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Dear Mayor Eric Adams and Comptroller Brad Lander:

To quote Mayor Adams, *"In order for our city to operate effectively and carry out its core functions, we need fair, expeditious, and just administrative trials and hearings."*¹ I am writing to make you both aware of a critical instance where this is not happening. The problem can be easily fixed and the city would even see increased revenues as a result.

The Department of Consumer and Worker Protection (DCWP) Is Not Filing Individual Consumer Restitution Cases For Hearings At The Office of Administrative Trials and Hearings (OATH), Without Requiring Consumers To First Obtain A Judgment In Regular Court

In 2017 DCWP ended its decades-long practice of filing consumer restitution cases for hearings and has required consumers to first go to court to obtain a judgment. As a result, there are tremendous delays and unnecessary roadblocks for consumers seeking restitution. Millions of dollars in trust funds are not being distributed in a timely fashion to pay consumers their restitution or to pay fines owed to the city.

My 35 Years of Experience And Expertise In This Area

I worked for 28+ years at what was formerly known as the Department of Consumer Affairs (DCA), as General Counsel and Assistant Commissioner, Special Counsel, and Principal Administrative Law Judge (ALJ). I then worked at OATH for the past six years as Deputy Commissioner. I retired in February 2022.

There Are Millions of Dollars In Trust Funds From Which Unpaid Restitution and Fines Can Be Paid, But Only After There Is A Hearing And Order By OATH

There are two Trust Funds established to provide restitution and fines when a DCWP licensee fails to pay -- the Home Improvement Contractor (HIC) Trust Fund and the Tow Truck Trust Fund. **The more important of these is the HIC Trust Fund which as of late last year had amassed \$12M.** The Comptroller may not invade these Trust Funds, for either restitution or fines, until OATH holds a hearing, finds the licensee in violation of the relevant license laws, and orders restitution and fines.

Consumers Left in the Lurch/Many Unable to Pursue Their Claims

There is no question that many, if not most, of the consumers turned away by DCWP since 2017 have not pursued their cases in court. The reasons include claims being above the Small Claims Court monetary cap and the difficulty in initiating and pursuing a case in Civil Court or State Supreme Court without an attorney to help.² In fact, as of the end of last year, only about two dozen HIC consumer restitution hearings had been filed with OATH after the consumer obtained a judgment.³ Of those, all had had many years of lag time. In the last few years DCWP has curiously filed one or two cases with OATH without the consumer first obtaining a court judgment, raising serious questions of special access and a lack of fairness.

¹ *The Record of Law & Commerce*, March 23-30, 2022.

² In many cases the cost of an attorney is prohibitive because discovery and motions takes years in court. This is why DCWP is supposed to facilitate the bringing of expeditious administrative hearings in the city's tribunal.

³ Most of these cases were drafted by law interns and are no simpler to draft than the pre-court judgment cases.

Failure To Ensure That Licensees Comply With The Relevant Licensing Laws

DCWP's long delays in bringing charges against licensees, and then only on a sliver of cases where a consumer returns after obtaining a court judgment, fails to ensure that licensees will comply with the relevant laws and rules. Moreover, after so many years of not filing these cases for hearings, licensees must be aware that DCWP will not likely ever bring such cases against them. It makes a mockery of the license laws meant to protect consumers. It also makes for an uneven playing field for the licensees who comply with the laws!

The Need To Resume Hearings At OATH Is Most Critical In The Home Improvement Area

Home Improvement issues have always been one of the most frequent consumer complaints and they involve the greatest amounts of restitution sought. They are, also, the most difficult to resolve by DCWP's Consumer Services Division, and most often had to be referred to the General Counsel's Office to draft the papers for hearings. It is only when faced with a hearing and the possible imposition of both restitution and fines that there is a strong enough incentive for licensees to settle the cases.

Failure To Protect the Most Vulnerable; Many Forced To Live In Unsafe Conditions

Abandoning expeditious hearings for those consumers who have come to DCWP for help and who are often elderly, minority, or immigrants, and without the financial means to fend for themselves, too often leaves them with no timely refunds and no justice. Consumers risk living in a house or apartment in disrepair or being unable to rent a part of their house, losing income that may be critical to keeping their homes. Many of the cases I worked on over the years in this area were heart-breaking and involved serious unsafe living conditions. Consumers who had taken out home equity loans were often unable to repay them until monies came from the Trust Fund, helping avoid foreclosures.

OATH's Past Outreach to DCWP To Help Mediate These Cases Inexplicably Refused

OATH reached out to DCWP in the Spring of 2020 about the HIC cases not coming to OATH. Then Commissioner Joni Kletter offered the mediation services of OATH's Center for Creative Conflict Resolution (CCCCR) to reduce the number of cases that would have to go to a hearing since DCWP's main objection to filing these cases was it had to assign an attorney to prosecute cases in OATH's Hearings Division. DCWP inexplicably rejected the offer even though with effective mediation very few of these cases would ever go to hearing so there would be little need for DCWP attorneys to have to prosecute these cases.

If Calendared At OATH, Fewer Than 10% Of Filed HIC Cases Should Require A Contested Hearing

Based on my experience, most cases will not require contested hearings. I always had an excellent record of settling HIC restitution cases as an ALJ at DCA. Then, in 2012, I requested a re-assignment from my ALJ position, back to being Special Counsel in the General Counsel's Office, to dedicate myself to clearing a backlog of cases that needed to be drafted. **Between Sept. 2012 and Sept. 2014, there were 437 cases sent for hearings. Of those, 235 cases were settled either by me or one of the ALJs. In total, \$1.6M in restitution was achieved via these settlements.** (See attached report submitted at the time; relevant totals are from the sums listed on pages 1 and 3.) **There were 31 contested hearings and 115 cases where the HIC defaulted resulting in inquests. Of the combined 146 inquests and hearings, \$2.3M was awarded in restitution and \$2.3M in fines.** Of the 437 calendared cases, 20 were withdrawn. That leaves a remainder of 36 cases which would not yet have come up for their hearing dates. **Bottom line: During that two-year period, of the 437 cases calendared, 401 had come up for their hearing dates and only 31 cases (8 %) led to contested hearings. Plus, excellent settlement results were achieved through mediation!**

Leverage To Settle These Cases Does Not Exist in Court

HIC cases are particularly amenable to a settlement because the licensee typically faces \$7K to \$10K in fines, which DCWP has always offered to waive if the HIC settles the restitution claim. This leverage is lost when a consumer is forced to go to court. It also means that when a consumer obtains a court judgment and DCWP refers the case for a hearing at OATH, the HIC will have onerous fines imposed which could have been avoided. Many will needlessly have to close their businesses once their licenses are revoked for failing to pay these fines. We should do what we can to avoid more businesses closing.

Suggested Way to Go Forward

The non-HIC cases can be filed with OATH's Hearing Division as there are few such cases and they are generally simple, involving less than \$1K. The HIC cases, which typically come in at about 15 to 20 per month, are better filed with OATH's Trials Division, which unlike the Hearings Division, conducts settlement conferences. If a respondent defaults, the case could be transferred to the Hearings Division for a computer-generated default decision; no inquest required. The contested HIC cases involving under \$10,000 can also be transferred to the Hearings Division and should be allowed to proceed to a hearing without a DCWP attorney – just like in Small Claims Court.⁴ The contested HIC cases involving more than \$10,000 can be heard at the Trials Division. As most should settle with effective mediation efforts, a DCWP lawyer will not often have to prosecute the case.⁵

I Will Volunteer My Time Two Days a Week

I am willing to volunteer at least two days a week to help fix this problem. I am willing to train the Trials Division ALJs, as I previously trained OATH's Hearing Officers⁶ to handle these cases. I would also mediate as many cases as possible either under the auspices of the CCCR or the Trials Division.

WIN-WIN For Consumers, Licensees Who Are Complying With The Laws, The City

The return to traditional practice will afford consumers the assistance they always received prior to 2017, provide a level-playing field for businesses who do right by consumers, and generate revenue from more timely fines being paid by licensees or from the two existing Trust Funds. The City is in the enviable position of being able to right a long-time wrong committed by the prior administration by once again providing an expeditious forum for the consumers it is meant to serve. I know that you are both dedicated to affordable housing and achieving equity for vulnerable New Yorkers. This would help in both of these regards.

Sincerely,



Susan Kassapian

cc: DCWP Commissioner Vilda Vera Mayuga; OATH Commissioner Asim Rehman; Deputy Mayor Maria Torres-Springer; Chief Counsel to the Mayor, Brendan McGuire; Corporation Counsel

This letter is dedicated to Robert Martin, former General Counsel at DCA, who was helping me to right this wrong, until he died of a 9/11 cancer in March of this year.

⁴ OATH may need to promulgate a simple rule to allow this, which would match an existing Trials Division rule.

⁵ OATH could also possibly expand this area for the appointment of pro bono attorneys.

⁶ Working with Ray Kramer at OATH's CCCR, I was responsible for organizing the Continuing Legal Education classes for the Hearing Officers from 2018 until I retired in 2022, and I was always an instructor for the DCWP classes.

Consumer Dockets
Charge Drafting and Settlement Report

Date of Report: Sept. 15, 2014 for Week Ending Sept. 12, 2014

I. Status Update – Weekly Snapshot (Short week – Labor Day; week back from vacation)

	Week Ending 9-5-14	Week ending 9-12-14
Cases Assigned for Charge Drafting	4	2
Cases Drafted, but Awaiting Final Review	5	10
Cases Filed with the Tribunal	0	1
Cases where DCA is Awaiting info from Consumer	14	17
Cases Settled	3	3
Total Restitution in Settlements	\$3,986.09	\$22,000.00
Appeals Filed by Respondents	0	0
Appeals or Oppositions Filed by DCA	0	0

II. From Project Beginning (Sept. 2012) to Present

	Week Ending 9-5-14	Week Ending 9-12-14
Cases Assigned for Charge Drafting	531	533
Cases Sent for Filing with the Tribunal	436	437
Cases Withdrawn or Closed without Going to Hearing	43	43
Cases to be drafted	26	18
Cases where DCA is Awaiting info from Consumer	14	17
Cases Awaiting a Final Decision on Whether to Proceed, Withdraw	7	8
Cases in Review or Needs Revision Post Review	5	10
Cases Settled	201	204
Total Restitution in Settled Cases	\$1,302,780.02	\$1,324,780.02

III. Cases on Hold (8)

Case name	Date Referred	Reason
C1035614 Ryncarz v. Mike Masonry	8/18	Unlic. HIC
C0948614 Haymando v. Top City	6/30	Concrete case
C0556114 Maffeo v. Steam-N-Stone	4/28	Concrete case
C0339614 Fenster v. Cracovia	4/4	Liquidated damages
C0233714 Hasenfeld v. Custom Wreckers	3/31	JC handling
C0108214 Warren v. Bil-ray	3/4	Expect to settle
C0428313 Jackson v. Trademark	12/13	Letters of administration
CD5-134284 Mullings v. Bil-Ray	9/13	Expect to withdraw

IV. Cases Awaiting Info From Consumers (17)

Case Name	Date Referred	Info Needed Awaiting Est (E) C review (C) Other (O)
C1190214 Horen v. Tipperary	8/18	C/E
C1079514 Werner v. Bellerose Const.	8/18	C/E
C1313714 Gheraldi v. World of Stone	8/11	C/atty
C1163514 Staffa v. Wild Bird Const.	8/11	C/E
C1237114 Adams v. Driscilla	8/11	C/E
C1235514 Zhong v. Boscaino/Speedway	8/11	C
C1029814 Ruboko v. Seaport Parking	7/28	O/Info
C1158814 Hanan v. Nari/Firestone	7/28	E
C0951114 Toscano v. Bella Home	7/28	C/E
C1250314 Carter v. Sherman Industry	7/28	C/E/O
C1060814 Cabrera v. 4 Kings	7/14	C/E
C0996114 Franklin v. 4 Seasons	7/14	C/E
C0844314 Sheperd v. BNI	7/7	C/E
C0892614 Frances v. Allstate	7/7	C/E
C0820514 Schlenoff v. Classico	6/16	C
C0619614 Almonte v. NYC Sunrise	5/19	C/E
C0214314 Brenner v. Heathrow Const.	3/24	E/O Work def.

V. ALJ Report – Inquests, Hearings, Settlements, Withdrawn

	Yr to Date for Week Ending 9-5-14	Yr to Date Week Ending 9-12-14
Inquests	115	115
Hearings	31	31
Settlements (plus 2 by SK as ALJ)	40	41
Withdrawn or Consumer Defaulted	20	20
Total Restit. on Settlements (plus 2 by SK=\$15.5K)	\$267,680.96	\$
Total Restitution on Inquests/Hearings	\$2,287,521.79	\$2,287,521.79
Total Fines (Combined Company and Salesperson)	\$2,293,475.00	\$2,293,475.00

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