let me see if I can

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sort of give a simple example for this. What

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happens is in a normal course of credit

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transactions you have a car dealer and he gets a

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whole bunch of contracts. He sells these

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contracts. Under the State Law, the financing

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companies have to be licensed. So he sells these

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contracts to the financing company. So they get

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this bag of contracts. Essentially, without

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getting into negotiability and the rest of that

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stuff, it's like he gets a bag of checks. The

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dealer turns the checks over to this other agency

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and says to run them through and collect them.

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They do. These are checks that are valid.

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They're written right now. They are valid debts.

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They're valid checks. The person buying them

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probably buys the checks for 98 or 95 cents on the

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dollar because he expects to make the money

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2 between the difference. He puts them through the
3 bank. What happens is some checks bounce. Some
4 checks the consumer may have legal reasons for not
5 paying it. He stops payment. In those cases,
6 this creditor who purchased this bag of current
7 checks is going to go and collect them. That kind
8 of a person really isn't a collection agency
9 because they're basically in the feed of the
10 seller and they're essentially the originating
11 creditor. So then we get to the debt buyer.
12 Here's another guy who gets a bag of checks. The
13 difference is these are all bounced checks. These
14 are basically dishonored checks. Now what happens
15 in the way this thing runs through the system is
16 they take it to court and ask the court to make
17 them to pay and then we'll go and collect on them.
18 That's the difference. In the one case, what you
19 have is essentially rubber checks that are being
20 run through and are being collected on by people
21 who had nothing to do with the original
22 transaction and have no clue what the original
23 transaction was about. Whereas the other one, you
24 have a real relationship and an involvement of a
25 real transaction. The third thing that I just

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2 want to raise, and I haven't done a lot of
3 research into this, but the thing about these kind
4 of debts is that under the Uniform Commercial Code
5 you have what's called a bulk transfer of assets.
6 That is likely to be the way these defaulted or
7 rubber checks are transferred from one creditor to
8 another. A bulk transfer, which is one of the
9 most arcane parts of the Uniform Commercial Code
10 legal system because it's so esoteric, and very
11 few people understand where that goes. But that's
12 the practice that's developed in terms of passing
13 these debts on. That's a different ball game, a
14 different stream of commerce than what we have
15 when you're dealing with the other kind of
16 creditor who purchases the contract and actually
17 expects to collect on it and then may have to go
18 because some people don't pay.

19 CHAIRPERSON COMRIE: So they're
20 just total predators. They don't care about
21 anything other than trying to meet whatever that
22 amount was that the total amount of the checks
23 were. They're trying to get to that amount and
24 they're claiming that amount as income already.

25 ANDREW EILER: Right. Basically

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2 the debt buyer doesn't buy it at 95 cents on a
3 dollar, he buys it for 3 cents on a dollar.

4 CHAIRPERSON COMRIE: But he's
5 trying to claim the full amount.

6 ANDREW EILER: These are the rubber
7 checks. I mean everybody knows in advance they're
8 no good. I mean basically they haven't been paid
9 for whatever reason. So what the debt buyer then
10 tries to do is collect as much as they can
11 collect. In the thousands of cases that were
12 filed by debt buyers, they march into court and
13 present the check and say that the check needs to
14 be paid, it wasn't paid, so mark it to pay.

15 CHAIRPERSON COMRIE: What should a
16 consumer do if they've been contacted by a debt
17 collection agency? What would you recommend that
18 a consumer do?

19 ANDREW EILER: If they're contacted
20 with an attempt to collect the debt and sufficient
21 information isn't provided, the first thing should
22 be to request a validation of the debt in writing.
23 Get the information to find out where this is
24 coming from and what it is about. Many of the
25 times with regards to debt buyers, the first thing

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2 a consumer may get is a notice of the court that
3 you've been sued. So essentially that step just
4 doesn't happen. You're right in court. So that's
5 a different kind of a ball game than a collection
6 agency that tries to first establish what the debt
7 is and what to do and so forth. In these kind of
8 situations, the first thing the consumer should
9 definitely do is go to court and contest the
10 claim, or at least raise issues about the claim.
11 The last thing a consumer should do is ignore it.

12 CHAIRPERSON COMRIE: Does DCA go
13 with any consumers to court hearings?

14 ANDREW EILER: Not in terms of the
15 specific.

16 CHAIRPERSON COMRIE: Do you have a
17 primer that you can give them?

18 ANDREW EILER: We give people
19 information about steps dealing with debt
20 collections and so forth. What we do is if we
21 have a complaint about debt collection practices,
22 then we try to intercede and resolve the issues.
23 We've been pretty successful. I think it was
24 about \$800,000 in recoveries last year. Basically
25 we're fairly successful in working out disputes

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2 about what the debt is and whether it's old and so
3 on.

4 CHAIRPERSON COMRIE: So you will
5 intervene on behalf of consumers if they reach out
6 to you claiming that they need to get a debt
7 contested.

8 ANDREW EILER: As a matter of
9 resolving between a debt collector and the
10 consumer. But when it comes to the lawsuit
11 itself, we don't intervene in the lawsuit.

12 CHAIRPERSON COMRIE: So you
13 intervene before there's a lawsuit filed.

14 ANDREW EILER: We intervene when
15 the consumer complains that a collection agency is
16 not acting properly or they're trying to dispute
17 the amount of the debt and the collection agency
18 is having issues with that and so forth. So we're
19 able to intercede there and either verify the debt
20 or have it terminated.

21 CHAIRPERSON COMRIE: But once a
22 lawsuit is filed, you said in your statement that
23 most people don't go with a lawyer. What would
24 you recommend them to do at that point?

25 ANDREW EILER: If they don't go to

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2 the court, they're going to get a default
3 judgment. Now they'll get a notice about the
4 default judgment and then of course the
5 recommendation there would be to go into court and
6 contest the default judgment and probably contest
7 service and see if you can overturn the default
8 judgment and raise issues there.

9 CHAIRPERSON COMRIE: Most people
10 are not that astute to even make those requests
11 before a judge.

12 ANDREW EILER: There is no doubt
13 whatsoever that if consumers are tangled up in
14 these legal processes they do not understand.
15 They don't know what the whole situation is or how
16 much access there is to assistance that a consumer
17 would need to actually appear in court and have
18 someone participate and so on. Those are the
19 limitations. The real problems come up in this
20 kind of situation. It's especially difficult when
21 the creditor doesn't fully affirm or declare or
22 identify and prove what the dispute is all about.

23 CHAIRPERSON COMRIE: I'm going to
24 turn it over to Councilman Garodnick. I'll come
25 back at the end and ask one or two more questions.

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2 This is a critical topic to be able to help
3 consumers. To give them that relief so that they
4 don't have to go to court would be a big help.
5 Council Member Garodnick?

6 COUNCIL MEMBER GARODNICK: Thank
7 you, Mr. Chairman. I have a few specific
8 questions about your testimony which I very much
9 appreciated. First I wanted to take a step back
10 and talk a little bit about the licensing
11 procedure and purpose today of debt collectors.
12 You said that there were 1,092 debt collection
13 agencies that are currently licensed by the
14 Department of Consumer Affairs. Help us
15 understand what the purpose is of having those
16 agencies be licensed by the Department of Consumer
17 Affairs today.

18 ANDREW EILER: The licensing is a
19 way for ensuring that the department has some
20 legal basis for determining whether or not the
21 person is performing it properly and there's a
22 legal basis for preventing someone from operating
23 at all by revoking the license. So the
24 requirement for having a license establishes that
25 the business has to have some government

1 confirmation that you're qualified to enter into
2 the business. The more important thing is that
3 the department, with respect to licensees, has
4 hearing authority and the commissioner has the
5 authority to award restitution for damages that a
6 consumer suffers as a result of violations of the
7 law. So what we have is you have substantive
8 provisions in the statute. We have rules that the
9 department has adopted regarding various kinds of
10 practices that debt collectors are not supposed to
11 use and what they're required to follow that
12 really mirror the federal Debt Collection
13 Practices Act. I think actually we preceded them.
14 They're pretty much in tandem with what's there.
15 Coupled with hearing authority and all these rules
16 with respect with what debt collectors are allowed
17 to do gives us the ability to address the consumer
18 complaints and to stop debt collectors from
19 engaging in outrageous conduct against consumers.
20 Because what we could then do is to terminate
21 their license and impose fees. So it's a complete
22 structure of enforcement and regulation and so
23 forth that ends up making the industry to appear
24 to at least some best practices standards and to
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make those standards mean something.

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COUNCIL MEMBER GARODNICK: I agree

with that. I want to understand the breadth of

who's out there. You said the department licenses

1,092 debt collection agencies. If this bill were

passed and let's say we just tightened the

definitions somewhat, even the way that you

suggested in your testimony, and included only the

folks who are collecting bad debt as opposed to

ongoing debt as you described, what's the universe

of debt collection agencies that could be licensed

by the Department of Consumer Affairs?

ANDREW EILER: That's hard to say.

To the extent that we don't license or they

haven't shown up, it only comes up piecemeal like

when you see complaints and then you have somebody

with the names and so forth. So I really can't be

sure how many additional licensees we would have.

The other thing about this is that many of these

companies operate interstate. The debt collection

law that we have, if you're out of state but

you're collecting in the City of New York, you're

required to be licensed. So the question would be

that if you expanded the definition and we

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2 garnered this group, there would be a question as
3 to whether or not people from out of state would
4 continue to come into the state. So people who
5 are now currently active may end up deciding they
6 don't want to be licensed and so they won't
7 operate, which is not bad.

8 COUNCIL MEMBER GARODNICK: Well
9 tell us what that means exactly. What is the
10 process for applying for a license with the
11 Department of Consumer Affairs? Is that a
12 daunting process? What do you have to do?

13 ANDREW EILER: Well, basically you
14 can go on an internet website and you can get the
15 applications and it tells you what information you
16 need to supply. People supply the information and
17 we review it and make sure that a license hasn't
18 been revoked or some other disqualifying factors
19 and you get licensed. It's not a daunting
20 process.

21 COUNCIL MEMBER GARODNICK: Is there
22 a fee associated with doing it?

23 ANDREW EILER: Yes, there is.
24 There's a license fee.

25 COUNCIL MEMBER GARODNICK: It is a

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2 nominal fee?

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ANDREW EILER: It's not a lot.

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COUNCIL MEMBER GARODNICK: Is it

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under \$100; under \$50?

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ANDREW EILER: I'd have to check to

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see exactly what it is. It varies. It's probably

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around \$300 or \$400. But I haven't focused on

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what the number is.

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COUNCIL MEMBER GARODNICK: Now if

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somebody goes onto the internet and they fill out

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the form and send in whatever the fee is, the

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Department of Consumer Affairs will take a look

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and consider that they are legitimate and hadn't

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had other problems, then they would be licensed by

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the City of New York. Is that right?

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ANDREW EILER: Sure.

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COUNCIL MEMBER GARODNICK: Would

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adding additional numbers of entities to the list

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of people who would need to be licensed create any

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significant burden on the Department of Consumer

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Affairs?

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ANDREW EILER: I don't think it

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would be. It would be part of the normal

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licensing process. When we came out with the

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2 interpretation that said that debt buyers who
3 actually collect are deemed to be collection
4 agencies and those people are covered by our law
5 as it is now, we got some additional licenses. We
6 can't tell just exactly how many that was. In
7 other words, they don't identify themselves as
8 debt buyers. So we don't know how many new ones
9 we got as a result of that.

10 COUNCIL MEMBER GARODNICK: So the
11 Urban Justice Center's report, which concluded
12 that some 42% of debt buyers, or people who are
13 pursuing New Yorkers in court, were unlicensed.
14 That sounds like about the right number to you.
15 Does that comport with your experience and
16 understanding?

17 ANDREW EILER: I have no way of
18 knowing. I don't know how they arrived at the
19 number of 42% or otherwise.

20 COUNCIL MEMBER GARODNICK: They
21 looked at specific cases. They looked at 600
22 specific cases and they looked and saw who was
23 licensed and who wasn't and they came up with 42%.
24 Does that seem like a low number or a high number?
25 Do you think that it could be many more than that?

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2 I'm asking from your experience and your judgment
3 as a government agency.

4 ANDREW EILER: It seems to be a
5 high number. If we get complaints against a
6 collection agency and run it through our database
7 and they're not licensed then that'll be flagged
8 and we go deal that. From that standpoint,
9 without delving into some kind of records, I'm not
10 able to say.

11 COUNCIL MEMBER GARODNICK: I don't
12 want you to guess. I just wondered if you felt it
13 was in the ballpark. I guess you can also address
14 the issue about referral to an attorney. An
15 attorney who is licensed today can file a claim on
16 behalf of somebody who is not licensed. Is that
17 right?

18 ANDREW EILER: What do you mean?

19 COUNCIL MEMBER GARODNICK: If there
20 was an attorney who is licensed with the
21 Department of Consumer Affairs to file one of
22 these cases against a debtor, they are allowed to
23 do it on behalf of a third party debt buyer who is
24 out of state, not licensed, et cetera?

25 ANDREW EILER: That's a question we

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need to address. That's what the definition really needs to address. That that debt buyer would have to be licensed.

COUNCIL MEMBER GARODNICK: It's your view that they should be licensed.

ANDREW EILER: They should be licensed. Whether they are required is another question.

COUNCIL MEMBER GARODNICK: So we can agree that there's some ambiguity today as to whether they should or should not or must or must not in the law at the moment.

ANDREW EILER: That's correct. You're hitting the right target. We need a clarification to ensure a debt buyer, regardless of whether he refers the debt to an attorney for collection or however that's done needs to be licensed. It's what's come up as the passive debt. In other words, the one who just buys the stuff and essentially kind of refers it out. That's the universe that we're trying to grasp. I think that we would suggest some language that will enable us to get it without raising the other issues.

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2 COUNCIL MEMBER GARODNICK: That
3 goes to your point about the specific definition
4 about debt collection agency, which I'm going to
5 get to in a moment. I appreciated your testimony
6 on that. You mentioned the issue of consumer
7 complaints about debt collection is now the number
8 one complaint that the Department of Consumer
9 Affairs gets. Is that right?

10 ANDREW EILER: It's the top one,
11 yes.

12 COUNCIL MEMBER GARODNICK: You said
13 it's first place in the department's top five
14 complaint categories. Give us a flavor of what
15 it's ahead of. What are the other complaints?

16 ANDREW EILER: Towing, home
17 improvement contractors and furniture are the
18 major ones.

19 COUNCIL MEMBER GARODNICK: In your
20 testimony you noted that there are a few problems
21 for consumers here. One of them is a failure to
22 validate the debt, missing data, which includes
23 complaints about billing errors and payments not
24 credited and identify theft and things like that.
25 Just the fact that this debt is not validated.

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2 You noted that there is a failure to identify
3 either the original creditor or actually what the
4 debt was or an itemization in any way; collecting
5 debts beyond the statute of limitations and the
6 reselling of debts to debt buyers. Now, under the
7 current Department of Consumer Affairs'
8 regulations, for those that are licensed today, do
9 the current rules deal with these particular
10 problems?

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ANDREW EILER: Not as exactly as we
12 would want to have it done. That's why we propose
13 that we need the strengthening legislation that
14 would enable us to address those kind of issues.
15 The reselling of the debt is not expressly
16 covered. There's nothing that would bear a debt
17 buyer from reselling the debt to someone else.

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COUNCIL MEMBER GARODNICK: There
19 would be nothing that would bar somebody from
20 pursuing you again for the same debt that had
21 already been satisfied?

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ANDREW EILER: Not satisfied.
23 That's another question because you can end up
24 with situations where a consumer pays the debt and
25 it's not marked satisfied. The debt can be

1 transferred and then someone else tries to collect
2 it. Now what you need to do is establish that
3 this debt has been paid. And then you get into
4 this whole runaround in terms of trying to
5 establish whether or not all of the payments
6 you've made have covered or satisfied what's
7 outstanding. In order to do that you have to know
8 what the outstanding amount was. That requires
9 the documentation of what the debt is and so
10 forth. It's a whole host of things. What we
11 really want to focus on is that the information
12 needs to be provided and more clearly identified
13 what information needs to be provided to validate
14 the debt and the information that needs to be
15 supplied at the initial contact. Federal law
16 calls for validating the debt. It's a little hazy
17 in terms of what qualifies as validating the debt
18 and what the actual proof or evidence that you
19 need to supply for that. We want to make it clear
20 what information is needed to validate the debt.

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22 COUNCIL MEMBER GARODNICK: You have
23 raised a number of very positive strengthening
24 concepts here for this legislation such as:
25 setting forth what documentation is needed to

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provide to the consumer in the initial communication; machine-generated calls must leave a callback number to a phone that's answered by a human being; information provided on the statute of limitations and any debt payment schedules or settlements reached; translation services; barring the sale or assignment of debts that have been already satisfied; and a few others here. This is a legal question and I understand if we are not able to address this one today. Is it the position of the Department of Consumer Affairs that we have the jurisdiction to add all of these things into a local law?

ANDREW EILER: You're asking for a more definitive legal opinion and I don't want to go into that area right now. We can certainly discuss that issue in terms of what those jurisdiction qualifications or requirements would be. Preliminarily we consider that, in terms of how we could do it, those requirements could be part of collection practices that a collection agency licensed by us would have to follow. There is an area where it gets to be a thicket and that's between where you actually practice law and

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2 the lawsuit and collection practices, in terms of
3 where that line is and what you can do at that
4 point. I don't want to get specific because I'd
5 rather not try to define it.

6 CHAIRPERSON COMRIE: There are four
7 committees going on today and I see Council Member
8 Liu is trying to bounce back to his other
9 committee. Just to let everybody know, we had a
10 five-hour committee meeting yesterday and we were
11 scheduled to have another one Friday. Friday's
12 was cancelled. We almost had three committee
13 meetings this week, so I know my committee members
14 are a little grumpy with me. Council Member
15 Oliver Koppell is here from the Bronx and Council
16 Member John Liu. I just wanted to announce them
17 because I know they have to leave.

18 COUNCIL MEMBER GARODNICK: I thank
19 you all for putting this hearing in after what I
20 know was a marathon session yesterday. Just to
21 flag this as an issue which is the position of the
22 Department of Consumer Affairs is that we should
23 put in as much specifying data as to what needs to
24 be included in a notice to an alleged debtor as we
25 can legally require without being preempted by the

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2 federal government. Is that an accurate
3 statement?

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ANDREW EILER: I think that's an
accurate statement.

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COUNCIL MEMBER GARODNICK: Just to
go back to your definition because I think I
understand your point but I just want to make sure
that I do. On debt collection agency, your point
in the testimony was you want to be very careful
about people who are buying active debt just for
the purpose of collecting it on a routine on-going
basis for which there's no bouncing of checks, no
problems yet, versus the ones where there is known
to be a delinquency of some sort and somebody is
buying for the purpose of recovering knowing that
that is already the case. Is that the
distinction?

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ANDREW EILER: That is a clear,
clear distinction. Both under the federal and
under laws one of the exemptions for creditors is
the business of if you're buying it when the debt
is not in default. That is assumed to be a normal
business credit kind of transaction. You're
buying to collect. That's the difference. When

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2 someone purchases a debt where the consumer is
3 already in default, then the only purpose for
4 purchasing that debt is not to acquire the stream
5 of payments that result from the credit
6 transaction. You are now in a position of having
7 to compel payment of the debt that's already in
8 default. That's a critical distinction between
9 the two. The one is a normal course of negotiable
10 instruments or assignments and so on. Generally
11 speaking, these debt collection statutes cover the
12 activities of a collection agency and not the
13 originating creditor. The rules that we have,
14 some of them also apply to originating creditors.
15 We're not just limited in terms of the practices
16 that we cover, only collection agencies. We're
17 one of the few that really goes into that kind of
18 debt depth. The reason for that is simple. The
19 creditor who is the originator has an ongoing
20 relationship with the borrower. He is expected to
21 stay his hand because he wants that borrower to
22 continue to be a customer. So you're dealing with
23 customers rather than just somebody who is owed
24 money and you just want to get it back. When the
25 debt has been sold for the purpose of collecting

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2 it, the person buying it doesn't care about any
3 ongoing relationship. The only thing he cares
4 about is collecting the money. The originating
5 creditor might have reasons for dampening the
6 extent to which he pursues claims that he may
7 have. This other operator does not have those
8 inhibitions. That is one of the critical
9 distinctions between the debt buyer or the
10 collection agency and the originating creditor.

11 COUNCIL MEMBER GARODNICK: I think
12 you make an excellent point on the language issue.
13 We will, as you describe in your testimony, work
14 with you to try to tweak and see if we can come to
15 a point where it addresses the right issue here
16 and not the over broad or under broad and really
17 get it right. But I think that's not going to be
18 too much of a challenge, frankly.

19 ANDREW EILER: I don't either.

20 COUNCIL MEMBER GARODNICK: I
21 appreciate your suggestion on that. This is the
22 last thing I have, Mr. Chairman. Just give us a
23 sense from the perspective of DCA, the sort of
24 behavior that could result in the revocation of a
25 license. What are we really worried about here at

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2 the end of the day? What sort of practices either
3 have you seen or are looking to protect against so
4 that when somebody comes within the jurisdiction
5 of DCA that we will be able to more comfortably
6 regulate?

7 ANDREW EILER: It would be like
8 contacting the debtor at his place of employment,
9 contacting debtors late at night, or refusing to
10 or failing to provide documentation of the debt.
11 In other words, doing none of it or essentially a
12 pattern and practice of not complying the
13 regulations governing the activities of a debt
14 collector. It could be any number of things.
15 There's a lot of things that are in there. It
16 could be the calls, the information that needs to
17 be supplied, or accounting for the money. That's
18 another aspect of the situation. If the debt
19 collector collects the money on behalf of a
20 creditor they need to make sure that it's properly
21 credited so that the consumer eventually ends up
22 getting credit with the creditor for the payments
23 made. The list is about as long as my arm in
24 terms of the things that they need to do. If a
25 debt collector ignores them, that's when things

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2 happen.

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COUNCIL MEMBER GARODNICK: I'm

going to leave it there. I very much appreciate

he testimony that you've provided and of your

agency. I am confident that we'll be able to

address the very few concerns that you raised and

certainly are willing to discuss strengthening

this to the extent that we are able under the law

and our jurisdiction and all preemption rules.

Again, I thank the Chairman and I thank you very

much for your testimony.

ANDREW EILER: The commissioner

looks forward to working with you on all of this.

COUNCIL MEMBER GARODNICK: Thank

you.

CHAIRPERSON COMRIE: I look forward

to getting this done quickly and making sure that

whatever we do is within our rules and

regulations. Hopefully we can get it done before

the tax season is over. There are no other

questions. Thank you, Mr. Eiler. We'll see you

soon.

ANDREW EILER: Thank you.

CHAIRPERSON COMRIE: The next panel

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2 will be Eric Berman from the Commercial Lawyers
3 Conference, Arthur Winston from ACA International
4 and Barbara Sinsley from DBA International.

5 Whoever would like to go first, you have to turn
6 off the light for the mic to work. It's
7 counterintuitive.

8 ERIC M. BERMAN: Good morning, Mr.
9 Chairman, members of committee and the council.
10 My name is Eric Berman. I am president of the
11 Commercial Lawyers Conference of New York, which
12 is a bar association whose members represent
13 creditors who collect commercial and consumer
14 debts within the state of New York. The
15 Commercial Lawyers Conference feels strongly that
16 this amendment or these amendments are in
17 violation of constitutional law, outside the
18 powers of the Department of Consumer Affairs and
19 cannot be passed. I would like to discuss quickly
20 a couple of basic matters. Most of the law that
21 we have is included in the testimony that's being
22 handed out so I'll try to avoid some of that. To
23 understand debt collection you have to understand
24 that many people actually owe debts. Attorney
25 General Cuomo states on his website that it's

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2 important for you to understand that companies do
3 have a right to try to collect money owed to them.
4 In its economic report for 2009, the New York
5 State Assembly Ways and Means Committee noted that
6 as banks are unable to raise capital, they will be
7 unable to raise money. In addition, lending
8 standards have been tightened for some time and
9 have become even tighter despite actions by the
10 federal government and the Federal Reserve.
11 Without the ability to raise funds and to collect
12 the debts that they are owed, banks will be unable
13 to lend money, driving us down into an ever-
14 increasing spiral of recession, though hopefully
15 not into a full-fledged depression. The speech by
16 President Obama last night gave a lot of hope and
17 hopefully that will help take us out of the
18 situation we're currently facing. Many banks sell
19 all or part of their delinquent accounts to raise
20 money and meet capital reserve guidelines set by
21 the federal government. The more difficult debt
22 collection becomes, the lower the price banks can
23 expect which adds to their financial woes. As the
24 economy sank into an economic morass, the media
25 spotlighted debt collection as an area of

1 financial and social abuse. Their stories
2 incorporate anecdotes about the poor and disabled
3 being assailed by debt collectors. Consumer
4 advocacy publications do the same. Consumer
5 complaints are up, the portrayal of debt
6 collectors is down. The Federal Trade Commission,
7 which enforces the Federal Fair Debt Collections
8 Act, issues an annual report which includes the
9 number of complaints lodged against debt
10 collectors. However, no analysis of the
11 complaints is provided. What is left unsaid in
12 all of these publications and in the prior
13 testimony is that the number of debt collection
14 complaints is infinitesimal in comparison to the
15 number of contact debt collectors have with
16 consumers. In prior testimony we heard there were
17 approximately 326,000 lawsuits filed in New York
18 City civil courts and the Department of Consumer
19 Affairs received 1,092 debt collection agency
20 complaints. That's 326,000 lawsuits. There are a
21 lot more contacts between debt collection agencies
22 and consumers than that. There is another side to
23 debt collection that is rarely discussed. Debt
24 avoidance is flourishing. Professional debtors
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2 have sprung up, using false claims of identity
3 theft and the courts to avoid payment of their
4 outstanding debts. The Civil Courts have provided
5 debtors with check-off forms to use as answer and
6 discovery demands which go beyond legal
7 entitlement. Court clerks fill out the forms and
8 tell the debtors where to sign. Judges decide
9 cases on the merit and then at the request of
10 debtors sign orders vacating their own judgments.
11 A segment of the consumer bar uses frivolous
12 allegations of improper debt collection practices
13 to extort payment from collection agencies who are
14 forced to make business decisions to pay rather
15 than incur the cost of fighting baseless lawsuits.
16 New York's Legislature has changed New York's
17 garnishment laws to severely handicap creditors in
18 recovering the amounts that they are owed. Now
19 the city seeks to require licenses they cannot by
20 law administer. Into. 660 raises several
21 questions, the answers to which doom its passage.
22 First, does the city have the legal authority to
23 amend the Administrative Code of the City of New
24 York as proposed? Second, how will the proposed
25 amendments change current law? Third, what will

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2 be the real world impact of these changes? The
3 short answers are that this body does not have the
4 authority nor the power to amend the code as
5 proposed. That these amendments are
6 unconstitutional. That the net effect of these
7 amendments would be to add another layer of
8 administration to processes that already in place
9 and duplicate powers rightfully held by other
10 branches of government. Lastly, these amendments
11 will not help consumers. In regard to the
12 licensing of attorneys at law as debt collectors
13 or debt collection agencies, New York has a
14 unified court system. New York's Constitution
15 provides the chief judge of the Court of Appeals
16 is the chief judge of the State of New York and
17 the chief judge establishes standards and
18 administrative policies for general application
19 throughout the state. The power to admit,
20 regulate and disbar attorneys is held by the
21 Appellate Division of the New York State Supreme
22 Court. This power cannot be placed with the New
23 York City Department of Consumer Affairs, which is
24 a department of the executive branch, as this
25 authority is exclusive and inviolate and its

1 transfer would create a constitutional conflict
2 whose final determination has one possible
3 resolution, which is the keeping of the status
4 quo. I'll just bring to your attention a quote
5 from Association Supreme Court Justice Kennedy in
6 the matter of William J. Clinton, President of the
7 United States versus the City of New York. In his
8 concurring opinion, Justice Kennedy wrote,
9 "Separation of powers was designed to implement
10 the fundamental insight. Concentration of power
11 in the hands of a single branch is a threat to
12 liberty." The principle object of the statute,
13 which was to give President Clinton the right for
14 line vetoes it is true was not to enhance the
15 president's power to reward one group and punish
16 another, to help one set of taxpayers and hurt
17 another, to favor one state and ignore another,
18 yet these are its undeniable effects. The law
19 establishes a new mechanism which gives the
20 president the sole ability to hurt a group that is
21 a visible target in order to disfavor the group or
22 to extract further concessions. The Commercial
23 Lawyers Conference of New York believes that that
24 is exactly what these proposed amendments will do
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2 by placing such powers with the New York City
3 Department of Consumer Affairs. We also believe
4 that the intent of this amendment is disingenuous
5 at best. Everybody who does consumer debt
6 collection must send a validation notice in a
7 letter or some form of document to everyone from
8 whom they are attempting to collect. If that
9 letter is sent, that would place every person who
10 does debt collection under the jurisdiction of the
11 Department of Consumer Affairs as proposed in this
12 legislation. That power is over extensive and
13 totally inappropriate. Also, Chapter 64 of the
14 New York City Charter limits the powers of the
15 commissioner of Consumer Affairs from assuming any
16 set powers which are conferred on other persons or
17 agencies by law. As mentioned, attorneys are
18 governed by the Appellate Division of the Court.
19 The Attorney General of the State of New York
20 under the New York Debt Collection Practices Act
21 has the powers to investigate debt collectors.
22 The federal government, under the FTC, and the
23 federal attorney generals have the right to
24 investigate and police the Fair Debt Collect
25 Practices Act and these powers are unavailable to

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2 the city as proposed. The same happens to be true
3 with passive debt buyers as they're called, but we
4 have experts at this table who certainly can
5 address that better than I. Thank you.

6 CHAIRPERSON COMRIE: The next
7 person?

8 ARTHUR WINSTON: My name is Arthur
9 Winston. I'm here on behalf of the ACA
10 International, which is the American Collectors
11 Association, which is one of the larger, if not
12 the largest agency for debt collection agencies,
13 as well as attorneys that practice in that area.
14 I find some fault with the attempt here to extend
15 this licensing because the way it's phrased now,
16 as Mr. Berman mentioned, any law firm in the state
17 of New York who sends a demand letter and every
18 attorney before they start a suit must send a
19 demand letter to give the validation notice. At
20 one point the courts took the position that you
21 could include the validation in the summons and
22 complaint. That was dashed because the courts
23 then had decided that it would be overshadowing
24 the 20-day notice and many of the times to answer
25 the summons as against the 30-day notice and the

1 validation notice. As a result, today, and we
2 recommend it to other attorneys too, every single
3 attorney in New York or from out of state who has
4 a debtor in New York, will send a demand letter
5 before the institute suit. Under the wording of
6 your proposed revision that would cover any law
7 firm in the state and of course in the city that
8 sent a demand letter to a consumer. That firm
9 would be subject to immediate licensing, even
10 though that may have been only the single case
11 that he handled in the entire year. In the
12 statute, I don't think you want to include the
13 attorneys that are suing and are then prosecuting
14 to collect the debt. But when you look at the way
15 you've phrased it, you've included the word demand
16 letters in the second portion of the revision,
17 which would include every other attorney. As far
18 as passive versus active debt buyers, which was
19 mentioned in the prior testimony, I think that
20 distinction has to be made. A debt buyer buys a
21 debt, even if he buys defaulted debt and he does
22 nothing other than refer the cases out to an
23 agency and makes no effort to collect himself,
24 even though they are defaulted debt, he has
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2 absolutely no exposure to the consumer. He isn't
3 calling the consumer. He isn't writing the
4 consumer. He isn't answering any phone calls from
5 the consumer, except perhaps about payments if the
6 party decides to resume his payments. That would
7 be a passive debt collector. An active debt buyer
8 who buys defaulted debts and then makes phone
9 calls himself and then sends letters himself, then
10 certainly the ACA International is not objecting
11 to the licensing of that type of a debt buyer
12 because that debt buyer is engaging in collect
13 activities. He should be responsible to the
14 licensing in the State of New York. There are
15 many decisions in the courts that state that a
16 passive debt buyer is not defined as a debt
17 collector under the Fair Debt Collection Practices
18 Act. I think one of the decisions has gone up to
19 the Circuit Court of Appeals. It has been handed
20 down by them where they've stated that. This has
21 been pretty well established law across the
22 country that a debt buyer who does nothing and
23 doesn't contact the consumers and doesn't write to
24 the consumers is not a debt collector. If the
25 council wants to get some citations to that

1
2 effect, I'm sure that both I and Eric can furnish
3 them to you. This is pretty well standard
4 established law. For these reasons, the ACA is
5 very strongly opposed to including the passive
6 debt buyer within the realm of those who have to
7 be licensed. I would like to elaborate a bit on
8 something Mr. Berman said. Attorneys are
9 regulated probably more than any other profession
10 in the country. There are few states, very few,
11 that require any form of licensing in this area
12 for attorneys. Aside from the constitutional
13 question, attorneys in each state are regulated by
14 each of the courts that we practice before
15 whenever we bring any suits. The judge is the
16 closest regulator we have that keeps us where we
17 should be, if you know what I mean. In addition
18 of which, we also have a grievance committee,
19 which is a very active committee. And then we
20 have the bar associations themselves. These all
21 regulate attorneys and keep adding and adding to
22 regulation of the profession. To add in a
23 licensing here when the Fair Debt Collection
24 Practices Act clearly applies to the attorneys who
25 are regularly engaged in debt collection and are

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2 targets for all the consumer attorneys for
3 violations of the Fair Debt Collection Practices
4 Act, I mean I don't know whether I heard it
5 correctly but the gentleman before us wants to be
6 able enforce the causes of the Fair Debt
7 Collection Practices Act. He has got many, many
8 attorneys that are monitoring the performance of
9 debt collection attorneys on a continuing, ongoing
10 basis. So further regulation is not really
11 necessary. It's there and it's going to continue
12 to be there. Another problem with the debt buyers
13 is when an automobile is purchased, normally the
14 dealer signs the contract and then he sells it to
15 the bank. I do not think you do not want to put
16 every bank in the position of being licensed.
17 They are regulated very heavily. According to the
18 speech last night, they will be regulated even
19 more. At any rate, thank you very much.

20 BARBARA A. SINSLEY: Good morning
21 council members and members of the committee. My
22 name is Barbara Sinsley. I am General Counsel to
23 DBA International, formerly known as the Debt
24 Buyers Association. DBA International is a
25 nonprofit trade group comprised of over 586

1 professional debt buyers which are committed to
2 the education, integrity and professionalism of
3 the industry. With an emphasis on legal
4 compliance, we work alongside other trade groups
5 to ensure the fair and ethical treatment of
6 consumers. The members of DBA work to educate
7 consumers on financial literacy, while seeking
8 solutions and resolving the consumer's debt. Debt
9 buyers are in the unique position of often being
10 able to substantially discount the debt in
11 situations where, in many instances, the original
12 could not or would not discount the debt. In a
13 recent study by Price Waterhouse, it was found
14 that over \$40 billion in 2007 was returned to
15 businesses that extend credit by debt collectors.
16 This amount is estimated to benefit consumers by
17 saving the average American household \$359
18 annually, or for my 15-year-old, one shop to the
19 grocery store. Unfortunately, plaintiff's counsel
20 are often motivated by the attorney fee provisions
21 of the Fair Debt Collection Practices Act. Simply
22 put, the FDCPA was intended to be a shield to
23 protect consumers from abusive debt collection
24 practices. Unfortunately, well aware of the cost
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2 of settling a lawsuit is usually less than
3 defending the lawsuit, the FDCPA is frequently
4 used as a sword by the plaintiff's bar to pursue
5 legal fees in a meritless case. The FDCPA was
6 enacted with the purpose to eliminate abusive debt
7 collection practices, ensuring that those
8 collectors who refrain from using abusive debt
9 collection practices are not competitively
10 disadvantaged and promoting consistent state
11 action to protect consumers against debt
12 collection practices. DBA's constant concern is
13 notwithstanding its members' compliance and
14 educational initiatives, time and money which
15 could be spent assisting the consumers to resolve
16 the matters is instead being spent on defending
17 frivolous lawsuits. I appreciate the opportunity
18 to testify today with the proposed amendment to
19 the City Code as it relates to the definition of
20 debt collection agency and the potential licensing
21 requirement. I'm going to keep my comments brief
22 because I'd like to address some of the areas of
23 questioning that you asked to the Department of
24 Consumer Affairs. As you may know, there are two
25 types of debt collectors, which is active and

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2 passive. Active debt buyers purchase and collect
3 on defaulted consumer loans. Passive debt buyers
4 purchase debt and do not collect on it themselves
5 but instead hire licensed third party debt
6 collectors to collect the debts, or they use
7 attorneys. At some point, both active and passive
8 debt buyers may engage the attorneys to file the
9 suit after other efforts to collect the debts have
10 been exhausted. The distinction between active
11 and passive debt buyers has been noted by the
12 general counsel for the Department of Consumer
13 Affairs, Marla Tepper, in a letter dated March
14 7th, 2007 wherein she acknowledges that a debt
15 buyer merely purchases or acquires defaulted debt
16 but is not engaged in collection activities itself
17 does not require a license from the department.
18 Administrative Code 20-489 defines a debt
19 collection agency as a person engaged in business,
20 the principle purpose of which is to regularly
21 collect or attempt to collect debts owed to be due
22 to another. In enacting this statute, the City
23 Council itself sought to curb abusive practices of
24 debt collection agencies by requiring licensing of
25 those entities dealing directly with the consumer

1 public and the collection of debts.

2 Administrative Code section 20-488 is that

3 section. Thus, under the Administrative Code, a

4 debt collection agency is the entity engaged in

5 active debt collection. The key component noted

6 by Ms. Tepper and the City Council is abusive

7 collection practices needs to be addressed to

8 those who deal with the consumer public. This

9 component is adequately and currently addressed by

10 the current definitions of the City Code and the

11 licensing of third party debt collectors and debt

12 buyers as they deal actively with the consumer

13 public. In a March 9, 2007 press release from the

14 Department of Consumer Affairs of the City of New

15 York, Commissioner Mintz indicated that debt

16 buyers must be licensed if collecting from New

17 York City residents. In contrast, a passive debt

18 buyer does not deal or collect themselves with the

19 consumer public. As a silent owner of a consumer

20 debt, a passive debt buyers never engages in

21 direct activity. Although collection activity is

22 not defined in the New York City Code, the term

23 under section 5-76 of the New York City Code, debt

24 collection procedures is defined as any attempt by

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1 a debt collector to collect a debt. The Federal
2 Fair Debt Collection Practices Act defines debt
3 collector in part as any person who uses an
4 instrumentality of interstate commerce or the
5 mails in any business the principal purpose of the
6 collection of debts or one who regularly collects
7 or attempts to collect a debt directly or
8 indirectly due to another. Without an affirmative
9 attempt to collect a debt, no duties or
10 prohibitions attached to the FDCPA. For example,
11 the FDCPA requires the initial validation notice,
12 which we've discussed, which is a notice which
13 must be sent to a consumer within five days of the
14 initial communication. Similarly, the
15 prohibitions of the FDCPA contemplate an active
16 communication where a debt collector must conform
17 his or her conduct, such as not calling before 8
18 a.m. in the morning or after 9 p.m. at night, or
19 falsely misrepresenting the status of the debt.
20 The FDCPA generally restricts communications and
21 collect of the debt under categories of time
22 restraints, attorney representation, calls to
23 employment, calls to third parties and ceasing
24 communication. Thereafter, the FDCPA defines
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2 specific instances of harassment, abuse and what
3 is false and misleading. The issue of passive
4 debt buyers and licensing requirement has been
5 addressed by several states including Connecticut,
6 Maryland, Massachusetts and most recently
7 Tennessee, and I've attached their letters to my
8 comment. In Connecticut, in a letter dated June
9 29, 2008 from the Department of Banking to
10 Attorney John Elliott, the State of Connecticut
11 acknowledged that debt buyers did not need to be
12 licensed as they did not engage in the business of
13 collecting or receiving payments from others. In
14 Maryland, in a letter to Attorney Stuart Blatt,
15 who is a board member at DBA, the Department of
16 Labor, Licensing and Regulations in addressing the
17 licensing of passive debt buyers stated that since
18 it is common practice for the passive debt buyer
19 to retain a licensed debt collector to directly
20 engage in the collection of the purchased debts,
21 it is the position of the commissioner that a debt
22 buyer who purchases debt in default but is not
23 directly engaged in the collection of these
24 purchased debts is not required to obtain a
25 collection agency license. Similarly, in the

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2 State of Massachusetts, it has issued an opinion
3 posted on its website at the Department of
4 Consumer Affairs, opinion 06-060 which exempts
5 passive debt buyers from licensing, provided they
6 hired a properly licensed debt collector. And
7 lastly, just last week Tennessee issued a
8 clarification statement via the Tennessee
9 Collection Service Board regarding debt and
10 judgment purchases and passive debt buyers and
11 have posted on their websites that entities who
12 purchase debts or judgment or do not attempt to
13 collect a debt do not have to be licensed in the
14 State of Tennessee. I've also reviewed comments
15 filed in 2007 by the New York City Bar when this
16 bill was initially proposed. I'd like to clarify
17 an inaccuracy in their statement and discuss the
18 Case Law that Mr. Winston referenced. In the New
19 York City Bar comment, they referenced a case
20 called Schlosser versus Fairbanks Capital and
21 indicated that those that purchased defaulted debt
22 were automatically covered by the Fair Debt
23 Collection Practices Act, when in fact that case,
24 which is a 7th Circuit Case says that you have to
25 actively collect on the debt after you purchased

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2 the consumer debt to be covered under the Fair
3 Debt Collection Practices Act. The Schlosser case
4 and the Fairbanks case has been followed by many
5 other courts. In fact, I handled the Fairbanks
6 cases in Florida and the Florida courts have filed
7 the same. In summary, passive debt buyers do not
8 engage in affirmative conduct or collection
9 activities. There's no need to license an entity
10 that engages in no conduct. Without conduct to
11 monitor and regulate, there is no abusive
12 practices to curtail. I'd like to address
13 specifically some of the issues that came up with
14 the Department Consumer Affairs, starting with
15 what they are looking at when they are trying to
16 prevent abusive practices. Their subpoenas when
17 they do send them out and are investigating
18 consumer collection agencies look at such things
19 as the phone calls that are made, the letters that
20 are sent, the conduct of the collector. In
21 investigating those debt collectors that may be
22 abusing them, they are looking directly at what
23 they've communicated with the consumer. However,
24 with a passive debt buyer you wouldn't have any
25 consumer communication. Therefore you would have

1 nothing to investigate. Secondly, the DCA was
2 asked about proof of evidence in court
3 proceedings. We are working with Chief Judge Fern
4 Fisher on this matter and Clerk Carol Alt and
5 Ernesto Belzaguy in formulating affidavits which
6 would be a business chain or the hearsay exception
7 to the business records rule that would satisfy
8 the New York City Courts. So that is being
9 adequately addressed with the courts. The next
10 issue that was discussed by the Department of
11 Consumer Affairs was the ease of the licensing
12 with the department. It is not true that it is a
13 simple matter. Frankly, you have to first have
14 applied with the State of New York and have your
15 certificate of authority with the State of New
16 York before you can be given the grant to apply
17 with the city. To get a license with the State of
18 New York, you have to have passed their
19 requirements with the Department of Banking as to
20 the name of your entity. Secondly, once you do
21 apply with the City of New York, some of their
22 questions are quite burdensome, but talk about
23 your collection activity with consumers and that
24 would not apply to passive debt buyers. The next
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2 issue that the Department of Consumer Affairs
3 brought up was that the suit is oftentimes the
4 first communications with the consumer. That is
5 not true as well. Because even an attorney that
6 files a suit is considered a debt collector under
7 the Fair Debt Collection Practices Act. And as we
8 discussed, within five days of the initial
9 communication, the lawyer must send a validation
10 letter to the consumer which is specifically
11 outlined in the Fair Debt Collection Practices
12 Act, section 6092(g) and that lawyer must give the
13 consumer the name of the creditor to whom the debt
14 is owed, the amount of the debt, a right to
15 dispute the debt and a right to ask for
16 verification of the debt. So the suit is not the
17 first communication with the consumer. And the
18 consumer knows who owns the debt and they know who
19 the original creditor was. The next issue that
20 the Department of Consumer Affairs addressed was
21 issues of the statute of limitations. The statute
22 of limitations has been fully addressed by the
23 Federal Trade Commission and there are papers
24 available on their website at FTV.gov that it is
25 perfectly allowable to collect on consumer debts

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2 that are past the statute of limitations as long
3 as there is no threat of suit. So a collector
4 can't continue to collect on a debt as long as
5 they aren't threatening suit. They can send
6 letters. They can do phone calls but they can't
7 file the lawsuit, which would be the ultimate
8 remedy. It's the position of the DBA that it is
9 favorable to review these laws but also look at
10 really what is the conduct that you're attempting
11 to address. Really what you're attempting to
12 address here is abusive conduct against consumers.
13 So if you want to regulate abusive conduct what
14 you have to do is look at whose actually
15 conducting conduct. Passive debt buyers are not
16 conducting any activities with the consumer and
17 therefore should not be licensed. DBA thanks the
18 Council for the opportunity to discuss this and
19 we'd like to be included in any further
20 discussions about this and are able to provide any
21 other information that the Council might request.

22 CHAIRPERSON COMRIE: I want to
23 thank the three of you for coming today. I'm sure
24 Councilman Garodnick has a lot of specific
25 questions. I just want to know where Lutz,

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Florida is.

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BARBARA A. SINSLEY: Lutz, Florida is about two miles north of Tampa.

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CHAIRPERSON COMRIE: Tampa?

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BARBARA A. SINSLEY: Yes. Real estate is a little cheaper up there.

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COUNCIL MEMBER GARODNICK: Thank you, Mr. Chairman. First of all, thank you all for your testimony. I want to just follow up on a couple of points and make sure that I understand precisely where you're coming from on some of these issues. It sounds to me like we're making a distinction here, as of course we do in the legislation, between active and passive debt buyers. Let me just start with Ms. Sinsley. Your position is that a passive debt buyer who has no contact with an alleged debtor should not have to be licensed by the Department of Consumer Affairs. Is that correct?

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BARBARA A. SINSLEY: That's correct.

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COUNCIL MEMBER GARODNICK: And that also, Mr. Winston, was your position too. Is that correct?

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ARTHUR WINSTON: Yes.

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COUNCIL MEMBER GARODNICK: And

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also, Mr. Berman, the same?

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ERIC M. BERMAN: Yes.

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COUNCIL MEMBER GARODNICK: Yes on

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all fronts. Let's take the example of that debt

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buyer referring a case to a debt collector. It is

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your view that that debt collector should be

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licensed by the Department of Consumer Affairs.

11

BARBARA A. SINSLEY: Yes.

12

COUNCIL MEMBER GARODNICK: Is that

13

a yes, sir?

14

ARTHUR WINSTON: Yeah. I mean, if

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he's required to be licensed by the State of New

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York and he's collecting in New York, then yes he

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has to be licensed.

18

COUNCIL MEMBER GARODNICK: Has to

19

and should be?

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ARTHUR WINSTON: Yeah.

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COUNCIL MEMBER GARODNICK: Mr.

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Berman?

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ERIC M. BERMAN: That debt

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collector is within the authority of the

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Department of Consumer Affairs to be licensed and

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then should be licensed.

COUNCIL MEMBER GARODNICK: I'm
sorry. So you said if?

ERIC M. BERMAN: No. He should be
licensed because the Department of Consumer
Affairs does have the power to license a debt
collector who collects in New York City.

BARBARA A. SINSLEY: I would add a
caveat. With the exception of the exemption of
attorneys which is currently in the code.

COUNCIL MEMBER GARODNICK: So it's
all of your views that the DCA has the power to
license debt collectors collecting in New York
State. Is that right?

ERIC M. BERMAN: Collecting in New
York City.

COUNCIL MEMBER ARROYO: Collecting
in New York City.

ERIC M. BERMAN: But that, as Ms.
Sinsley just mentioned, and I forgot to, that does
not include attorneys who are licensed to practice
in New York.

COUNCIL MEMBER GARODNICK: I'm
going to get to that one in a second. I just

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wanted to understand pure debt collectors.

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ARTHUR WINSTON: Connecticut has a licensing law and they license out of state and not necessary in state. I was involved in a litigation over that particular law for the National Association of Retail Collection Attorneys. Do you know of more that two or three?

ERIC M. BERMAN: That require out of state attorneys?

ARTHUR WINSTON: Yes.

ERIC M. BERMAN: Maryland, Delaware, Florida and there are a few others.

COUNCIL MEMBER GARODNICK: States that require that if you're an out of state attorney that you must be licensed locally.

ARTHUR WINSTON: If you distinguish between out of state attorneys an in state attorneys, that's a different situation.

COUNCIL MEMBER GARODNICK: So you think we should make that distinction? This is first a question for Mr. Winston and then, Mr. Berman, we'll give you a chance.

ARTHUR WINSTON: That distinction has been used in some states.

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2 COUNCIL MEMBER GARODNICK: Do you
3 think we should be making that distinction here?

4 ARTHUR WINSTON: Well I don't think
5 you should be licensing any attorneys because most
6 of the states, the great majority of the states do
7 not license attorneys for the simple reason that
8 they're so heavily regulated as a profession by
9 the court systems of each state. You're
10 encroaching upon the court systems and the state
11 appellate courts and everything and their
12 grievance committees and you're encroaching on a
13 whole area which has been so thoroughly utilized
14 by the consumers and everybody else that you're
15 just adding another level that is really not
16 necessary.

17 COUNCIL MEMBER GARODNICK: So your
18 position is that it doesn't matter where the
19 lawyer is coming from they shouldn't have to be
20 licensed because lawyers are over licensed as it
21 is?

22 ARTHUR WINSTON: That's true.

23 COUNCIL MEMBER GARODNICK: Let me
24 just confirm; I think that's also the position of
25 Mr. Berman. Without my editorial, I really was

1
2 just trying to understand it. But the point is
3 that if a passive debt buyer refers a case to a
4 lawyer for the purpose of debt collection, you
5 would say the lawyer should not be licensed here.
6 Is that right?

7 ERIC M. BERMAN: That's correct,
8 particularly if that lawyer is already licensed to
9 practice law within the State of New York.

10 COUNCIL MEMBER GARODNICK: And you
11 would make the distinction that if they were not
12 licensed to practice in the State of New York that
13 perhaps they should be required to be licensed by
14 the DCA.

15 ERIC M. BERMAN: I agree with Mr.
16 Winston that if a lawyer is licensed to practice
17 in his own jurisdiction he should not have to be
18 licensed in the city or the State of New York.
19 However, this is a practice that is active in
20 other places. I would have trouble defending that
21 position I think within New York City.

22 COUNCIL MEMBER GARODNICK: I'm
23 sorry. You would have trouble defending which
24 position?

25 ERIC M. BERMAN: In other words, an

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2 out of state lawyer who seeks to collect in New
3 York City who is not licensed to practice law
4 within the State of New York, it may be
5 appropriate to require that lawyer to be licensed.

6 COUNCIL MEMBER GARODNICK: So you
7 hinge it on somebody who is actually a licensed
8 lawyer in the State of New York.

9 ERIC M. BERMAN: That's correct.

10 COUNCIL MEMBER GARODNICK: The last
11 question on this particular line. I just want to
12 make sure I understand. If the passive debt buyer
13 is going after the debtor directly, they are no
14 longer passive and they should be licensed
15 according to all of you. Is that correct?

16 BARBARA A. SINSLEY: Yes. Let me
17 give you an example. The old company that I was
18 previously with was Asset Acceptance. That's the
19 company that we did have an administrative appeal
20 with the City of New York and the Department of
21 Consumer Affairs on whether or not an active debt
22 buyer should be licensed. The opinion that came
23 out from the administrative law judge was that
24 since Asset Acceptance was an active debt buyer
25 collecting their own debt, they purchased it in

1
2 default and held it and didn't collect for anyone,
3 but just on their own debt, that they should be
4 licensed. So the answer is yes.

5 COUNCIL MEMBER GARODNICK: Mr.
6 Winston, the same? Yes, it's what the law says
7 and that's the way the law should be. Is that
8 correct? That's a yes from Mr. Winston. Mr.
9 Berman?

10 ERIC M. BERMAN: It's a yes.

11 COUNCIL MEMBER GARODNICK: I think
12 I understand. You all are making the specific
13 distinction. The one area where you believe the
14 passive debt buyer should not have to be licensed
15 is the circumstance in which they're receiving it
16 to a lawyer.

17 ERIC M. BERMAN: Or to a debt
18 collection agency.

19 COUNCIL MEMBER GARODNICK: I'm
20 sorry. Or to a debt collection agency, which
21 would by all of your testimony, would have to be
22 licensed and should have to be licensed.

23 ERIC M. BERMAN: Correct.

24 COUNCIL MEMBER GARODNICK: So the
25 circumstance that I just want to hone in on is the

1
2 situation where you have a debt buyer and decides
3 they're going to pursue a New York City resident.
4 They refer the case to a lawyer who is licensed to
5 practice in New York State. Let's make it the
6 simplest scenario. So it's a member of the New
7 York Bar who has all of the attendant ethical
8 responsibilities and all of the rest of it. Your
9 view is that that lawyer should not have to be
10 licensed by the Department of Consumer Affairs
11 based on the fact that there are already existing
12 regulations which govern that attorney's practice?

13 ARTHUR WINSTON: FPCPA.

14 ERIC M. BERMAN: It's even stronger
15 than that. The Department of Consumer Affairs has
16 no power nor right to require the licensing of a
17 lawyer who is admitted to practice law in New
18 York.

19 COUNCIL MEMBER GARODNICK: Let's
20 say that lawyer was not doing anything in court.
21 Let's say the lawyer was operating a carriage
22 horse around Central Park. Would the Department
23 of Consumer Affairs have the power to license them
24 then?

25 ERIC M. BERMAN: If the guy's a

1
2 driver of a carriage horse or a taxi and he's
3 doing it to supplement his income as the economic
4 woes increase, if a license is required, you're
5 not requiring him as a lawyer to be licensed.
6 You're requiring him as a carriage driver.

7 COUNCIL MEMBER GARODNICK: And if
8 times are such as you describe and he decides to
9 open up a fruit cart, the same situation, right?
10 He would be licensed as a fruit vendor by the
11 Department of Consumer Affairs.

12 ERIC M. BERMAN: I understand what
13 you're trying to drive at.

14 COUNCIL MEMBER GARODNICK: You can
15 just answer that question because I think it's a
16 very easy one. The answer is what?

17 ERIC M. BERMAN: The answer is if
18 he does sell fruit that's fine. But a lawyer can
19 collect debts.

20 COUNCIL MEMBER GARODNICK: The
21 answer is that if he is selling fruit on the
22 street he is able to be licensed by the Department
23 of Consumer Affairs. Is that correct?

24 ERIC M. BERMAN: That is correct.
25 But there is a major distinction here. I refer

1
2 you to the Code of Professional Responsibility
3 which provides that the practice of law means the
4 giving of legal advice or counsel, providing legal
5 representation. A lawyer can serve as an advisor
6 to a client, rule 2.1, or as an advocate in non-
7 adjudicative matters, rule 3.9. Lawyers have
8 responsibility for the conduct of subordinate
9 lawyers, rule 5.1 and the conduct of non-lawyers
10 they employ, 5.3. I can go on. It's in my
11 papers.

12 COUNCIL MEMBER GARODNICK: I see it
13 right here on page 7. I have no reason to doubt
14 any of those disciplinary rules or other rules
15 here. In fact it's my understanding of the rules.
16 Let's just give you an example then. Let's say
17 the lawyer, instead of just filing papers, instead
18 of hiring subordinate lawyers, instead of just
19 providing non-legal services, simply put, whatever
20 that may be, let's say they start making phone
21 calls in the middle of the night. Should that
22 count as something which is within the context of
23 debt collect practices, or is that something which
24 is just advocacy as a lawyer for a client?

25 ERIC M. BERMAN: That violates the

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2 Fair Debt Collection Practices Act. The person
3 who is harassed in such a manner would have the
4 right to bring that to the Grievance Committee of
5 the Bar or to the attorney general for that
6 purpose. There's no need to attempt to
7 incorporate that into the City of New York.

8 COUNCIL MEMBER GARODNICK: So your
9 view is that a lawyer is barred today from certain
10 practices which are already set forth under
11 federal law?

12 ERIC M. BERMAN: Absolutely.

13 COUNCIL MEMBER GARODNICK: Your
14 feeling is there is no circumstance in which a
15 lawyer becomes anything but a lawyer in the
16 context of debt collection?

17 ERIC M. BERMAN: No. However, you
18 have to remember that when an owner of debt comes
19 to a law firm for collection purposes, they are
20 coming to us and we have a requirement to review
21 the materials. If the debt is out of statute, we
22 cannot sue on it. You heard testimony regarding
23 the rest of it before. If we feel that the debt
24 is incorrect, or whatever, we review it, we try to
25 confirm it. We still have the power to go to

1 court, even though we prefer not to just for the
2 added expense, plus the pain in the neck it is for
3 the consumer as well as the debt buyer, or
4 creditor as the case may be. But the power to go
5 to court is still there within that law firm.
6 Whereas, the power to go to court is not there in
7 that carriage driver's situation or in that street
8 vendor's situation unless he hires a lawyer. We
9 have lawyers who never go to court. They could be
10 trust and estates people. They could be people
11 who do contract law. Even a lot of the personal
12 injury lawyers draft documents, they don't go to
13 court. So the actual act of litigating in court
14 is not the determinate. The ability to litigate
15 in court, which the lawyer has may be the
16 determinate. If you can see what that distinction
17 is. So if a creditor comes to my law firm and
18 says they want me to collect that debt, then
19 decisions are going to be made. I must send out
20 that letter required by the Federal Fair Debt
21 Collection Practices Act with the validation
22 notice. I'd like to also point out in regard to
23 that, that by the time it comes to us, the debtor
24 has been contacted by the original creditor. The
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2 debtor has rights under the Fair Credit Billing
3 Act under the Electronic Funds Transfer Act and
4 six other acts to which he can object to the debt
5 which is in the billing statements or what the
6 creditor is saying. So by the time it comes to us
7 there has been a lot of possible contact. We send
8 out the validation letter, which includes the
9 information Ms. Sinsley mentioned. If the debtor
10 wants us to validate or verify the debt, we then
11 have to stop all action, including legal action,
12 until we do so. If we cannot do so, then we
13 cannot move forward.

14 COUNCIL MEMBER GARODNICK: I'm not
15 going to ask you all unless you want to address it
16 at the end here as to where the 80% defaults rate
17 is coming from, the \$800 million in claims that
18 are given against New Yorkers every year and why
19 there are so many of these cases that are
20 currently in court. There are 300,000 of them
21 according to the report which prompts this hearing
22 today. That's an issue which I think we have not
23 heard from you all on.

24 ERIC M. BERMAN: Can I just address
25 that for a second?

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COUNCIL MEMBER GARODNICK: Sure.

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ERIC M. BERMAN: I read the Urban Justice Report and I think that they write a fine report. However, in the New York Law Journal shortly after that report came out, the court itself noted some discrepancies. I apologize that I don't have the article and I don't remember all of it. But there is no doubt that there are a lot of lawsuits. There is no doubt that there is a lot of debt owed. We live on credit. It has been mentioned in a variety of places. Some people either choose to or are unable to repay the credit that they have used, so there are lawsuits.

COUNCIL MEMBER GARODNICK: The question is about the defaults.

ERIC M. BERMAN: But we question a lot of people with whom we have contact as to why they did or did not go to court. A lot of responses, and this is anecdotal, was that they knew they owed the debt, so they weren't going to lose a day's work going to court to try to fight something they owed. That's also there. It's not a matter that they don't know what's going on. They don't want to miss that other day of work.

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2 They also know if they contact us there are
3 millions of cases out there, most of which, that
4 are resolved or settled without the need of court.

5 COUNCIL MEMBER GARODNICK: We're
6 going to have an opportunity to hear from other
7 lawyers who may not share precisely you view. Let
8 me just ask one more angle on who should be
9 licensed and who shouldn't because I think we took
10 it through very clearly on passive debt buyers
11 going after a debtor themselves. Then they're not
12 passive and they should be licensed. A debt buyer
13 referring it to a debt collector, the debt
14 collector should be licensed. A debt buyer refers
15 to a lawyer, the lawyer, in your view, should not
16 be licensed, except maybe if it's an out of state
17 lawyer, reserving the right to take that view.
18 The last question that I wanted to understand is
19 what happens if you have a lawyer who buys the
20 debt and they want to collect it for themselves?
21 Should the be licensed under the DCA's rules?

22 ERIC M. BERMAN: In the State of
23 New York there are some legal issues regarding
24 lawyers who buy debt. That's a whole other topic.
25 There's regulation under State Law that deals with

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2 that. I cannot buy a debt in the name of my law
3 firm, for instance. If I wish to set up a
4 separate company and there's arm's length
5 transactions and this sort of thing.

6 COUNCIL MEMBER GARODNICK: If
7 you're finished and Mr. Winston can start by
8 speaking into the microphone. I'm not sure I
9 understand the answer to that question, but we'll
10 give Mr. Winston a chance.

11 ARTHUR WINSTON: There's a law on
12 the book where attorneys can't buy debts in order
13 to sue. It's been there for like 50 or 100 years
14 or more. I'd like to make one comment. Why don't
15 you give credit to the fact that maybe all of
16 these so-called defaults where they don't appear
17 is because the attorney has been reviewing the
18 debts, the debts are valid and the people owe the
19 debts. So give credit maybe to that the attorneys
20 are doing their job and only suing on valid debts
21 and that's why the debtors don't appear. When
22 they do have a dispute over the debt and they do
23 feel they don't owe it, believe me, they come to
24 court.

25 COUNCIL MEMBER GARODNICK: Mr.

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2 Winston, just to understand that point then, you
3 are of the view that of the 300,000 cases that are
4 brought against New Yorkers every year, you feel
5 rather confident that they are hitting their
6 target. That the people who are supposed to be
7 served are. Is that correct?

8 ARTHUR WINSTON: Yeah.

9 COUNCIL MEMBER GARODNICK: And then
10 let me just understand that you're also of the
11 view that people who are not turning up to court
12 to defend themselves are doing so primarily
13 because they feel that they actually owe the
14 debts.

15 ARTHUR WINSTON: Yeah. If more
16 people were disputing the debt then you might
17 argue that the more people that are disputing
18 debts the attorneys are not doing their job.

19 COUNCIL MEMBER GARODNICK: And the
20 absence of dispute says to you that they have
21 accepted the claim and it's not for any other
22 reason?

23 ARTHUR WINSTON: If they know they
24 owe then why are they going to court? They'd have
25 to take a day off from work.

2 COUNCIL MEMBER GARODNICK: What are
3 your suspicion on the folks in the 300,000 cases?
4 Do you think that they are represented by counsel?

5 ARTHUR WINSTON: Not being
6 represented by counsel?

7 COUNCIL MEMBER GARODNICK: Are they
8 being represented by counsel do you think?

9 ARTHUR WINSTON: Are you talk about
10 the 300,000 cases that have been started suit?

11 COUNCIL MEMBER GARODNICK: Yeah.

12 ARTHUR WINSTON: Well, if you owe
13 the debt then I assume they do not retain counsel.
14 It's when you don't owe the debt that you need
15 counsel.

16 COUNCIL MEMBER GARODNICK: You're
17 making the ultimate outcome of the case here. I
18 really am just curious to get your impression of
19 where things stand out there in world. From what
20 I'm hearing from you it is that you believe that
21 people don't turn up to court because they believe
22 they actually owe it.

23 ARTHUR WINSTON: I think the
24 greater majority is that reason.

25 COUNCIL MEMBER GARODNICK: I'll

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2 leave it there.

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ARTHUR WINSTON: But I'm sure there are exceptions.

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COUNCIL MEMBER GARODNICK: I think I hear you clearly. The point about license fee and obligations I just wanted to clarify it. For everybody's information here, the license fee for DCA is \$75. It's a two-year fee. I wanted to clarify that since DCA had said it might have been a few hundred. It's not, it's \$75. I also just wanted to take issue with the idea that there is some sort of a looming constitutional crisis as a result of this legislation. I don't believe that. I think that, Mr. Berman, by your own comments about possibly being able to license certain attorneys from outside the state, I think it sort of does away with that argument. I very much do appreciate your insights. The one, Mr. Winston, that you mentioned, which was consistent with the DCA's point about folks who are buying debt that is ongoing but it's not actually for the purpose of any absence of payment but rather just to service the accounts, we've now heard a couple of times. We will certainly take that under

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2 advisement and everything that you've said. I
3 thank the Chairman for all the time that he
4 afforded me.

5 CHAIRPERSON COMRIE: Thank you. I
6 want to thank the panel for coming. I appreciate
7 you taking the time to be here.

8 BARBARA A. SINSLEY: Thank you.

9 ERIC M. BERMAN: Thank you.

10 ARTHUR WINSTON: Thank you.

11 CHAIRPERSON COMRIE: We're supposed
12 to be out of the room by 1 o'clock. In order to
13 do that we're going to ask everyone to limit their
14 comments from here on in to three minutes, if
15 possible. I'm sorry. I don't normally want to do
16 that but we really don't have a choice. The next
17 panel is Robert Martin from DC 37, Melvin
18 Billings, Harvey Epstein from the Urban Justice
19 Center and HaQuyen Pham from the Urban Justice
20 Center. If you have copies of your statements,
21 you can hand them to the sergeant.

22 ROBERT A. MARTIN: Good afternoon.
23 My name is Bob Martin. I'm the Association
24 Director of District Council 37 Municipal
25 Employees Legal Services or MELS. I'm testifying

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2 today on behalf of DC 37 in support of the
3 legislation before you. MELS provides legal
4 services to some 125,000 city workers and 20,000
5 retired city employees and their dependants. Our
6 lawyers give representation in a range of legal
7 matters, including consumer and debt cases. I
8 also not that in a prior life I served as general
9 counsel at the Department of Consumer Affairs for
10 seven years, and thus have experience in the
11 regulation of debt collection agencies under DCA's
12 licensing statute. Obviously the debt collection
13 industry has evolved. The computer age has made
14 it viable for companies to buy and sell consumer
15 debts for pennies on the dollar or less and then
16 try to collect. You'll hear from others and you
17 can look at my written testimony for our scenarios
18 of how consumers are harmed by what has happened
19 in the collect industry. I can tell you that our
20 members, day in and day out, hundreds of times a
21 year are sued by debt buyers who are attempting to
22 wrongfully collect debts, to collect monies that
23 they have no right to collect. It is really true
24 that the debt buyers collect debt, or attempt to,
25 that's well beyond the statute of limitations.

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2 That's just one problem. In my written remarks I
3 put in one of my favorite quotes from Woody
4 Guthrie and I hope you take a look at it. It's
5 the line about, "Some will rob you with a six-gun,
6 some with a fountain pen." Well, when I was at
7 DCA we saw some of the brazen collection
8 activities, and today I think we're even well past
9 the fountain pen. Collection agencies make money
10 because of the changes with having to deal with
11 computers. That's really what happens. I would
12 submit to you that there's a lot of bad stuff out
13 there that happens to the working people that my
14 office represents. Our members are really lucky
15 because if they come to us they have a lawyer.
16 When a debt buyer brings a lawsuit and we put in
17 opposition and we ask for documentation of the
18 debt, the lawsuit goes away. It disappears. The
19 debt buyers make money on the cases where they get
20 a default judgment. The real victims are the
21 people who never get served because they're served
22 at an old address where they haven't lived in five
23 years, et cetera. The proposed amendment is an
24 important step to close the loop so that DCA has
25 full authority in the collection industry. I've

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2 heard some misleading information from the debt
3 buyer industry. It's really pretty simple. The
4 definition in the City Law ought to be consistent
5 with the federal act. What I would say is that if
6 you're a debt buyer plaintiff and your name is on
7 a caption then you ought to have a license from
8 the city. The biggest single rationale for this
9 amendment is to enable DCA to perform
10 investigations of debt buyers and to bring cases
11 against those who violate the law. Hopefully
12 that's what will happen. I do note for you that I
13 went on this morning to the website that has
14 administrative law judges decisions and I didn't
15 see any for the past 12 months in cases that went
16 to decision in the DCA administrative tribunal.
17 In these tough economic times I applaud you for
18 bringing this legislation to the City Council.
19 You are doing a service to low-income and working
20 New Yorkers. There is a case, by the way, that
21 you ought to know about. It's called Aponte
22 versus Ray Chuck, which completely dispels the
23 myth that lawyers in New York are only subject to
24 regulation by the grievance committee. I can give
25 you the site. Thank you.

MELVIN BILLINGS: Good afternoon.

My name is Melvin Billing. I'm 60-years-old. I am a Vietnam vet. I am disabled due to a work-related injury in 2004. I survive on Social Security Disability and workers compensation. I was sued by an unlicensed debt buyer company. The first time I even knew that I had been sued was when my bank account, which contained only workers compensation and Social Security benefit, was restrained. While my bank account was frozen, I had trouble obtaining any information about the company and my life was turned upside down. I had no money to eat, to wash my clothes or to pay my bills. I did not understand who was suing me or why. I had never heard of the company Rushmore Recoveries X. They never wrote me a letter or informed me of anything, and yet they expected me to just believe them and that I owe them money and that I would give them my Social Security check. I found later that this company buys people's debts and then hires a law firm to sue on their behalf. They have sued thousands of other New Yorkers. Finally, with help from MFY Legal Services' attorney, I was able to resolve the

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2 problem. But I do not think other New Yorkers
3 should have to go through what I went through. I
4 believe the City Council should regulate these
5 kinds of companies so they can investigate when
6 there are problems and so they can fine them or
7 take away their license if needed. Thank you for
8 your time.

9 HAQUYEN PHAM: Good afternoon. My
10 name is HaQuyen Pham. I am the intake and
11 outreach coordinator at the Urban Justice Center
12 and I am testifying on behalf of Maria V. Ferrer,
13 who is one of our clients. I'm a resident of
14 Brooklyn, New York and a client of the Urban
15 Justice Center's Community Development Project.
16 I'm submitting testimony in support of the debt
17 licensing bill because I believe this is an
18 important law that will protect many low income
19 New Yorkers like myself. If this law was
20 currently in effect I would have had somewhere to
21 go to report the abusive debt collection
22 activities which I have been subjected to by debt
23 buyers collecting debts in New York City.
24 Instead, I was the victim of these aggressive and
25 abusive tactics for over a year before I learned

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2 of my rights and sought the free legal services of
3 the Urban Justice Center. My story begins with
4 the simple fact that I have a common name. Over a
5 year ago, a debt buyer began garnishing my wages
6 to pay a debt that was not mine, but rather
7 belonged to a different Maria Ferrer who lived in
8 the Bronx and had a different Social Security
9 number than I. I also learned that two other
10 cases have been brought against this other Maria
11 Ferrer, who lives on Hughes Avenue in the Bronx.
12 I have lived in Park Slope Brooklyn for nearly my
13 entire life and never have resided on Hughes
14 Avenue in the Bronx. But somehow, this fact was
15 overlooked by the debt buyer, the county marshal
16 and all other parties who were involved in the
17 garnishing of my wages. After attending a
18 consumer debt clinic run by the Urban Justice
19 Center, I learned of my rights. I also learned
20 that in two of my cases, the debt buyer was either
21 not licensed or had not alleged a license in their
22 pleadings as required by law. The notice of
23 garnishment I received bears a different address
24 and different Social Security number than my own.
25 But somehow the debt buyer, Metro Portfolios, was

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2 able to garnish my wages for over a year. When I
3 submitted my order to show cause to vacate this
4 judgment with the assistance of the Urban Justice
5 Center, the debt buyer's counsel then submitted an
6 Affirmation in Opposition to my order to show
7 cause. Because they claimed that I was simply
8 attempting to "forestall the payment of monies due
9 and owing to" Metro Portfolios. If I had not had
10 the advice and counsel of the Urban Justice
11 Center, I would not have known what to do. I
12 spent several days going back and forth to the
13 Bronx from Brooklyn where I live and work in my
14 efforts to clear my name. Ultimately, I succeeded
15 and have been working to clear the negative and
16 mistaken information from my credit report. Days
17 after the judgment against was vacated, I learned
18 of another judgment being mistakenly entered
19 against me by another debt buyer. This debt
20 buyer, LR Credit 15, was able to get a default
21 judgment on July 22, 2008 against the same Maria
22 Ferrer of Hughes Avenue in the Bronx, but then
23 sought to collect from me. I have been back and
24 forth to the Bronx several times already and must
25 return for my hearing on March the 4th. If this

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2 law were in place, I would have been able to go to
3 the Department of Consumer Affairs where I could
4 have filed a complaint against both Metro
5 Portfolios and LR Credit for seeking to collect
6 the money from me to pay for a judgment against
7 another person. Thank you.

8 HARVEY EPSTEIN: Good afternoon.
9 Thank you Councilman Comrie for the opportunity to
10 testify here today. My name is Harvey Epstein.
11 I'm from the Urban Justice Center Community
12 Development Project. The Urban Justice Center
13 serves the city's most vulnerable residents
14 through a combination of direct legal services,
15 systemic advocacy, community education and
16 political organizing. The Community Development
17 Project of the Urban Justice Center formed in
18 September 2001 to provide legal, technical,
19 research and policy assistance to grassroots
20 community groups engaging in a wide range of
21 community development efforts through New York
22 City. Our work is informed by the belief that
23 real and lasting change in low-income urban
24 neighborhoods is often rooted in the empowerment
25 of grassroots community institutions. I'm here to

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2 urge you to support Council Member Garodnick's
3 proposed legislation Intro. 660. We've heard
4 today that the Office of Court Administration
5 supports this bill. It helps them clarify what
6 they need to, what they need to in the court. The
7 Department of Consumer Affairs supports this bill.
8 It's an important support for them in regulating
9 the consumer industry. I want to just talk about
10 this distinction between passive and active debt
11 buyers because I think it's a false distinction.
12 Everyone acknowledges that "active" debt buyers
13 should be regulated. But the debt buying industry
14 says people who are passive don't need to be
15 regulated. But there's nothing passive about
16 their activities. They go out and buy debt. They
17 hire an agent to act on their behalf. They hire a
18 lawyer to represent them. They collect any debt
19 that comes back to them as profit from their
20 initial debt buying. They may not get their hands
21 dirty by the day-to-day phone calls that they're
22 empowering their agents to do, but they're clearly
23 involved in every step of the process. They tell
24 their agents this is how much money we have for
25 this. You can hire a process server for \$3 per

1 case. That's why we're talking about suer
2 service. They say well hire the lawyer, but we
3 give you 30,000 cases and we're only going to pay
4 you \$100 a case. There's 80% default rates in the
5 court system. They hire agents and tell them to
6 collect as much money as possible. That's why we
7 see abusive debt collection practices. Our client
8 who couldn't stay today, we had Miss Pham testify
9 on behalf of. Another client, Mr. Yurigan
10 [phonetic] who was here earlier and he couldn't
11 stay. All the clients will attest to these
12 problems. It starts with the debt buyer and ends
13 with the debt buyer. They set the wheels in
14 motion. They set the system. Let's use New York
15 as an example. You bought a building here. You
16 own the building, so you hire a managing agent and
17 you hire a lawyer, but then you're really not
18 involved. So the city shouldn't regulate you.
19 There's faulty wire, it's not your fault. There's
20 a fire in your building, you have no
21 responsibility. There's problems going on, it's
22 not your obligation. The City wouldn't say that.
23 The City says the landlord sets the wheels in
24 motion. The debt buyers set the wheels in motion.
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2 We need to regulate them. DCA needs the power to
3 do that. We're here to support the, doing that.
4 The one last thing I want to say is that we don't
5 think we bill needs to slow down. I appreciate
6 Council Comrie saying we want his done by April.
7 I appreciate DCA making suggestions. We're happy
8 to work with them to move this forward. We're not
9 in the position to say that this can't go forward
10 within the next few months. We don't want their
11 suggestions to slow this bill down. We're happy
12 to work with them and see what we can incorporate.
13 But if there's another bill or there are
14 regulations that they want to introduce, we're
15 happy to be behind them on that. But this bill
16 should go forward with some tweakings, as
17 Councilman Garodnick laid out earlier. Thank you.

18 CHAIRPERSON COMRIE: Thank you.

19 Ma'am, are you testifying? Council Member
20 Garodnick? Did I mention Council Member Stewart?
21 We've been joined by Council Member Kendall
22 Stewart. He's been here a while.

23 COUNCIL MEMBER GARODNICK: Thank
24 you, Mr. Chairman. I just want to focus on what
25 we heard from the last panel and give you a chance

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2 to respond to it, Mr. Epstein, or anybody who
3 wishes. The rationale for not requiring lawyers
4 to be regulated when engaging in debt collection
5 practices was, as I understood it from the last
6 panel, because they're already subject to all of
7 the various ethical rules and responsibilities as
8 members of the New York State Bar. Do you think
9 that that is accurate and fair? Why is that right
10 or wrong?

11 HARVEY EPSTEIN: Well, I think Bob
12 and I both want to say that first of all if the
13 DCA has the authority to regulate them and it's
14 pretty clear there is case law on it. Second of
15 all, they're not acting as lawyers. They're
16 acting as debt collectors. If I want to be a
17 plumber and do plumbing and do lawyering, I can
18 get my plumber's license and have my legal
19 license. Their actions are as lawyers and as debt
20 collectors. The DCA should and has an obligation
21 to license them and has the authority to license.
22 To make the distinction that because they're
23 licensed as a lawyer then you know they're
24 licensed I think is a faulty distinction.

25 ROBERT A. MARTIN: The grievance

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2 committee doesn't do consumer protection work.
3 That's the job of the Consumer Affairs. The case
4 that I gave you involved a lawyer who was doing
5 immigration work and deceived people. But there
6 are other cases that establishes DCA's authority.
7 The short answer is the grievance committee
8 doesn't do consumer protection.

9 COUNCIL MEMBER GARODNICK: I'm
10 sorry, is that the grievance committee of the Bar?

11 ROBERT A. MARTIN: No, the
12 Appellate Division Grievance Committee. They
13 license lawyers and they take them away. They
14 disbar people. They don't do consumer protection
15 work.

16 HARVEY EPSTEIN: To further that
17 point, if someone lost their legal license, they
18 could still engage in debt collection activities
19 if they had a debt collection license. They can
20 lose different licenses for different things. The
21 next quest was Mr. Winston on the last panel
22 testified that he believed that the 80% default
23 rate that you identified in your report was the
24 result of people receiving notices, almost all of
25 the time, it was his view that the people were

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2 getting them and that they were defaulting not for
3 any reason other than the fact that they saw the
4 notice, they considered what they owed and
5 accepted this. Do you agree or disagree with that
6 and tell us why?

7 HARVEY EPSTEIN: I can speak on
8 behalf of the entire advocacy community and we
9 fundamentally dispute that claim. We think, first
10 of all, at least 40% of those claims are just not
11 valid claim, based on the information we have. We
12 also believe that people don't get the notices. I
13 mean, in April of 2008, the Office of Court
14 Administration instituted a new policy that when
15 filings happen they have to send a card out. The
16 court sends a card out to everyone whose been
17 sued. That change is as a result of all of our
18 advocacy. So far, over 30,000 postcards have
19 returned from the address that the debt buyers
20 have submitted to the court. They say the
21 addressee unknown, unable to reach person. So in
22 the address where they allegedly served someone,
23 over 30,000 cases in 2008 alone were returned.
24 There's at least some portion of 10% who never
25 even got the notice because they didn't live in

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2 the address that they were acclaimed to be living
3 at. We think the percentages are much higher
4 where people move and things are forwarded, it's
5 an address from eight years ago, it's a judgment
6 they don't understand, and I'm sure there's some
7 portion of people who just ignore because they
8 don't even understand who ABC Corporation is, or
9 LR Credit is because eight years ago they might
10 have had a Sears card and bought something for
11 \$100 and maybe didn't pay it or forgot to pay it
12 and they get this \$10,000 bill. There's no
13 relationship to people defaulting and owing the
14 debt.

15 ROBERT A. MARTIN: Well said.

16 COUNCIL MEMBER GARODNICK: Thank
17 you, Mr. Chairman.

18 CHAIRPERSON COMRIE: I want to
19 thank the panel for coming. I won't be redundant
20 but you know my sentiments already. Thank you.
21 The next panel is Janet Ray Kalson, Oda Friedheim,
22 Claudia Wilner and Janet Araya. Is Carolyn Coffey
23 testifying? Separately? You'll be on the next
24 panel Ms. Coffey. We're up against another
25 hearing. It's not canceled because I see the

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2 chair and the president of DC 37 is here. Whoever
3 would like to go first, please speak into the
4 microphone. You have three minutes.

5 JANET RAY KALSON: My name is Janet
6 Ray Kalson. I'm the Chair of the Civil Court
7 Committee of the New York City Bar Association.
8 I'm testifying in support of Intro. 660. This
9 legislation clarifies that all debt buyers,
10 including those that refer debts to other entities
11 for collection or litigation are debt collection
12 agencies under Local Law and must be licensed by
13 the Department of Consumer Affairs that we're
14 affectionately calling DCA at this hearing. In
15 1984, the City Council passed a law requiring debt
16 collection agencies to be licensed by DCA because
17 engaging in debt collection activities. The idea
18 was to protect residents from abusive debt
19 collection practices. In the last 20 years, the
20 industry has now grown to include a growing number
21 of debt buyers that purchase these debts for
22 pennies on the dollar and seek to collect the full
23 value of the debts for themselves. Increasingly,
24 many of these debt buyers outsource the collection
25 work to other entities and to debt collection law

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2 firms. Debt users are heavy users of the Civil
3 Court. Some of the larger debt buyers file tens
4 of thousands of debt collection cases. The Civil
5 Court saw almost 300,000 consumer credit filings
6 in 2008 alone, the majority were made by debt
7 buyers. Section 3015(v) of the Civil Practice Law
8 and Rules requires that if a plaintiff's cause of
9 action arises from conduct of a business which is
10 required to be licensed, the complaint shall
11 allege as part of the cause of action that the
12 plaintiff is licensed and list the license number.
13 If a debt collection agency files a consumer
14 credit lawsuit against a city resident, it must
15 state its licensed by DCA and provide the license
16 number. If this is not included in the complaint,
17 the defendant may move to dismiss the case. In
18 recent years, some debt buyers have argued that
19 they are not debt collection agencies and don't
20 have to comply with this law because they are
21 passive because they don't do the collection work
22 themselves, but they hire others to do it. This
23 group of so-called passive debt buyers have been
24 among the worst perpetrators of abusive collection
25 practices against city residents

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2 disproportionately affecting those who are poor,
3 disabled or elderly. This law would eliminate the
4 so-called active/passive distinction and clarify
5 that all debt buyers who are seeking to collect
6 debt from city residents, including those who hire
7 a collection agency or law firm to collect on
8 their behalf, are debt collection agencies and
9 must obtain a license from DCA. There are three
10 reasons the City Bar supports this legislation.
11 First, it comports with the Federal Fair Debt
12 Collection Practices Act. Second, it will lead to
13 increased efficiency in the Civil Court by making
14 it much easier for the judges and clerks who will
15 not have to try to parse the distinction between
16 active and passive and indeed, Judge Fisher of the
17 Civil Court, whose in charge, is supporting this
18 legislation. Third, it will bring these so-called
19 passive debt collectors under the jurisdiction of
20 the Department of Consumer Affairs so that they
21 regulate the egregious practices that go on in the
22 industry.

23 CHAIRPERSON COMRIE: Thank you.

24 JANET RAY KALSON: I just want to
25 say that one of the people who testified claimed

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2 that the City Bar materials was misleading because
3 of a reference to a case. But basically, it is
4 our position that engaging in debt collection
5 activity includes somebody to do that.

6 CHAIRPERSON COMRIE: Thank you.

7 JANET ARAYA: My name is Janet
8 Araya. I am here to speak on behalf of my mother
9 who was not able to take the day off from here job
10 in Queens. My mother is a 46-year-old working
11 mother of two. She came to the United States
12 about 28 years ago from Central America and has
13 lived here ever since. My mother opened up her
14 very first credit card in 1995, a Sears card
15 financed by Citibank, which she only ever used at
16 Sears stores close to our home. After a few years
17 of regular on-time payments of the full balance,
18 she was upgraded to a Sears card with a MasterCard
19 logo, which would have allowed her to use the card
20 anywhere MasterCard was accepted. Even so, my
21 mother continued to use the card only to purchase
22 Sears products in the store nearby to buy
23 necessities such as clothes or to have our car
24 worked. That all changed in May of 2005 when my
25 mother discovered charges for three transactions

1 statement that she had not made. All of the
2 transactions had apparently been made in Bangkok,
3 Thailand for jewelry and other luxury goods,
4 amounting to over \$10,000. My mother was shocked
5 and immediately contact Citibank and Sears to
6 dispute these charges. She also stopped using the
7 card altogether. Despite her continued written
8 disputes, Citibank eventually charged off and sold
9 the account to a debt buyer. Over the course of a
10 couple of years, the account was sold from one
11 debt buyer to the next. For almost two years my
12 mother and our family received harassing phone
13 calls from the debt collection agencies that were
14 hired to collect the debts with my mother trying
15 to explain that she did not owe the money. When
16 the collectors would call, they were very rude and
17 said threatening things, such as that if we didn't
18 pay we would lose our belongings and we would be
19 living on the streets. My parents were scared of
20 what might happen and even discussed the
21 possibility of selling the house to pay something
22 to the collectors and make the whole thing go
23 away. I even considered raising money of my own
24 in case my parents were forced to pay something
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2 and thought about going to the Army rather than
3 enrolling in college. After putting up with these
4 phone calls for a long time, finally in March of
5 2008, and unlicensed debt buyer, LVNV Funding sued
6 my mother for \$13,000, which included the \$10,000
7 balance on the credit card plus \$3,000 in
8 interest, finance charges and late fees. This
9 lawsuit caused us even more stress and anxiety.
10 We could not believe my mother was being sued for
11 so much money for a debt that was obviously not
12 hers. Luckily, when we contacted MFY Legal
13 Services, an attorney from their Consumer Rights
14 Project agreed to represent my mother. Eight
15 months later the lawsuit was discontinued because
16 LVNV Funding was unable to provide any
17 documentation to the court to prove that they had
18 bought the account, or that my mother was
19 responsible for the charges on the Sears card.
20 After going through a nightmare as a family, we
21 all feel it is important for all debt buyers, such
22 as LVNV Funding, to be subject to regulation and
23 oversight so they can be held accountable for
24 abusing New Yorkers, whether through harassing
25 phone calls or abusive meritless lawsuits. These

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2 kinds of things should not happen to any New
3 Yorker. Thank you for listening to my mother's
4 story and thank you for the opportunity to speak.

5 CLAUDIA WILNER: My name is Claudia
6 Wilner. I am a senior staff attorney at NEDAP,
7 the Neighborhood Economic Development Advocacy
8 Project. I want to thank the committee for the
9 opportunity to testify today in support of this
10 legislation. I want to state briefly that we
11 agree with and endorse the statements of the other
12 advocates that have been made here today,
13 particularly the reasoning in City Bar. I wanted
14 to talk a little bit about some of the experiences
15 our clients and some observations that we have
16 drawn from an analysis of the people who have
17 sought help through our project. We ran a legal
18 hotline for low income New Yorkers who have
19 problems with credit and debt issues. In 2008, we
20 assisted 466 people who had been sued in the Civil
21 Court. Within this group, 52% of clients were
22 sued by debt buyers rather than original
23 creditors. Of the debt buyer cases, 40% were
24 brought by unlicensed debt buyers. It turned out
25 that about half of those unlicensed debt buyer

1 cases were brought by LR Credit and its
2 affiliates. We had a good chunk of cases where we
3 could look and see what the merits of those cases
4 were and we were really surprised by what we
5 found. It turned out that according to what our
6 clients were reporting to us, a full 40% of those
7 cases seemed to be just devoid of merit. The debt
8 was not owed by the client because it was the
9 result of fraud, or it had been discharged in
10 bankruptcy, or the client had already paid it or
11 it was past the statute of limitations. That was
12 in 40% of the cases. We also found that in 79% of
13 the cases the clients were reporting, that they
14 were not properly served with a summons and
15 complaint. And 60% reported that they never had
16 any notice of the case at all. So definitely, the
17 service issues and the merits of the cases are
18 really important issues and I think that really
19 raises the question of why is it that debt buyers
20 need to be licensed by the Department of Consumer
21 Affairs. We have huge default rates and we have a
22 lot of cases that just have no merit. People
23 aren't appearing in the cases. The issues about
24 the underlying merits of the cases are never
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1 brought up before the court, and so judgments are
2 being entered. Huge amounts of judgments entered
3 against low-income New Yorkers that should not be
4 entered. If they were challenged, they would not
5 be entered. The court system is completely unable
6 to address those issues. Now, if debt buyers were
7 licensed, people could file complaints with the
8 Department of Consumer Affairs. DCA would have
9 some record of who the trouble makers were. They
10 could use their subpoena power to launch
11 investigations. Another issue is some of these
12 assignments, when a debt is sold, actually provide
13 in the assignment that the debt buyer can only get
14 proof of the debt in 2% of cases. I've seen
15 assignments that say that the debt buyer is not
16 allowed to get documents from the original
17 creditor. So if you have a debt buyer who is
18 filing cases, and it may be that the assignments
19 say that they can't have evidence of the case in
20 any case, what are they doing filing lawsuits?
21 They shouldn't be allowed to bring those cases in
22 court. As a litigant we are not able to get
23 access to those assignments to see if there is any
24 merit to the cases being brought at all. DCA
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2 could get that information. If DCA found that a
3 debt buyer was bringing lawsuits and had no
4 ability to prove the cases, it could revoke the
5 license and then that debt could not bring that
6 case and those cases would not be in our court
7 system. I think that's an important protection
8 that has to be available for New Yorkers. Thanks.

9 CHAIRPERSON COMRIE: Thank you.

10 ODA FRIEDHEIM: Good afternoon.

11 I'm Oda Friedheim. I'm a staff attorney with the
12 Legal Aid Society. We have prepared written
13 testimony, so I'm going to add a few remarks. I
14 wanted to thank the committee and Council Member
15 Comrie for holding this hearing and Council Member
16 Garodnick for introducing this very important and
17 much needed bill. Obviously, along with all the
18 other advocates whose comments we echo, we
19 strongly urge prompt passage of this very
20 important bill. As part of our civil practice, we
21 have been representing low income New Yorkers who
22 were being sued by debt buyers. In all cases
23 where we appeared, we won. Why did we win? For
24 all the reasons that actually have already been
25 cited such as no proof, statute of limitations,

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2 and the suer service. In once case it was claimed
3 that a woman was served in a private home and in
4 fact she lives in an apartment building. All of
5 the issues have already been pretty much
6 highlighted. In fact, most alleged debtors find
7 out really only when their wages are garnished
8 and/or their accounts are frozen that in fact
9 there is a debt. Obviously we can only represent
10 a relatively small number of people. Together
11 with other advocates, we also initiated a project
12 called the Civil Legal Advice and Referral Office,
13 or CLARO, which provides pro bono advice and
14 referral services to low income New Yorkers. But
15 even that is not enough. We still don't capture
16 all the people that are being sued unlawfully by
17 the debt buyers. So, therefore, this legislation
18 is particularly critical. I just want to make one
19 remark about the passive debt buyer, which has
20 already been made by several other people. I
21 recall one time I had a case with a client who was
22 actually on the same day sued by two different
23 entities with two different lawyers for the exact
24 same debt. One of the entities actually used a
25 very confusing name. It has legal something in

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2 the name. I don't remember it exactly. There is
3 just a lot of abuse and typically low income New
4 Yorkers and New Yorkers in general, the hard
5 working New Yorkers are frightened by the phone
6 calls, the summonses, the letters or finding out
7 that their wages are garnished. Some even believe
8 they have to go to prison. There's just
9 incredible abuse that we look to the bill's
10 passage and to DCA actually enforcing it. Thank
11 you very much.

12 CHAIRPERSON COMRIE: Ma'am, are you
13 not testifying? Thank you then for testifying.
14 Unfortunately we're short on time so we can't ask
15 any more questions. The next panel is Carolyn
16 Coffey and Matt Schedler. These are the last two.

17 CAROLYN E. COFFEY: Good afternoon.
18 My name is Carolyn Coffey. I'm a staff attorney
19 in the Consumer Rights Project at MFY Legal
20 Services. MFY provides legal services to more
21 than 5,000 low income and immigrant clients in New
22 York City every year. We're the largest legal
23 services provider for people with mental
24 disabilities in New York City. We have several
25 other projects to help low income New Yorkers,

1 including our Consumer Rights Project. As you
2 know, and as you've heard today, low income
3 consumers in New York City face a myriad of
4 issues, including being targeted for subprime
5 credit cards and mortgages, identity theft, poor
6 credit scores, tenant blacklisting and unfair and
7 illegal debt collection tactics. Low income
8 consumers are also the subject of thousands of
9 debt collection lawsuits each year brought by debt
10 buyers which are flooding the New York City Civil
11 Court. MFY represented defendant Robert Druce in
12 Centurion Capital Corp versus Druce, the first New
13 York decision to clarify that debt buyers are
14 considered debt collectors for purposes of
15 licensing under the Department of Consumer
16 Affairs, under the New York City Administrative
17 Code. Since the Druce decision, however, many
18 debt buyers have attempted to skirt the DCA
19 licensing requirement by claiming they are so-
20 called passive debt buyers because they do not
21 engage in traditional debt collecting methods with
22 consumers. The DCA itself has issued confusing
23 guidance on this question. While we firmly
24 believe that all debt buyers are already subject
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2 to the licensing requirement, the bill before the
3 City Council would clarify this issue. They New
4 York City recognized that the debt collection
5 industry is rife with abuse and unfairness to the
6 public, which is why it enacted the law to license
7 debt collection agencies and subject them to
8 regulation by DCA in the first place. Notably,
9 the law as written contains no exception for a
10 passive debt buyer or for a debt collection agency
11 that does not have direct contact with the public.
12 These companies have thus created a new exception
13 that is now provided for by the City Council,
14 which is the legislative body that enacted the
15 law. Further, while passive debt buyers may not
16 engage in traditional debt collection activities,
17 because they purchase debts and hire others to
18 contact and sue consumers on their behalf, the
19 filing of a lawsuit is a debt collection activity
20 under the Fair Debt Collection Practices Act.
21 There is no reason why such activity should not
22 come under the purview of the city. Also, New
23 York City's licensing law specifically states that
24 licensees are responsible for the acts of their
25 agents. As the owners of these alleged debts,

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2 debt buyers have the most at stake in attempting
3 to collect on these accounts and are in the best
4 position to ensure to that entities collecting the
5 debts for them do not engage in abusive practices.
6 Finally, MFY knows from firsthand experience by
7 representing people sued by debt buyers that most
8 debt buyer lawsuits lack merit. In fact, over the
9 past three years not one consumer credit case
10 handled by the Consumer Rights Project in my
11 office has gone to trial, chiefly because the debt
12 buyer cannot prove its case against the defendant
13 and could not prove that it actually owned the
14 debt in question. For all these reasons, MFY
15 encourages the council to pass this important
16 clarifying legislation and is committed to working
17 with you to better protect the consumers of New
18 York City. Thank you for holding today's hearing
19 and for considering this bill.

20 MATT SCHEDLER: Good afternoon.

21 I'd like to begin by thanking the City Council for
22 the opportunity to speak here today and to
23 specifically thank Councilman Garodnick for
24 introducing this bill. My name is Matt Schedler.
25 I'm an attorney practicing consumer law at CAMBA

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2 Legal Services, a community-based nonprofit legal
3 service provider located in the Flatbush
4 neighborhood of Brooklyn. CAMBA's consumer law
5 program arose out of its membership in the working
6 poor coalition, a five-member group that includes
7 the Urban Justice Center, Westside SRO, Housing
8 Conservation Coordinators and the Northern
9 Manhattan Improvement Corporation. The aim of the
10 consumer program is to assist housing clients at
11 the member organizations with consumer issues that
12 they might have, with the goal of ensuring self-
13 sufficiency for the client after the provider has
14 resolved the initial issue. We've heard a lot of
15 talk today about the un-provability, if you will,
16 of the cases that are being brought. Anecdotally,
17 my own experience suggests that debt buyers are
18 never able to present prima facie case. I've
19 never seen that presented and I've never had a
20 case go to trial. Because the mission of CAMBA's
21 consumer program is focused on assisting the
22 working poor, I'm able to see sort of firsthand
23 the potentially devastating effects that these
24 cases can have on that population. Even though
25 the vast majority of debt buyer cases can likely

1 never be proven, the cost of a defendant to
2 represent himself in a consumer credit action is
3 extraordinarily high. Consumer credit cases are
4 often adjourned numerous times, requiring the
5 defendant to miss multiple days of work to attend
6 the court appearances. This causes not only loss
7 of a day's wages, but also puts the defendant in
8 fear of losing their job due to too many absences.
9 As a result, working poor clients often make
10 settlement agreements on invalid debts or debts
11 they don't believe they owe out of fear that a
12 prolonged court case will put their job at risk.
13 This isn't a decision that New York's working poor
14 should be forced to make. One example of this was
15 a client who I term Mr. D. With the assistance of
16 the Northern Manhattan Improvement Corp and the
17 CAMBA Legal Service, Mr. D was able to move out of
18 the homeless shelter and into affordable housing.
19 He was also offered job search assistance through
20 these organizations and found employment as a
21 security guard. After obtaining employment, he
22 was sued by an unregulated third party debt buyer
23 attempting to collect a debt that Mr. D didn't
24 recognize. CAMBA Legal Services agreed to
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2 represent him. After requesting discovery and
3 numerous adjournments, the debt buyer voluntarily
4 dismissed the case with prejudice. No documents
5 were ever produced in that case supporting their
6 claim of the debt. Had Mr. D no been represented
7 however, like most Civil Court defendants are, he
8 would have been faced with the decision of
9 defending his case or signing a stipulation and
10 putting his new job and his self-sufficiency
11 potentially at risk for a debt that he didn't
12 believe he owed and for which ultimately no
13 supporting evidence was ever produced.

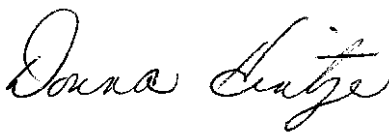
14 CHAIRPERSON COMRIE: I want to
15 thank you. You're the last two speakers. I want
16 to thank you for your testimony. I think all of
17 the testimony today was insightful and compelling.
18 I again want to thank Council Member Garodnick for
19 bringing this opportunity to us to correct the
20 problem to further protect consumers that are
21 being harassed by unfair debt collectors. I think
22 we had a lot of discussion and opportunity to
23 illuminate this topic and the ability of the
24 Department of Consumer Affairs to regulate the
25 activities of passive and active debt collection

1 was thoroughly vetted today. I think that, again,
2 as I said in the beginning, I'd like to see this
3 bill move fairly quickly. I want to remind people
4 during this tax season that if you do have a
5 problem you should not go to anyone that is not
6 regulated by the city. If you have a situation
7 with debt collection you should contact the
8 Department of Consumer Affairs. They were here
9 earlier and testified. You just heard from CAMBA,
10 MFY Legal Services, Queens Legal Service and Legal
11 Aid that were here today. They're doing excellent
12 work trying to protect people. We need to get
13 that message out that if you're being sued by
14 someone and you don't know what it's for, if you
15 believe that a debt collector is going after you
16 for some reason that you believe has already been
17 taken care of, you need to contact them. You just
18 heard a story where a person was being sued for a
19 debt collection that he did know and they did not
20 have any proof of what the collection was for. We
21 just heard another story of a family where the
22 child almost didn't go to college because they
23 were worried about paying off a debt that they
24 didn't have. We need to have more teeth in
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1
2 dealing with the people that are trying to go
3 after debt collection. We want to work with the
4 legal people. We understand that we have bills to
5 pay. We understand we have obligations to meet.
6 But the people that are just calling and harassing
7 people without having proof are the people that we
8 need to regulate. I want to thank Council Member
9 Garodnick for bringing this bill to our attention
10 and the Urban Justice Center. Again, I want to
11 thank my staff. We have to get out of the way
12 because there's another hearing. Have a good day,
13 everybody.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature_____

Date March 13, 2009_____