



Neighborhood Economic Development Advocacy Project

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Testimony of Claudia Wilner, Staff Attorney Neighborhood Economic Development Advocacy Project

Before the New York City Department of Consumer Affairs Exploratory Public Hearing on Debt Collection Practices in New York City

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Thank you for the opportunity to testify today regarding debt collection practices in New York City. My name is Claudia Wilner, and I am a Staff Attorney at the Neighborhood Economic Development Advocacy Project (NEDAP) and the Director of the New York City Financial Justice Hotline. NEDAP is a nonprofit resource and advocacy center that provides legal, technical and policy support to community groups in New York City's low income neighborhoods and communities of color. NEDAP's mission is to help groups in underserved communities increase access to affordable and equitable financial services and credit needed for local community development.

NEDAP officially launched the NYC Financial Justice Hotline in September 2005, and the phones have been ringing constantly ever since. The Hotline has logged more than 1300 calls in the last nine months. I have personally spoken with and assisted literally hundreds of New Yorkers. The majority of them are calling about one problem --- abusive debt collection.

I want to take a few moments to paint a portrait of our callers. They are the individuals who make up the communities with whom our organization has worked for the past 10 years. They come overwhelmingly from the lowest income neighborhoods of our city – central and northern Brooklyn, upper Manhattan and the Lower East Side, the South Bronx. 60% of our callers are African-American or Latino. 60% are women. 60% earn less than \$20,000 a year. Many of our callers receive some form of protected income, such as Public Assistance or Social Security. And many are struggling to raise families on a very limited income.

I would like to focus my testimony today on a specific debt collection practice: lawsuit abuse. Lawsuit abuse is the practice of filing a debt collection lawsuit without having any admissible evidence that the defendant actually owes the debt in question. I want to focus on this topic because it is, by far, the most common complaint that we receive. About 60% of Hotline callers complain of lawsuit abuse. Let me describe some typical variants:

- Elizabeth is an 83-year-old woman who lives in the Bronx. She is homebound due to age-related disabilities. Elizabeth called the Hotline because her bank account – which contained only her Social Security and Pension benefits – had been frozen by a debt collector who obtained a default judgment against her. (Elizabeth believed that she had not received notice

of the case; however, even if she had received notice, she would not have been able to come to court due to her disabilities.) Elizabeth had no access to her funds and did not know how she would pay her rent and utility bills. She worried that she might be evicted or lose her utility service, and the stress was endangering her health. Elizabeth told us that the debt collector stated that it would not release her bank account because she could not prove her income was exempt. The original debt was for a credit card that Elizabeth believed she had paid about 10 years ago.

- Maria works as a home health aide, earning less than \$20,000 per year. She is the only wage earner in a family of three (she supports her minor daughter and her mother, who does not work due to disability). Maria called the Hotline because her bank account was frozen by a debt collector who obtained a default judgment against her. Maria was not served with notice of the lawsuit, which concerned a cellular phone account that Maria had cancelled about five years ago. She thought that it was possible she owed something, but she was adamant that she did not owe the \$3000 alleged by the plaintiff, a debt collector. Following our advice, Maria was able to vacate the default judgment and has appeared in the case several times. So far, the plaintiff has produced no evidence that Maria owes anything on this account.
- George is in his early 60's. He lives in a rooming house and works odd jobs to support himself. He is also an identity theft victim. George called the Hotline because a debt collector seized \$10,000, his entire life savings, from his bank account. The debt collector had obtained a default judgment against him on a personal loan obtained by the thief in George's name. George had repeatedly informed the debt collection agency that he was an identity theft victim, but neither the debt collector nor its law firm ever bothered to investigate George's claims. With our assistance, George was able to vacate the default judgment and get his money back. Eventually, the debt collector withdrew from the case because it could not find any evidence that George owed the debt.

These cases are not isolated examples, but in fact are very typical of the calls we receive on a daily basis. And what we see is just the tip of the iceberg. The New York City Civil Courts adjudicate hundreds of these cases every day.

Lawsuit abuse is primarily perpetrated by debt buyers and debt collection law firms. Debt buyers are companies that purchase portfolios of old, defaulted debts from creditors for pennies on the dollar, and then engage in aggressive efforts to collect these debts. Debt buying is a large and growing business. According to the Nilson Report, an industry trade publication, debt buyers bought \$63 billion in charged-off debt in 2004, 100 times the amount bought in 1993.

If traditional debt collection methods fail to generate a payment, debt buyers sue to collect the debt. However, the debt buyer usually fails to obtain records from the original creditor prior to filing suit. As "evidence" of the debt, the debt buyer has only a computer printout with the defendant's name and identifying information and the amount he or she allegedly owes, along with the history of its own failed attempts to collect the debt. As it turns out, however, the debt buyer does not need evidence of the debt to prevail in court because more than half the time, the defendant fails to appear. (Defendants often do not receive notice of the lawsuit.) The debt buyer obtains a default judgment and then begins the process of restraining bank accounts and garnishing wages to collect on the judgment. Many defendants do not learn about the litigation until after the plaintiff

takes action to enforce the judgment. Often, if the defendant contests the case, the debt buyer will withdraw rather than undergo the expense of tracking down the original documents needed to prove the debt. Essentially, the debt buyer uses the power of the court system to extract money from consumers that it could not obtain otherwise – but it lacks any admissible evidence that the debtor actually owes the debt. This practice is unfair and deceptive, and we believe it violates the Fair Debt Collection Practices Act and New York’s debt collection laws.

Lawsuit abuse causes low income New Yorkers tremendous hardship. Many people do not receive notice of the lawsuit, and so they fail to appear in court and a default judgment issues. Default judgments lead to frozen bank accounts, which place low income New Yorkers at risk of eviction and hunger because they cannot access funds needed for basic necessities like food and shelter. Many frozen bank accounts contain only exempt funds like Public Assistance and Social Security, yet the owners of those accounts have great difficulty getting them released. And frozen bank accounts often generate associated costs, like bounced check fees and legal process fees, which can take hundreds of dollars from a family’s already tight budget. These days, judgments appear on credit reports as public records, and they remain there until seven years after the judgment is satisfied. The consequences of having a judgment appear on a credit report are severe. A person with a judgment on his or her credit report will pay more for a mortgage, insurance, and personal loans, and may have trouble finding employment or a new apartment. Yet debt buyers routinely obtain judgments against low income New Yorkers based on nothing more than a computer printout.

To avoid a default judgment, an individual must appear in and defend the case. This, too, is a hardship. Low income people must give up valuable workdays to spend the day in court. Some people, whose employers have strict attendance policies, are forced to choose between keeping their court appearances and keeping their jobs.

The New York City Department of Consumer Affairs could help low income New Yorkers tremendously by taking a strong stand against debt collection lawsuit abuse. NEDAP submits the following recommendations:

- The Department should ensure that debt buyers and debt collection law firms are covered by state laws and regulations concerning debt collection. These entities are major players in the business of debt collection, and their importance is growing. They should have to abide by the same rules as ordinary debt collectors.
- The Department should take the position that debt collection lawsuit abuse violates existing laws and regulations prohibiting the use of unfair and deceptive debt collection practices.
- The Department should use its licensing authority to require debt collectors and debt buyers to obtain proof of the debt before filing suit. In this way, the Department could substantially prevent debt buyers from filing meritless lawsuits. In addition, cases could be resolved more quickly and more fairly if consumers had access to records that established the true amount of their debt.

Thank you very much for the opportunity to present testimony at today’s hearing.