

While the new proposed changes to the Home Improvement Business Trust Fund (TF) rule sound good on paper, the implied benefits are mostly illusory unless DCWP resumes individual consumer restitution hearings for victims of unscrupulous Home Improvement Contractors (HICs). In fact, DCWP has provided no protection for apartment owners or homeowners since they no longer draft such hearings, which should be heard at the Office of Administrative Trials and Hearings (OATH). Without hearings, HICs are not held accountable for the damages they cause to consumers or the laws they violate. This all happened because OATH did not want to hear *pro se* cases when jurisdiction to hear these cases was transferred to them in August of 2016. OATH insisted that DCWP assign attorneys to each consumer. After about a year, DCWP stopped drafting hearings unless the consumer first obtained a court judgment and the TF kept growing while barely making any payments to consumers.

With the proposed changes, the TF will just keep paying damages caused by bad contractors, without consequences to them. The city will also never collect fines for their violations of laws. The way the original TF rule worked was that restitution and fines could only be paid from the TF *after a hearing* and *after a license suspension or revocation*. As one of the people who helped draft the original TF rule in 1991, paying out damages for HICs and letting them off the hook was NOT what was envisioned. **At the very least no contractor on whose behalf the TF has paid out damages should be allowed to be exempt from continued bi-annual contributions.** Even then, unless hearings are resumed and charges brought, bad contractors will have impunity to just keep ripping off more consumers.

Very Few Will Be Eligible for the \$40K “Standard” Invasion Process

Raising the limit of monies that can be paid to consumers from the “standard trust fund invasion process” (from \$25,000 to \$40,000) is particularly illusory because without hearings virtually no consumers succeed in obtaining court judgments in excess of the small claims court amount of \$10,000. To even refer to this route as the “standard” process is a farce since the very first listed way for this happen is via “administrative hearing decisions,” an unachievable result, since hearings are not happening! Those hearings were the standard from 1979 until 2017. Now a consumer would have to obtain a Civil or Supreme court judgment to be eligible for this route, a path most consumers cannot afford to pursue. I know of several consumers who paid lawyers ten thousand dollars or more to pursue damages of more than \$100,000 only to give up and abandon their court cases because of a lack of funds. At best, a consumer might be eligible for \$20K through the claims process but that too is unlikely. Read on.

Most Claims Submitted Via the “Claims Process” are Denied By DCWP

While it is welcome news that DCWP wants to raise the Consumer Claims Process invasion amount to \$20,000, the fact is that DCWP has not been doing a good job of granting these claims. Based on a series of FOIL requests and replies received to date, 1,593 consumers who had previously filed complaints since January 1, 2016 were sent claim letters inviting them to file claims. All of these consumers had previously been denied hearings and told to sue in court. There were then an additional 83 consumer complainants who were sent claim letters as of November 22, 2024. **Of the 1,676 consumers sent claim letters, only 313 filed claims and of those only 125 were approved for TF invasions for a little more than a total of \$1.2M. The majority of the claims -- 186 -- were denied.** Notably, of the 90 consumers that received the current cap of \$10K, at least half of them appear to have been damaged far in excess of \$20K including several who appear to have suffered six figure damages. For these most seriously aggrieved consumers, even \$20K is insufficient. It would require hearings for them to be eligible for the proposed \$40K TF invasions. They could also then have their administrative decisions converted to court judgments which could yield further satisfaction.

The large numbers of claims denied make no sense. DCWP’s Consumer Services rigorously requires an extensive checklist of things to show that a claim has validity before it is docketed as a complaint. Once that gauntlet is passed there should be no reason that so many claims are rejected. I was handling these cases for over 28 years and virtually all cases docketed and which went to hearing were deemed valid. **The extremely high denial rate is likely due to either not enough time and resources being put into their review or the need for the consumer to present their case in person instead of in writing.** Everyone but the highly literate and highly educated are disadvantaged by this claims process and the denial of hearings.

Hiding That The TF is Being Mismanaged and Not Being Used As Intended

This is at least the third time DCWP has amended this rule since 2022. Curiously as part of the explanation for having to amend this rule again, DCWP cites the TF balance as of November 2023 as being \$15M and says it wants to be able to go back and cover complaints submitted in 2015. Several of the 2015 complaints actually went to hearings at OATH before the hearings stopped and given the passage of time only a few consumers at best, who were not afforded hearings, will likely file claims. Again, this is illusory. Also, DCWP knew back when it passed the limited TF invasion rule in 2023 that the TF balance had enough money to pay claims related to complaints submitted in 2015. Plus, one has to wonder why DCWP failed to cite the current TF balance as of the end of February 2025 since that

was when HIC licenses were renewed and about \$2M would have been added to the balance. (I have a pending FOIL seeking this information.)

I suspect that there is a different reason these changes to the TF rule are being made now. Since the most significant *real change* here is to pause future TF bi-annual contributions on license renewals, DCWP will make it less noticeable that the TF is still being mismanaged and not being used as intended. Apparently, it will do anything instead of the right thing -- to resume hearings -- to make the TF balance decrease. DCWP was put on the spot about the TF with the article that came out in *The Gothamist* on November 24, 2023, and the *New York Law Journal* article I had written on July 23, 2024. See <https://gothamist.com/news/nycs-15m-consumer-protection-fund-is-going-unused-as-homeowners-clamor-for-help> and <https://www.law.com/newyorklawjournal/2024/07/23/defrauded-consumers-harmed-by-two-new-york-city-agencies-that-are-not-doing-their-jobs/>.

Bottom line: Without resuming hearings most consumers will be unable to be eligible for either the \$40K TF invasion because that would require a court judgment, or the \$20K TF invasion through the claims process because of the extremely high rate of denial of those claims. The vast majority of HIC victims will continue to get absolutely nothing, while the TF balance will likely continue to be at least \$15M for many years to come. This is not only because what has already been explained but because there are always new companies applying for an HIC license for the first time who will be contributing to the fund. **More importantly, the general public will continue to be exposed to the HICs who have already ripped off consumers and who can continue to do so without any accountability. With this rule's proposal to not require them to continue contributing into the TF, we are giving bad HICs an unconscionable gift upon an already unconscionable gift of not being subject to hearings. Talk about government waste and inefficiency!**

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