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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, particularly the disabled and seniors living on fixed incomes. The DCA hearings found that buyers of bulk debt often attempt to collect debts that have already been paid or target the wrong consumer.

Last December, MFY conducted a training session on consumer credit at the orientation program for new Civil Court judges at the New York State Judicial Institute. MFY educated judges on debt collection law and presented the arguments an attorney defending debt collection would make. Unfortunately, many judges will never hear those arguments because most of the defendants who show up in court are not represented.

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.

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It's a Wild West kind of world, with some law-abiding companies and a whole host of cowboys that don't care what laws are broken as long as they get their money.

– Liz Weston
MSN Money

News from
MFY Legal Services, Inc.
299 Broadway, New York, NY 10007
www.mfy.org

SPRING 2007

MFY's '07 Fete Rocks!

Thanks to the efforts of a dedicated event committee led by Abby Hendel (Cleary Gottlieb Steen & Hamilton) and Tiffany Liston Austin (Simpson Thacher & Bartlett LLP), hundreds of young associates partied at The Grand on February 1 to raise funds to support MFY’s work. Featuring live music, food, an open bar, silent auction and friendly people, it was an evening not to be missed!



Join MFY for
An Evening
of Dinner
& Theater

**LEGALLY
BLONDE**
The Musical

Thursday, June 7, 2007

Cocktails: 6pm Dinner: 6:30 pm Theatre: 8 pm

For information and tickets:
Bobbie Kraus: 212-417-3726
E-mail: bkraus@mfy.org
Online at www.mfy.org

MFY Legal Services, Inc.

Celebrating 44 years of free civil legal services to low-income New Yorkers.

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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 provide 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 accountable by the state for spending the funds in accordance with the program's goals. Over \$28 million has been distributed 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 statistics 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 example, 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 grant, such as insurance premiums and interest on loans. Approximately 20% was spent on improving services or goods to residents, including replacing resident furniture. If routine expenses for resident furniture are subtracted 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 residents' needs, and that residents have some real input into how these grants are used. For now, the report has had the desired effect of spurring DOH to put adult home accountability high on its agenda. The full report is available on MFY's web site at www.mfy.org.

Thank You!

MFY acknowledges generous recent support from:
Lily Auchincloss Foundation, Inc.
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Rhodebeck Charitable Trust
New York State Interest on Lawyers Account Fund
Wachtell, Lipton, Rosen & Katz

Special thanks to the sponsors of MFY's 2007 Fête:
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Debt Collectors

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cient as a matter of law because it relied on hearsay. Opposing counsel's only response was that these motions are made and won in that very court every day, and that the court regularly relied on such statements to grant summary judgment in these cases. The judge ruled in favor of MFY's client and denied summary judgment. The case highlighted that when no arguments are made on behalf of clients who cannot afford attorneys, the court is placed in the position of granting default judgments and enabling debt collectors' volume practice.

In addition to representing low-income clients in debt collection cases and in other consumer matters, MFY's Consumer Rights Project is working on a variety of

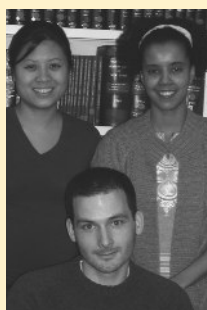
fronts to end debt collectors' abuse of lawsuits and to defend low-income consumers' rights. MFY attorneys participate in the Civil Legal Advice and Referral Office (CLARO), providing free legal advice to pro se litigants in debtor/creditor cases in Brooklyn Civil Court. The project was initiated by a Brooklyn judge who was alarmed at the number of defendants appearing pro se in Civil Court on debt matters. MFY helped train 45 attorneys and law students who have volunteered for the project.

As in all its practice areas, MFY's Consumer Rights Project combines rigorous representation of individual clients with community-based legal education and outreach, and advocacy and impact litigation to address the underlying inequities faced by our clients.

City Council Supports Legal Services for Immigrants and the Working Poor

Thanks to City Council Members **Melissa Mark-Viverito**, **Rosie Mendez**, **Dan Garodnick** and **Miguel Martinez** and the **Manhattan Delegation** for their commitment to expanding free legal services to immigrants and working poor New Yorkers. City Council funds are helping MFY to expand services to these groups, particularly in the areas of employment, housing and consumer law.

MFY STAFF NEWS



MFY recently welcomed three new staff attorneys. Pictured at left are: **Amelia Toledo** (Consumer Rights), **Jonathan Burke** (SRO project), and **Natalie Chin** (senior project). Congratulations to **Maro Constantinou**, Specialist in the Mental Health Law Project, who helped fight cancer by organizing an MFY contingent to walk for a cure. And bravo to Workplace Justice Staff Attorney **Bernadette Jentsch**, who played violin with The Lawyers Orchestra at its holiday concert.

in brief

MFY Speaks Out on Department of Buildings' Failure to Protect Tenants' Safety

Testifying before the New York City Council Task Force on the Operations and Improvement of the Department of Buildings (DOB), MFY Staff Attorney Allegra Chapman argued that DOB should inspect buildings slated for major construction or demolition to ascertain whether tenants still reside in the building and not rely on architects' self-certified plans that accompany permit applications. Chapman cited the case of a client who was the sole remaining tenant in a building that had received a permit to be converted to a one-family dwelling based on an application that failed to ask whether a tenant lived on the premises. As a result of living in the midst of hazardous construction, the client developed eye and respiratory problems, had no hot water, and lived in constant fear of the walls crumbling around her. The City Council subsequently approved measures to revoke certification privileges for professionals who knowingly or negligently certify a plan containing false information or in violation of the law.

Residents of Notorious Home Win Settlement

Former operators of the Seaport Manor Home for Adults in Brooklyn have been permanently barred from running facilities for people with mental disabilities and must pay \$100,000 to 300 former residents who lived there in 2002. MFY's tireless investigation of conditions in the home and work on behalf of residents spurred a *New York Times* series that exposed sordid conditions, including questionable deaths and three suicides. In its December 28, 2006 press release on the settlement, the NYS Attorney General's office thanked MFY for its assistance.

MFY Demands Fair Wage Enforcement

As part of the Campaign to End Wage Theft, MFY joined forces with a score of advocacy organizations to demand that the New York State Department of Labor carry out aggressive investigations of whole industries that routinely violate minimum wage and overtime laws, particularly the restaurant, landscaping, laundry, agriculture and apparel industries. The Campaign's report, issued last December, details how workers' rights are routinely violated and sets forth six major recommendations. The report is available at www.mfy.org. MFY will step up its efforts to help neighborhood-based organizations address low-wage workers' needs by training local advocates on wage and hour laws and how to use the Small Claims Court to win back wages. The effort is supported by a grant from the **Mertz-Gilmore Foundation**.

MFY Wins SLAPP Suit

MFY Staff Attorney Donna Chiu settled a Strategic Lawsuit Against Public Participation (SLAPP) suit and won attorneys' fees against a landlord who sued a tenant for accompanying several local officials to examine potentially hazardous construction on his building's roof. The tenant can now exercise his right to speak out about problems and seek help from elected officials.

MHLP Client Awarded \$129,000 Settlement

MFY Staff Attorney Dinah Luck settled a Surrogate's Court case on behalf of a mentally disabled client who was entitled to a portion of the proceeds of a wrongful death action, but who had been persuaded by a relative to sign away his rights. The funds will go into a Supplemental Needs Trust for the client's care.

pro bono news

MFY Honors Pro Bono Partners in Justice

MFY's 2007 Pro Bono Recognition and Awards Breakfast, hosted by Skadden, Arps, Slate, Meagher, & Flom LLP on April 27, honored 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**, **Cascone & Kluepfel LLP**, **Citigroup Global Markets Inc.**, **Cleary Gottlieb Steen & Hamilton LLP**, **Constantine Cannon LLP**, **Cravath, Swaine & Moore LLP**, **Davis Polk Wardwell**, **Dechert LLP**, **Family Law Center**, **Goldfarb Abrandt Salzman & Kutzin LLP**, **Greenberg Traurig LLP**, **Hughes Hubbard & Reed LLP**, **Jenner & Block LLP**, **Kaye Scholer LLP**, **Labaton Sucharow & Rudoff LLP**, **Mayer, Brown, Rowe & Maw LLP**, **McDermott Will & Emery LLP**, **Milbank, Tweed, Hadley & McCloy LLP**, **Milberg Weiss & Bershad LLP**, **JPMorgan Chase**, **Morgan, Lewis & Bockius LLP**, **O'Melveny & Meyers LLP**, **Outten & Golden LLP**, **Patterson Belknap Webb & Tyler LLP**, **Paul, Weiss, Rifkind, Wharton & Garrison LLP**, **Pillsbury Winthrop Shaw Pitman, LLP**, **Shearman & Sterling LLP**, **Sidley Austin LLP**, **Skadden, Arps, Slate, Meagher & Flom LLP**, **Weil, Gotschal & Manges LLP**, **Willkie Farr & Gallagher LLP**.

City Council Member Rosie 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 experience 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 adoption matters. Over 100 attorneys from 20 firms and corporate law offices currently participate in the project.