

**Comments of Robert A. Martin and Sheldon Barasch
District Council 37 (AFSCME)
Municipal Employees Legal Services**

**Federal Trade Commission Workshop
Collecting Consumer Debts: The Challenge of Change
November 7, 2007**

Robert Martin is Associate Director of District Council 37, AFSCME (American Federation of State, County and Municipal Employees) Legal Services. Our legal plan, known as “DC 37 MELS”, provides representation in a variety of civil legal areas to approximately 120,000 current New York City employees and 25,000 retirees. Our coverage includes consumer and bankruptcy matters, and a substantial part of our practice entails representing persons in debt cases. I have been at DC 37 MELS for the past five years. My prior experience includes seven years (from 1995 to 2002) as General Counsel at the New York City Department of Consumer Affairs (DCA). In that role I was significantly involved in the regulatory function which DCA, as the licensing authority for debt collection agencies in New York City, carries out with respect to debt collectors and their practices.

I have prepared these comments with Sheldon Barasch, Supervisor of the Debt/Bankruptcy Unit at DC 37 MELS. Mr. Barasch is a lawyer and CPA with over 25 years experience in representing clients in consumer, debt and bankruptcy matters.

We appreciate the opportunity to comment. Like many others who submitted written comments and/or testified at the FTC Debt Collection Workshop last month, we have seen tremendous changes in the collection industry which merit a deep and fresh look at how the industry is regulated.

Our comments are addressed to certain specific topics for comment in the workshop announcement as indicated below.

1. Demographic and Industry Information

b. Please provide information regarding consumers subject to debt collection action, particularly any information showing changes in overall numbers of such consumers, and demographic data about the consumers themselves.

c. Please provide information about trends in the nature of the underlying debt subject to debt collection actions (e.g., mortgage, automobile, educational, credit card, personal, etc.).

d. Please provide information detailing recent changes in the extension and use of credit and how, if at all, this has affected the collection of debts.

DC 37 MELS represents clients in consumer matters across a broad range of professions, salaries and personal circumstances. In addition, we represent retired working persons whose circumstances also vary. Some of our clients own their homes or have other assets. Clearly, however, most of our clients are low- or middle-income wage earners who are struggling to support themselves and family members in a city and an economy with a cost of living that is high in relation to their income.

Not surprisingly, the largest source of underlying debt for our clients in collection actions is *credit card debt*. What is surprising is the extent to which credit card debt has eclipsed other types of debt such as auto loans, student loans and educational loans, as a basis for collection activity. In the past five years, those other kinds of debt have ever increasingly paled in comparison to credit card debt.

The ready availability of credit - which really goes back 10 or 20 years - has unquestionably facilitated a climate in which many in our client populations have taken on increased credit card obligations, and indeed, in many instances, beyond their ability to pay in a timely fashion. That phenomenon has been exacerbated by a much more recent occurrence: a steep spike in fees of all types, including late fees, “universal default” interest rate increases, and others. These fees have heightened the difficult for our typical clients to keep abreast of credit card debt – let alone to catch up if they fall behind – or even to know or understand what they owe.

2. Industry Trends

e. Please provide data illustrating how the practice of debt buying has evolved over the years and what impact, if any, it has had on the practice of debt collection. In addition, please discuss the frequency with which debt is sold more than once in the course of collection, the age of debts that are sold, and the impact, if any, that trends in this area have had on businesses and consumers.

h. Has the practice of selling mortgage and other debt portfolios multiple times affected the collection industry and consumers subject to debt collection? If so, how? In responding, please discuss what information about the consumer and the debt is typically transferred by credit issuers to debt buyers, and whether this information is typically transferred from one debt buyer to another if the debt is subsequently resold.

The impact of debt buying on debt collection practices cannot be over-stated. Debt buying has changed the very nature of debt collection. The price of debt is so cheap that if a buyer collects on a tiny fraction of the debts that it buys, it turns a profit. On the flip side, the damage to consumers is tremendous. At best, a consumer suffers confusion when confronted by a collector claiming a debt owed to an entity that the consumer has never heard of. At worst, consumers have to pay debts that they do not owe. In our office, we see the situation of the confused and frustrated consumer, the consumer who has unjustly been the victim of a default judgment or restrained bank account, and every variation in between.

Here are the four primary problems that our clients encounter with respect to claims made by debt buyers and their collection companies:

- 1. Debts that are outside the statute of limitations.**
- 2. Identity theft cases, where even after filing an identity theft report, a consumer is later contacted by a debt collector that claims no knowledge of the report.**
- 3. Cases involving multiple purchases and assignments of an underlying debt, so that a consumer hasn't a clue when contacted by a collector.**
- 4. Debt collection activity without sufficient (or any) documentary evidence supporting the claimed debt.**

We estimate that in the past year, upwards of 80% of lawsuits against our clients based on credit cards were filed by a debt buyer. In an estimated 50% of the cases, the debt has been sold or assigned more than once. The information transferred by the seller is almost always minimal. When our lawyers challenge the bare and conclusory assertions made in lawsuits, the plaintiffs are unable to come forward with basic proof of the debt. For example, in two reported decisions in 2007 (*PRA III v. MacDowell*, reported in the *New York Law Journal*, April 5, 2007, and *Global Acceptance Credit Company v. Forquignon*, *NYLJ*, June 5, 2007), judges of the Civil Court denied the plaintiff's motion for summary judgment based on a failure to make out a prima facie case. In the *Global Acceptance* case, for example, our client denied ever having a credit card with the original creditor, and the plaintiff debt buyer had no proof of a credit card agreement with our client.

These two cases are actually somewhat unusual for having progressed to a decision by the court. Here is a more typical scenario: A client is sued by a debt buyer. Our office appears and submits interrogatories or a bill of particulars seeking the basis of the claim. The case then dies on the vine – because the plaintiff has no colorable proof of the debt.

These examples are quite typical of the situations faced by our clients on a day to day basis due to the changed practices associated with debt buying. The frustration for our clients is endless, and they sometimes suffer monetary loss. The time and expense for our staff in unraveling these situations is significant. More importantly, we believe that what we see is only the tip of the iceberg. Our clients – working men and women and retirees – at least have the benefit of the services that our union sponsored legal plan is able to provide. Many, many consumers are not in such a position. The result is that debt buyers and debt collectors obtain default judgments in the New York City courts on a regular basis without having records to support their claims.

6. Legislative Issues

a. Are any modification to the FDCPA warranted in light of technological, economic, or legal changes affecting the debt collection industry?

Without a doubt, the FDCPA needs to be amended to reflect changes in the debt collection industry associated with debt buying. The changes we would recommend include the following:

1. Sale of a debt where the consumer has filed an identity theft report or has otherwise disputed the debt should be prohibited.

2. Similarly, a debt sale should be prohibited when a consumer has sent a cease-communication letter. At a minimum, the buyer of a disputed debt should still be subject to the cease-communication letter sent to the seller of the debt.

3. Debt validation and verification should be made more meaningful. Even when a debt buyer sends “verification” of a debt, it is virtually meaningless, typically consisting only of an internal printout from the debt buyer’s own records.

4. Most importantly, debt collectors and debt buyers should be prohibited from collection activity unless they possess basic information establishing the debt. Our experiences with clients as described above compel the conclusion that in many, many instances collection agencies do not possess any proof or information whatsoever concerning the debt they are trying to collect. Allowing debt buyers and collectors to proceed in the absence of basic documentation leads to abuses all down the line.

5. Debt collectors and debt buyers should be prohibited from attempting to collect debts discharged in bankruptcy or reporting to credit reporting agencies that such debts are active and collectible.

There is one other important necessary change that we would highlight:

6. The statutory damages under the FDCPA need to be increased to a meaningful level. The statutory damage amount of \$1,000 has not been increased in decades. Neither the Federal Trade Commission nor state and city agencies such as the New York City Department of Consumer Affairs can come close to effective regulation and enforcement in the debt collection industry. Neither legal services organizations nor pre-paid legal plans such as our office can do it, either. An essential component of the regulatory scheme is private enforcement, and therefore the statutory damage amount available to plaintiffs in private actions must be raised to a meaningful level.