



# **Debt Collection Abuse**

*10 Tips for Working Families*



**District Council 37  
Municipal Employees Legal Services**

**December 2010**

# *10 Tips to Stop Debt Collection Abuse*

*DC 37 Municipal Employees Legal Services (MELS) offers these tips to help you if you have been contacted by a debt collector or have been sued:*

- 1** *Seek help sooner rather than later.* It is an understandable reaction to debt issues to either ignore the problem, or to attempt to resolve it without help. But failing to act will probably make matters worse. So will taking certain actions on your own, such as entering into a settlement agreement with a debt collector or (even worse) giving your money to a debt settlement company. If you are a MELS-eligible DC 37 member or retiree being hounded by debt collectors, and certainly if you are sued, call MELS at (212) 815-1111 to get advice and assistance about all your legal options.
- 2** *Open and read your mail and do not ignore court papers.* Notices from debt collectors and even court papers may look like junk mail; avoid the natural impulse to throw them out without opening. The only notice that you have been sued may well be a summons through the mail. If you ignore the summons, the creditor will obtain a default judgment against you, leading to garnishment and putting you at a disadvantage in defending your case.
- 3** *Be aware that you may have defenses if you are sued.* By seeking legal advice, you will be able to determine whether a debt is legally owed or whether you may have defenses. For instance, it is not uncommon for a debt buyer (a company that claims it has purchased a debt from the original creditor) to commence a lawsuit when it does not even own the debt which it is seeking to collect.
- 4** *Do not let a debt collector trick you into making a payment on an old debt.* As a debt approaches the statute of limitations (or even after it has expired), debt collectors will often attempt to persuade a consumer to make a payment in order to keep

the debt alive. Even a small payment may extend or renew the collector's legal right to pursue the debt – so beware of this trick. It is often difficult to know what the limitations period is for a particular debt. For credit card debt, the period is typically from three to six years. Seek legal advice before making a payment on an old debt.

**5** *Don't even think about paying money to a 'debt settlement' company.* These companies don't settle your debts – they steal your money! Debt settlement companies operate on the flawed premise that they can negotiate deals with creditors after a consumer has deposited monies with the settlement company over a period of many months. This approach doesn't work, and creditors will be suing you in the mean time. The only certainty is that these debt settlement companies will charge you high fees. Stay away from them.

**6** *If a debt collector contacts you, you have rights.* For example, a collection agency may not call you before 8:00 a.m. or after 9:00 p.m. or with excessive frequency (more than twice a week); may not contact your employer or friends or relatives; and cannot discuss your debts with anyone except you. Collectors may not make false statements or use obscene or abusive language. When a debt collector contacts you, it is supposed to provide the name of the original creditor and the amount of the debt. You have the right to dispute any debt in writing and/or to demand that the collector verify and document the debt. If you make such a demand, the collector must provide documentation from the original creditor including the final account statement and a breakdown of the amounts owed.

**7** *You may direct a debt collector to stop contacting you (even if you owe the debt).* Under federal law, you may tell a debt collection company to cease further contact with you, by notifying it in writing (not by phone). Once the company receives your letter, it may contact you one more time to inform you of any legal action it intends to pursue.

**8** *If you are feeling overwhelmed by multiple debts, seek the help of a lawyer or a qualified free or low-cost financial counselor.* The MELS legal staff provides representation in debt matters and bankruptcy to DC 37 members and retirees. Our social work department also conducts financial management seminars for union members and retirees from time to time.

**9** *Check your credit report annually.* Consumers can get a free report every year from each of the three major credit reporting agencies. You can stagger your requests and request one report every four months. Find out how at [www.annualcreditreport.com](http://www.annualcreditreport.com) or by calling (877) 322-8228.

**10** *Remember Tip # 1: don't wait to seek legal help when needed! If you are a DC member or retiree, call MELS at (212) 815-1111.*

# *Debt Collection Ripoffs: A Cruel Blow to Union Members*

*In December 2009, MELS released a report revealing that debt buyers who sue New York City workers and retirees are often unable or unwilling to produce documentation to prove their case. A “debt buyer” is a company that purchases debt from an original creditor (usually a credit card issuer) and then pursues collection efforts. Debt buyers typically pay pennies on the dollar or less for debts, and in return receive scanty computer records that may be error-ridden.*

## ***Where’s the Proof? Nowhere to be found***

The findings in our report, “Where’s the Proof? When Debt Buyers are Asked to Substantiate Their Claims in Collection Lawsuits Against NYC Employees and Retirees, They Don’t,”<sup>1</sup> included the following:

- In 94.5% of the MELS cases in an 18-month period in 2008 and 2009 in which a debt buyer sued a consumer, and in which MELS’ lawyers asked for documentation of the debt, the debt buyer failed to provide substantiation.
- Some clients – 27% of the clients in our study – were the victims of “sewer service” (they were not served with legal papers) and only found out about the lawsuit when their bank account was restrained or their salary garnished.
- Debt buyers routinely sue on debts that are beyond the statute of limitations. In those cases where the limitations period could reasonably be determined, fully 50% of the debts were beyond the statute of limitations.

## ***The bad practices continue...***

In 2010, almost a year later, MELS lawyers observe that little has changed. The practices identified in our report continue. Debt buyers and debt collectors file lawsuits without possessing accurate information. All too often they sue the wrong persons, for the wrong amounts of money. Their business model is to file lawsuits in bulk and either obtain default judgments or persuade consumers to enter into settlements on debts which they may not legally owe.

We note that there has been an apparent slight reduction in the volume of debt collection cases filed in New York City. Although it is still too early to draw conclusions, this drop may well be due to the heightened attention that advocates have drawn to debt collection problems, and to the efforts of some judges who have been enforcing the letter of the law and dismissing collection cases where the proof is insufficient. In our office, we have also observed a somewhat higher percentage of cases filed by the original creditor as opposed to debt buyers.

Here are some sample cases from our files in the past several months.  
(The names are fictitious.)

- Local 1597 member Lawrence L. Johnson, a custodial assistant for HHC, found out the hard way that debt collectors sometimes don't care if they are even going after the right person. In June, 2010, Mr. Johnson was shocked when his paycheck was garnished. When a MELS lawyer confronted the debt collector – a law firm – we learned that the Lawrence L. Johnson the company had sued and obtained a judgment against lived in White Plains, while our client lived in the Bronx. The law firm quickly returned the garnished wages, which it should never have taken in the first place. The lesson is that collectors often do not have accurate documentation and are careless and reckless in their pursuit of debts.
- In August 2009, Ms. Randolph's bank account was restrained. She had been sued in 2008 by a debt buyer, but because of "sewer service", she did not know about the law suit. After she contacted MELS, her lawyer was able to have the restraint lifted. The basis for the suit was a five-year-old debt to a cell phone company. Since the statute of limitations for a cell phone debt is two years, the debt was time-barred. Nonetheless, the debt buyer persisted over a period of months in attempting to persuade Ms. Randolph to agree to a pay-out arrangement. Finally, in September 2010, the debt buyer's lawyers agreed to discontinue the case.
- Ms. Rodriguez, a clerical worker, had contacted MELS back in March 2009, after receiving a dunning letter from a collections law firm, Eltman, Eltman & Cooper, regarding a claimed debt to First USA Bank. MELS assisted her in preparing a letter disputing the debt – since she had never had a credit card with First USA – and asking for verification. There was no response. However, in September 2009, Ms. Rodriguez learned that a second law firm, Solomon and Solomon, had filed suit based on the same account and obtained a judgment against her for \$4,935. Ms. Rodriguez, a victim of sewer service, only learned of the suit after judgment was entered. A MELS lawyer succeeded in vacating the judgment, and in December 2009, the court dismissed the lawsuit. But the story does not end there. In June 2010, Eltman, Eltman & Cooper, the first law firm, sent papers to Ms. Rodriguez' payroll department attempting to collect the judgment that had been vacated and dismissed! A quick letter from MELS to the law firm ended the matter, hopefully for good.

## *3 victories for union workers*

# **Reforming Debt Collection**

*headlines and to focus attention on the need for better protections for consumers. Advocates in New York State and around the country have been fighting for measures to bring fairness to the debt collection industry. Here are some recent developments:*

- ***NY Court of Appeals rules that a shorter statute of limitations applies in many debt lawsuits.***

In April 2010, New York's highest court issued a decision that effectively makes the statute of limitations three years on many credit card debts, rather than the six-year limit which is generally applicable to contracts under New York State law. This case<sup>2</sup> involved a suit by a debt buyer to collect a claimed debt that was originally owed to Discover Bank. Discover Bank is based in Delaware, and the Court of Appeals ruled that Delaware's three-year statute of limitations is applicable. This ruling governs some other major credit card issuers that are located in states with such a three-year statute, including Chase, Bank of America and Capital One.

- ***Federal Trade Commission issues report on debt collection lawsuits and asks states to consider stronger laws.***

In July 2010, the Federal Trade Commission issued a report, "Repairing a Broken System,"<sup>3</sup> in which it urged states to consider reforms to make the debt collection process fairer for consumers. The FTC's recommendations included measures to ensure that consumers receive adequate notice of a lawsuit; that debt collectors be required to include more information about alleged debts when they file lawsuits; and that states take steps to prevent collectors from suing on debts that are beyond the statute of limitations. This report and similar local studies, along with legal actions undertaken by consumer advocates in New York State,<sup>4</sup> have served to keep up the pressure on the debt collection industry, which will hopefully lead to action by the state legislature.

- ***New rule prevents for-profit "debt settlement" companies from collecting advance fees.***

The Federal Trade Commission issued a groundbreaking rule, effective October 27, 2010, that prohibits debt settlement companies from collecting a fee from a consumer unless and until the company has actu-

ally produced results. In recent years, these companies have preyed on vulnerable consumers with the false promise of being able to negotiate settlements with creditors. Debt settlement companies have an abysmal track record of taking money from consumers and never delivering any results. By prohibiting these businesses from charging advance fees, the new FTC rule may well have the effect of driving them out of business, which is where they should be.

## *Winning justice for consumers*

### ***Pass the Consumer Credit Fairness Act***

The Consumer Credit Fairness Act (CCFA) would go a long way toward curbing the practices highlighted in “Where’s the Proof?”. The CCFA would require the plaintiff in a debt collection suit to include certain key information when it files the lawsuit, thus barring the courthouse door to debt collectors who sue consumers without the evidence to back up their claims. This legislation would also stop creditors from collecting on stale debts by reducing the statute of limitations under New York State law from six years to three years in consumer credit cases.

DC 37 and a coalition of organizations throughout the state have supported passage of the CCFA. Unfortunately, in both 2009 and 2010 the CCFA passed the New York Assembly but did not have enough support to pass the Senate. We will keep working hard for this bill!

### **Endnotes**

<sup>1</sup>“Where’s the Proof?” is available on the DC 37 website ([www.dc37.net](http://www.dc37.net)) and by using this link: [http://www.dc37.net/benefits/health/pdf/MELS\\_proof.pdf](http://www.dc37.net/benefits/health/pdf/MELS_proof.pdf).

<sup>2</sup>The case is Portfolio Recovery Associates v. King. DC 37 joined in a ‘friend of the court’ brief in support of the consumer.

<sup>3</sup>“Repairing a Broken System: Protecting Consumers in debt Collection Litigation and Arbitration,” Federal Trade Commission, July 2010, available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

<sup>4</sup>See “Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers,” MFY Legal Services, Neighborhood Economic Development Advocacy Project (NEDAP), Urban Justice Center, and Legal Aid Society, May 2010, [http://mfy.org/news/reports/DEPT\\_POLICY\\_PAPER\\_FINAL\\_WEB.pdf](http://mfy.org/news/reports/DEPT_POLICY_PAPER_FINAL_WEB.pdf). MFY Legal Services and NEDAP have filed a class action lawsuit which is pending against a major debt collection law firm and several debt buyers alleging that they engaged in a pattern of sewer service.

## ***About DC 37 Municipal Employees Legal Services***

DC 37 Municipal Employees Legal Services, or MELS, is the prepaid legal services program of the Health and Security Plan of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO. MELS in-house staff provide benefits in a range of civil legal matters to current and retired employees of the City of New York. MELS lawyers regularly represent consumers in financial and debt matters.