From: **NYC Rules** <noreply@rules.cityofnewyork.us>
Date: Tue, Jun 20, 2023 at 5:23 PM
Subject: Thank you for your comment on NYC Rules - "Home Improvement Contractor Trust Fund"
To: <kassapians@gmail.com>

Thank you for your submission! Your comment will be reviewed and you will receive a separate email when it is approved and posted on the "Home Improvement Contractor Trust Fund". Please see our [Comment & Posting Policy](https://rules.cityofnewyork.us/comment-posting-policy/) for additional information.

 This is the comment under review:

"I once again commend DCWP for trying to add to its ability to invade this fund for consumers. However, until DCWP resumes bringing hearings on behalf of consumers to the Office of Administrative Trials and Hearings (OATH), any effort will fall short. This proposal is in particular grossly inadequate. It only tinkers at the margins of the problem resulting from DCWP’s failure to bring hearings against licensed Home Improvement Contractors (HICs) based on complaints filed by consumers who have been told to go to court since on or about November 2017 before DCWP will bring charges against the HIC. The best way forward, based on my many years of expertise in this area, is explained in detail in my June 9, 2022 letter to the Mayor and Comptroller. See attached: <https://rules.cityofnewyork.us/wp-content/uploads/2022/12/Letter-to-Mayor-and-Comptroller-June-9-2022.pdf>.

Moreover, no doubt DCWP will have to dedicate at least one or two attorneys to implement its plan for these limited invasion reviews. A much better approach would be to dedicate one or two attorneys to draft the hearing notices and mediate the cases, which I did full time starting in Sept of 2012. The chart attached to my letter gives the statistics for the two-year period of Sept. 2012 to Sept. 2014, showing that during this period I calendared 437 hearings, settled 204 cases for $1.3M in restitution for consumers, Administrative Law Judges settled another 41 cases for $267,680 in restitution for consumers, and 115 inquests and 31 hearings resulted in nearly $2.3M in additional restitution for consumers. None of the restitution amounts were capped at any amount and several of my settlements were in excess of $25K. The drafting would be much easier than when I was doing this work since DCWP thereafter started using a simpler template rather than the hyper-detailed approach I had been told to implement. The summonses being used before DCWP stopped bringing hearings were so form-like a consumer could even fill in their own particulars with just a few sentences.

Here are my specific objections to the rule as proposed:
1. The limited $5K TF invasion for consumers who meet the requirements in the proposed rule will not help the vast majority of consumers since the vast majority of these complaints seek damages well in excess of $5K.

2. Similarly, the limited $5K TF invasion will not help the most aggrieved consumers who have suffered significant damages of at least $25K, the current cap of TF invasions for restitution.

3. This rule change memorializes a total abandonment of enforcement of the relevant laws and rules in connection with these invasions -- no charges or sanctions imposed on the licensees who have violated the relevant laws and rules. That means that HICs who have abandoned or deviated from contracts (Adm. Code 20-393(1)), failed to perform work in a skilled and competent manner (Adm. Code 20-393(11), or failed to include important disclosures in their contracts (6 RCNY 2-221(a) et seq.), have no incentive to comply with these laws/rules and will continue to put other consumers at risk.

4. There is no need to stop making limited invasions if the TF has a balance that goes below $5M as set forth in subparagraph (d)(3). The gross hoarding of TF funds must end. Approx. $2M in new funds come in every two years at license renewal and the contribution amount of $200 has not been raised since 1992.

Assuming you will proceed with your approach for limited TF invasion, here are my suggested revisions to the rule:
1. Raise the limited invasion amount to at least $10K so that consumers with damages up to $10K don’t have to still go to Small Claims Court (SCC) to seek the balance of their damages. Making these consumers go to DCWP and then SCC is unduly onerous. It will also confuse the SCC judges and make them less likely to award additional damages.

2. I would alternatively suggest a limited invasion amount of $15K since a very significant number of HIC complaints are at least $15K and this amount is still quite limited compared to the $25 cap otherwise allowed by the TF.

3. Clarify in subparagraph (d)(1) that a consumer has fully cooperated in an unsuccessful mediation when an HIC fails to reply to a complaint or engage at all with DCWP.

4. If a limited invasion occurs and a second complaint against the same HIC is filed within a three-year period, the HIC should have to reimburse the TF for any invasions and be subject to license suspension or revocation for failure to do so.

5. The reference to “award from the Commissioner” in subparagraph (d)(7) should be clarified to explain whether this means awards after a hearing at OATH."