



MFY Redoubles Efforts to Aid New York's Immigrants

While the nation debates immigration reform and advocates challenge Arizona's recent anti-immigrant legislation, MFY has redoubled its efforts to aid immigrants in employment, housing, consumer and foreclosure matters. At MFY, immigrants form a growing percentage of our client base and, as a non-LSC provider, MFY serves all immigrants, regardless of their citizenship status.

New York has always been a city of immigrants, and today the city depends on their labor and talent to keep the economy strong. Immigrants represent 43% of the city's workforce, and accounted for \$215 billion in economic activity and 32% of the gross city product in 2008. From low-wage food service workers to registered nurses and chemical engineers, immigrants occupy jobs at all levels. Despite their critical importance to the city's economy, immigrants confront constant exploitation in the workplace. Violations of wage and hour laws cost low-wage workers in the city \$18.4 million per week. On average, low-wage workers lose 15% of their earnings—\$3,106 a year—due to labor violations. Minimum wage violations are pervasive in certain industries, with 40% of undocumented women reporting violations. Unpaid wages are the most common prob-

lem facing immigrant workers, many of whom live on the margin. Wage theft can set in motion a downward spiral that leads to loss of housing and other serious problems.

Wage Theft Jeopardizes Domestic Worker's Housing

Ms. V, a Jamaican immigrant, is a case in point. When she first began working for a Manhattan store owner, she was paid regularly. After a year or two, however, payments became erratic and her employer often paid her small sums, but never the full amount she was owed. Like many other domestic workers, Ms. V worried that if she quit her job, she would never recover the money she was owed. As a result, Ms. V fell behind on her rent and her landlord sued her for nonpayment of rent. She went to housing court on her own and signed a stipulation agreeing to

pay the back rent. She then left her job, assuming she would be able to collect unemployment insurance benefits while seeking a new position. However, the Department of Labor (DOL) denied her claim because her employer had paid her in cash, so there was no financial record of her earnings. She applied to public assistance for one-shot rental assistance and was turned down because she could not show future income. With an eviction looming and caught between two bureaucracies, Ms. V came to MFY for help.

MFY attorney Magdalena Barbosa advocated for Ms. V with the DOL, which had recently set up a task force to address problems of workers who are paid in cash. She convinced DOL to give expedited attention to Ms. V's case and helped Ms. V complete forms to document her income. DOL authorized payment of \$400 a week, including three months' retroactive payments. Ms. Barbosa then filed an Order to Show Cause in housing court to gain more time to pay arrears, and won a Fair Hearing on the denial of one-shot rental assistance. With back rent paid and Ms. V able to pay her ongoing expenses, Ms. Barbosa turned her attention to recovering the unpaid wages, only to find that Ms. V's employer had filed for bankruptcy without listing Ms. V as a potential creditor. A pro bono attorney from Patterson Belknap Webb & Tyler is providing advice on the bankruptcy proceeding.

"Ms. V was quite distraught when she came to MFY," said Ms. Barbosa. "She had tried her best to deal with her problems but hit a brick wall at every turn. Now her housing and income are secure while she looks for a new job and we pursue her back wage

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Above: Members of Domestic Workers United and supporters after a day of lobbying in Albany for passage of the Domestic Workers Bill of Rights. (Photos courtesy of Domestic Workers United)



claim." Ms. V is one of many examples of MFY's commitment to holistically addressing clients' legal problems.

MFY Wins Back Wages

In recent months, MFY has settled a record number of unpaid wage claims. MFY attorneys Rachel Spector and Carolyn Coffey represented three Mexican restaurant delivery and kitchen prep workers who had worked for years earning well below minimum wage. They quit their jobs in protest when the restaurant asked them to work extra hours with no increase in pay. The workers were members of the Justice Will Be Served Campaign, an initiative of the National Mobilization Against Sweatshops. MFY filed a lawsuit in federal court to recover unpaid minimum wage and overtime pay and engaged in negotiations with the restaurant. At a settlement conference mediated by a Magistrate Judge, the workers were determined to get a just settlement and boldly rejected the employer's first three offers. MFY and the workers held firm until the employer proffered a fivefold increase of his original offer, resulting in a substantial settlement for the workers.

In another case, MFY Fellow Lindsey Schoenfelder represented four restaurant workers who made deliveries, did cleaning and custodial work, stocked supplies, and handled inventory. They earned between \$10 and \$15 per shift, well below the legal amount for workers who earn tips. On the first day of trial in federal court the workers won a six-figure settlement. In another case, Ms. Schoenfelder represented a nanny who had lived for over ten years with a Manhattan family that underpaid her. When the family no longer needed her services, she found herself without a place to live and no savings to make a fresh start. Ms. Schoenfelder settled the case, winning a \$45,000 settlement for the nanny.

Recently, several Chinese construction workers came to MFY after a Bronx contractor failed to pay them for several weeks' work. MFY attorney Rachel Spector negotiated for months with the construction company, which consistently renege on promises to pay. When Ms. Spector filed a mechanic's lien on the property for



the amount of the unpaid wages, the company immediately paid the workers what they were owed.

Jamaican Family Averts Foreclosure with Help from MFY

Mr. O and his family moved into their new Far Rockaway home in 2001. When his wife fell ill in 2006 and could no longer work, he refinanced his mortgage. In 2007 his financial situation worsened when he was laid off and his mother, who contributed to paying the mortgage, died. By early 2008 he had fallen behind on payments.

Around the same time he started a new job in August 2008, he received a foreclosure notice. A short time later he was contacted by a company promising to take care of everything for him. He paid the company \$800 and believed they were working on his problem. When he received no response to his requests for information, he contacted MFY in early 2009. Irv Schwartz, a volunteer attorney for MFY's Foreclosure Prevention Project, took the case and discovered that the plaintiff in the foreclosure action had no standing to file suit. Mr. Schwartz filed a late answer, which the court accepted, and then filed a motion to dismiss the case. He also filed a complaint against the company that scammed Mr. O, recouping Mr. O's payment plus damages. The case hit a snag when the court misread the motion to dismiss, but Mr.

Schwartz persisted, filing a motion to reargue, and opposing the bank's motion for summary judgment. In the end, the judge simultaneously granted the motion to reargue, denied the bank's motion for summary judgment, and discontinued the case. MFY referred the client to a housing counselor, who helped Mr. O arrange for a loan modification to make his payments affordable.

Improper Debt Collection Practices Wreak Havoc on a Haitian Family

"Unpaid wages are an enormous problem for immigrants," said Andrew Goldberg, supervising attorney of MFY's Workplace Justice and Consumer Rights projects, "but immigrants also face problems as consumers." Ulrick Chatelain, a 74-year old immigrant from Haiti, found his bank account frozen when he went to withdraw funds to send to his son and granddaughter in Haiti, who were left with nothing after the earthquake in January. He had never been served papers about a lawsuit that had been filed against him, so the court entered a default judgment when he did not appear. MFY went to court and got the judgment vacated based on improper service and found that Mr. Chatelain had been sued for a debt he did not owe.

"We represented Mr. Chatelain three years ago in a dispute with his landlord and reached a settlement in which 11 months' rent was waived," Mr. Goldberg explained. "But his landlord turned around and sued him anyway. It's outrageous that a debt collector such as this landlord can get a judgment and have a bank account frozen without having to prove that the defendant actually owes the debt." For nearly a month, Chatelain had no money to support himself and his wife or to send to desperate relatives in Haiti. "They don't have anything to eat. They were crying," he said during an interview with ABC News. "I couldn't do anything."

Mr. Chatelain did do something, however. He spoke to the press and testified at a City Council hearing, lending his voice to growing demands for stricter rules on process serving, which led to a new law enacted in April (see article, p. 5).

in brief

Court Finds Dept. of Education's Denial of Employment Arbitrary and Capricious

Ms. P, mother of three children, served as a volunteer since 2000 at her children's school, where she held leadership positions in her the PTA, was elected to the School Leadership Team, and was active in an organization that trained parents to tutor children. When a part-time school aide position became available, the principal and others urged Ms. P to apply.



Although Ms. P worked with children for ten years as a school volunteer, the DOE denied her employment as a part-time school aide.

Her application was denied by the Department of Education (DOE) based solely on an 18-year old criminal conviction. MFY and the Bronx Defenders co-counseled and filed an Article 78 lawsuit in state Supreme Court, alleging that DOE's decision was arbitrary and capricious and failed to recognize the overwhelming evidence of rehabilitation and community support that Ms. P had presented. The court agreed, and ordered the DOE to reconsider the application in light of the decision.

"The DOE summarily denies employment to people with old criminal records despite tremendous evidence of rehabilitation and stellar records of employment," said MFY attorney Bernadette Jentsch, who specializes in re-entry cases. Since 2006, MFY has assisted and represented numerous individuals who were either fired or denied employment by the DOE and other agencies because of a past criminal conviction.

MFY Wins Apartment Succession Rights for Gay Partner

MFY attorney Brian Sullivan won a recent trial enabling Paul Garrison, the life partner of the son of the tenant of record, to succeed to the apartment. Mr. Sullivan demonstrated that Mr. Garrison was a valued member of the family who helped care for his partner's ailing parents before they died and who was treated like a son by the parents. Mr. Garrison's partner, Michael Lorge, was tragically killed in 2009, prompting the landlord's holdover proceeding. The judge ruled that such "loving, committed, long-term relationships are the very types of non-traditional families that . . . the rent regulations sought to protect," and ruled that both Michael Lorge and Paul Garrison had rights of succession.

MFY Files Class Action Suit on Behalf of Home Care Workers

MFY, together with the National Employment Law Project (NELP) and Abbey Spanier Rodd & Abrams, LLP, filed a class action lawsuit against McMillan's Home Care Agency on behalf of Josefina A. Toledo Montero and others who were consistently underpaid, never paid overtime, and frequently worked more than 60 hours per week. The complaint, which also charges that McMillan's unlawfully required workers to cover the costs of cleaning their uniforms and purchasing certain supplies and repeatedly falsified or misreported pay records, seeks unpaid wages and assurance that the company will comply with New York State's wage and hour laws in the future. A recent NELP study, *Working Without Laws: A Survey of Employment and Labor Law Violations in New York City*, found rampant wage theft in the city's home care industry, where over 80% of workers experience labor law violations.

MFY Fellow Lindsey Schoenfelder, who is handling the litigation for MFY, said "This suit is about basic justice for women who do the difficult and essential work of caring for our sick and elderly. When home care agencies break the law by cheating workers out of legal wages, both the workers and the people they care for suffer."

Mental Health Law Project Holds Symposium on Representing People with Mental Illness



L to R: MFY Deputy Director Jeanette Zelhof, Judge Mark Finkelstein, Jacqueline Cara, Esq., Judge Gerald Leibovits, and MFY Attorney Dinah Luck at Symposium panel on the Powers and Limitations of Guardians ad Litem.

MFY's Mental Health Law Project held a symposium on February 5 on *Representing People with Mental Illness: Partnerships, Perceptions and Perspectives on Guardians ad Litem*, hosted by Pfizer, Inc. Attended by over 80 attorneys and mental health professionals, the symposium examined the complex issues involved in representing people with diminished capacity and provided practical guidance on how lawyers, social workers, and the courts can collaborate to ensure that people with mental disabilities get full access to justice.

MFY Staffer Organizes Aid Effort to Haiti

One month after the January 12 earthquake in Haiti, MFY's Director of Operations, Juliette Bistoury, and four relatives flew to the Dominican Republic with 40 large suitcases filled with first aid supplies, painkillers, lab supplies, baby formula, diapers, children's clothing, shoes, and school items. They had started a new group, *Renaissance Jacmeliene*, to rebuild their old neighborhood. In Jacmel, they found their relatives and former neighbors sleeping outside under makeshift tents, with little access to water or sanitation.

"A Canadian newspaper was following us around," Ms. Bistoury explained, "so we went to the Mayor's office and demanded



Juliette with children from Jacmel, a seaside town 25 miles southwest of Port-au-Prince.

tents and latrines for the neighborhood. We got them." The group distributed supplies to residents and to the local hospital, which had been partially destroyed.

In April, the group returned. "Everyone was living in mud," she said, "and all the kids had ringworm so we focused on creating dry land." They prodded the mayor to provide workers to use debris for paving stones and purchased gravel to combat the mud in and around the tents.

The group now has a local chapter in Jacmel to facilitate coordination, and members in New York are donating land for new houses. On their next trip in August, they hope to supply modular building materials and supplies for street vendors to restart their small businesses. "Once we get our old neighborhood of Rue de Comedie rebuilt, we'll move on to a new area of Jacmel," Ms. Bistoury said.

Pro Bono News

MFY Honors Pro Bono Partners in Justice

Over 200 pro bono attorneys representing 46 private law firms and corporate law offices were honored at MFY's 2010 Pro Bono Recognition and Awards Breakfast, held on February 26 at Davis Polk & Wardwell in New York City. **Paul, Weiss, Rifkind, Wharton & Garrison LLP** received MFY's Matthew G. Leonard



Award for Pro Bono Excellence in recognition of the exemplary work done by its litigation team in *Disability Advocates v. Paterson*, the landmark ruling ordering New York State to provide supported housing in the community for current and future adult home residents with mental disabilities. **State Senator Eric T. Schneiderman** received MFY's Champion of Justice Award for his efforts to expand access to free legal services for low-income New Yorkers. The firms honored were:

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MFY Spearheads Drive to End “Sewer” Service

MFY raised the red flag on rampant sewer service in consumer debt cases by documenting the relationship between improper or “sewer” service and default judgments in its June 2008 report, *Justice Disserved*. Of the thousands of clients who MFY has advised, counseled, and represented in debt cases, only a handful have been properly served. Most found out about the lawsuit when they discovered their bank accounts were frozen.

Since issuing the report, MFY consumer rights attorneys Carolyn Coffey and Anamaria Segura have advocated for greater oversight of the process serving industry, testifying before the New York City Department of Consumer Affairs and the City Council, and meeting with the Attorney General’s (AG) office to share data on the extent of the problem. Their efforts paid off. In April 2009 the AG sued one of the largest process serving firms in the state for sewer service and indicted its CEO, who pled guilty and is awaiting sentencing. In July, the AG upped the ante and sued 35 law firms and two debt collectors, seeking to vacate over 100,000 faulty judgments statewide. At several press conferences announcing this suit, Attorney General Andrew Cuomo praised MFY’s efforts to protect consumers from improper service.

With momentum building, MFY encouraged City Councilmember Daniel Garodnick, who had successfully sponsored legislation to rein in third-party debt collectors, to introduce new legislation to combat sewer service. Crafted with help from MFY, introduced by Garodnick, and signed into law on April 14, the bill requires process servers to pass a test to receive a license, use an electronic device to record service attempts, keep electronic records for seven years, and post a bond to cover the cost of unpaid fines and judgments. The bill also gives defendants a private right of action against process servers who operate unlawfully.

MFY also found that employers routinely misclassify many process servers as independent contractors, paying them as little as \$3 for each successful service. “By ex-

ploiting their workers, the industry incentivized sewer service,” said Ms. Coffey. “The piecework system meant that many process servers received less than minimum wage and no payments were made to Social Security on their behalf.” The bill requires that employers provide workers with information about their rights as workers, including wage and hour laws.

The Consumer Credit Fairness Act

MFY’s drive to protect consumers against unscrupulous debt collectors is not over. MFY, together with New Yorkers for Responsible Lending, is urging the state to pass the Consumer Credit Fairness Act (CCFA), introduced by Assemblymember Helen E. Weinstein and State Senator Eric T. Schneiderman. In consumer credit actions, only one out of every 100 defendants is represented by counsel, while all plaintiffs are represented. Unrepresented defendants often unwittingly waive important defenses, such as the absence of personal jurisdiction, the plaintiff’s lack of standing to bring the claim, or the statute of limitations. They rarely ask the plaintiff for proof of its claims, even when they believe they do not owe the debt.

The CCFA addresses the most common problems facing debtors. It requires an additional mailing from the court to the debtor-defendant before a default judgment can be entered; reduces the statute of limitations from six to three years; and allows defendants to raise lack of per-

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sonal jurisdiction in their answer and preserve that defense for trial without filing a separate motion to dismiss within 60 days as under current law. Since many debt lawsuits are filed based on outdated information by third-party debt collectors, the bill would require plaintiffs to provide information about the debt, including the name of the original creditor, last four digits of the account number, the date and amount of the last payment, and an itemization of the amount sought, including principal, finance charges, fees and other items.

“Debt collectors buy credit card debt for pennies on the dollar and file lawsuits based on little more than an entry on a spreadsheet,” said MFY Fellow Anamaria Segura. “The CCFA, combined with stricter process serving rules, will help level the playing field and dramatically reduce the number of bogus lawsuits clogging the courts.”



MFY Fellow Anamaria Segura, Councilmember Daniel Garodnick, MFY Attorney Carolyn Coffey, and MFY client Jackie Neal spoke at press conference on sewer service.



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