MFY Challenges Debt Collectors to Play by the Rules

The third party debt collection industry is growing rapidly, with companies buying bundled debt—usually from credit card companies—for pennies on the dollar and using a variety of tactics to collect it. They aggressively pursue debtors, many of whom are low-income, disabled and easily intimidated. They file thousands of lawsuits—often based on shoddy information—overwhelming New York City’s Civil Courts.

MFY launched its Consumer Rights Project in 2005 in response to pleas for help from low-income New Yorkers who were being harassed by debt collectors or, even worse, who had found that their bank accounts had been frozen as the result of a default judgment. In many cases, clients were able to show that the debt was not theirs or had been paid years earlier. In other cases, the consumers only learned about the lawsuit when their bank accounts were frozen; legal papers were never properly served, leaving them saddled with a default judgment.

More debt collectors operating in New York City will now have to play by the rules, thanks to a decision won by MFY in Centurion Capital Corporation v. Druce. The plaintiff, Centurion Capital, is a Delaware corporation that purchases uncollected debt from credit card companies and then uses forceful tactics to collect these purported debts. Centurion commenced an action against MFY’s client seeking to recover under an alleged credit card agreement and sought summary judgment. MFY answered that the suit should be dismissed on the grounds that Centurion is not a licensed debt collection agency, as required by New York City Administrative Code. Centurion argued it is not a debt collection agency at all because it only collects debts due itself.

In a decision rendered on December 21, 2006, the court found that the New York City statute’s definition of a debt collection agency should be interpreted consistently with the definition of debt collector under a similar federal act, the federal Fair Debt Collection Practices Act (FDCPA). MFY’s motion to dismiss Centurion’s appeal was granted on default in April.

Centurion v. Druce has already been cited as precedent in other consumer debt cases, resulting in dismissal by judges. Moreover, in March the New York City Department of Consumer Affairs (DCA) began an aggressive campaign to crack down on unlicensed debt collectors. Last year, after a surge in complaints from consumers, DCA held public hearings on consumer debt practices at which MFY testified about the devastating consequences of illegal debt practices on our low-income clients, and sought summary judgment. MFY answered that the suit should be dismissed on the grounds that Centurion is not a licensed debt collection agency, as required by New York City Administrative Code. Centurion argued it is not a debt collection agency at all because it only collects debts due itself.

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In opposing a motion for summary judgment in a debt collection case for a low-income client last year, MFY argued that the evidence of debt provided by the plaintiff was not sufficient.
MFY’s White Paper
Exposes Lax State Oversight of Adult Home Program
In December 2006 MFY concluded a year-long study of the state’s Quality Incentive Payment Program for Adult Homes (QUIP), a program initiated 12 years ago to pro-
vide adult home operators with funds to improve residents’ quality of life. MFY’s report showed that QUIP funds were rarely used to directly benefit residents and that home operators have not been held ac-
countable by the state for spending the funds in accordance with the program’s goals. Over $28 million has been distrib-
uted to operators statewide since the QUIP program began.

After scrutinizing thousands of pages of data from Fiscal Year 2003-04, the last year for which data are available, MFY found that QUIP funds were generally used by homes to subsidize routine operating expenses or for capital improvements that enhanced the value of property. For exam-
ple, detailed reports on expenditures made by 16 homes in the city revealed that 73% of QUIP funds were used for maintenance of the physical plant, and 5% was spent on items well outside the scope of the program, such as insurance premiums and interest on loans. Approximately 20% was spent on improving services or goods to residents, including replacing resident furniture. If rou-
tine expenses for resident furniture are extracted from the 20%, only one in every eight dollars was spent to directly benefit residents.

In March 2007 DOH acknowledged the program’s problems as set forth in MFY’s report and agreed to draft amendments to the regulations governing the program. MFY is hopeful that DOH’s new attitude will translate into the high level of oversight necessary to ensure that future QUIP monies are spent on resident’s needs, and that residents have some real input into how these grants are used. For now, the report has had the desired effect of spur-
ing DOH to put adult home accountability high on its agenda. The full report is avail-
able on MFY’s web site at www.mfy.org.

MFY’s 2007 Fête:
Awards Breakfast, hosted by Skadden, Arps, Slate, Meagher, & Flom LLP on April 27, hon-
ored over 200 attorneys and paralegals who have provided invaluable pro bono assistance to MFY clients. MFY’s Pro Bono Honor Roll includes: Alston & Bird LLP, Andrews Kurth LLP, Bryan Cave LLP, Cascardo & Klaupel LLP, Cityscape Global Markets Inc., Cleary,

City Council Member Rosalie Mendez received MFY’s Champion of Justice Award for her leadership in the City Council to expand free legal services to low-income New Yorkers. A former legal services staff attorney and tenant organizer, Ms. Mendez has first-hand experi-
ence fighting to preserve affordable housing and defending the rights of low-income New Yorkers. William C. Silverman, pro bono coordinator at Greenberg, Traurig LLP, received the Matthew G. Leonard Award for Outstanding Pro Bono Achievement for his efforts to launch the Pro Bono Kinship Caregiver Law Project, which provides free representation to grandparents and others caring for related children in custody, guardianship and adop-
tion matters. Over 100 attorneys from 20 firms and corporate law offices currently par-
ticipate in the project.