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NEW YORK CITY COUNCIL
COMMITTEE ON CONSUMER AFFAIRS

PUBLIC HEARING: DEBT SETTLEMENT COMPANIES
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TESTIMONY OF ANAMARIA SEGURA
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My name is Anamaria Segura. I am a member of the Consumer Affairs Committee of the New York City Bar Association. I am testifying on behalf of both the Consumer Affairs and Civil Court Committees of the Association. These committees are comprised of practitioners in the New York City Civil Court, current and former attorneys from federal, state and city consumer protection agencies, legal services attorneys; consumer advocates; attorneys from private firms representing businesses in actions brought by consumer protection agencies; class action attorneys representing consumers and businesses; judges; attorneys affiliated with local law schools and others with expertise in litigation and debt collection.

The abuses inherent in the debt settlement industry have recently been the source of increasing scrutiny and regulation across the country. In April 2010, *The New York Times* reported on the rampant abuses by the industry at the expense of vulnerable consumers, illustrating the manner in which companies typically charge a fee based on a large percentage of the balances owed by the consumers and then collect those fees regardless of whether a consumer's debts are actually reduced.[1]

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[1] *See* Peter S. Goodman, *Peddling Relief, Firms Put Debtors in Deeper Hole*, N.Y. Times, April 18, 2010, *available at* http://www.nytimes.com/2010/06/19/business/economy/19debt.html?pagewanted=1.

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Attorneys General in twenty one states have filed more than 128 actions against debt settlement companies for fraud.[2] In 2009, the New York State Attorney General sued two large nationwide debt settlement companies, alleging that one percent or less of consumers who paid for debt settlement services received any benefits from the defendants.[3]

In 2009, the Federal Trade Commission concluded that debt settlement is fundamentally unsound and causes "irreparable injury to consumers."[4] Moreover, in April 2010, the U.S. Government Accountability Office testified to Congress that, after an investigation of the debt settlement industry, it found that most of the debt settlement companies it investigated engaged in unfair and deceptive acts and practices.[5]

Consumer advocates and watchdog groups including the Consumers Union and the National Consumer Law Center have long criticized the debt settlement model as fraudulent and deceptive[6] and according to the GAO testimony, the Better Business Bureau has given debt settlement companies an "inherently problematic" rating.[7] In fact, the industry's own figures show that consumers typically fail to secure relief, despite many companies' promises about guaranteed or typical results. A survey of The Association of Settlement Companies (TASC) cited in the GAO report found that only 34.4 percent of consumers who started debt settlement three years earlier had either "substantially completed" their debt settlement plans or were still actively saving for settlements, and only 24.6 percent had eliminated at least 75% of their debt. That survey also found that only 24.8 percent of consumers who terminated debt settlement before completion had even one debt settled before termination of the contract.[8]

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[2] Nat'l Ass'n of Attorneys General, *Comments in Support of Proposed Rulemaking to Amend the Federal Trade Commission's Telemarketing Sales Rules* 5 (Oct. 23, 2009).
[3] *See* Press Release, N.Y. Attorney Gen., *Attorney General Cuomo Sues Debt Settlement Companies for Deceiving and Harming Consumers* (May 20, 2009), *available at* www.oag.state.ny.us/media_center/2009/may/may19b_09.html.
[4] Telemarketing Sales Rules, 74 Fed. Reg 41988, 41995, 41996 (August 19, 2009) to be codified at 16 CFR pt. 310.
[5] *See* United States Government Accountability Office, Testimony before the Committee on Commerce, Science, and Transportation, U.S. Senate, *Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers,* Statement of Gregory D. Kutz, Managing Director Forensic Audits and Special Investigations, GAO-10-593-T April 22, 2010, hereinafter "GAO-10-593-T," *available at* http://www.gao.gov/new.items/d10593t.pdf.
[6] See National Consumer Law Center, *An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers*, March 2005, *available at* http://www.nccusl.org/nccusl/Docs/NCLCDebtSettlementRpt.pdf.
[7] *See* GAO-10-593-T, 11-13.
[8] *See* The Association of Settlement Companies, October 26, 2009, comments to the FTC on the proposed amendments to the Telemarketing Sales Rule on the marketing of debt relief services, 9-11, *available at* http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00202.pdf.

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States have enacted legislation to prevent such abuses against consumers. For example, in May 2010, Illinois passed the Debt Settlement Consumer Protection Act[9], which limits any settlement fee to 15% of the consumer's savings, and prohibits such a fee from being charged until after a debt settlement company has negotiated and executed a settlement agreement with the creditor. Maine also passed a law limiting the settlement fee to 15% of the consumer's savings.[10] The Illinois law requires that an individualized consumer financial analysis be conducted to determine suitability before a consumer is enrolled in a program.

The most significant development in the regulation of this abusive industry is the Federal Trade Commission's amendment of the Telemarketing Sales Rule (TSR) through the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, which imposed regulations on companies selling "debt relief services," including debt settlement. The new TSR went into effect on October 27, 2010, and imposes limits on some of the most harmful aspects of the debt settlement industry. The TSR applies to outgoing calls by debt settlement companies, as well as incoming calls by consumers in response to debt settlement advertising. A few highlights of the TSR include the requirement of key disclosures to consumers, the prohibition of misrepresentations to consumers about any material aspect of the debt relief service, and a ban on up-front fees; replacing such fees with a so-called "pay as you go" fee model.

From Article at GetOutofDebt.org

Clients of committee members and other New Yorkers have first hand experience with debt settlement companies that have worsened their financial circumstances. Three examples follow:

Thomas B., a disabled fifty-four year old living in Manhattan, receives SSI benefits of $761 a month that are exempt from garnishment. Desperate to avoid being sued for debt on three credit cards, and afraid of what would happen to his SSI benefits if he were sued, Thomas enrolled in a debt settlement company program that withdrew $336 a month from his bank account for a year and a half. Only after Mr. B was sued for nonpayment did he realize that he

[9] H.B. 4781, Public Act 096-1420 (effective Aug.3, 2010), *available at* http://www.ilga.gov/legislation/publicacts/96/PDF/096-1420.pdf

[10] *See* Me. Rev. Stat. tit. 32, § 6174-A, *available at* http://www.mainelegislature.org/legis/statutes/32/title32sec6174-A.html.

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had no money to settle with any of his creditors in the escrow account set up by the debt settlement company because the money he sent to the company had been applied to "set-up fees." Mr. B has since been sued by two other creditors, and despite his exempt income, is considering filing for bankruptcy.

David C., of Staten Island, also had a negative experience with a debt settlement company. After his son became severely ill, David became overwhelmed by medical bills and could not keep current on his credit card bill. He enrolled in a debt settlement program with a company that promised to help him settle his debt, and paid nearly $3,000 to the company. Later, upon returning from military service in Iraq from April 2009 to July of 2010, Mr. C learned that he had been sued by the credit card company while he was away, and that the debt settlement company had done nothing to help him settle his debt or avoid a lawsuit. David is currently defending himself in the debt collection lawsuit and hopes to come up with a settlement on his own.

A federal lawsuit was recently commenced against debt collectors on behalf another New Yorker, Bernadita D., who was promised that her debt would be settled for a fraction of the amount owed. Instead, the debt settlement company collected huge up front fees and left her with little or no money to pay creditors. Ms. D is a disabled mother those only income is SSI, which is exempt from garnishment. The defendants took $3,190.64 in fees from Ms. Duran, and by instructing Ms. D to stop paying her credit card bills and to ignore letters from creditors, caused Ms. D's overall debt to increase by more than $4,500 in eight months.

Unfortunately, the stories of Mr. B, Mr. C and Ms. D are not unusual. Though the TSR should go a long way towards protecting New Yorkers like them against unscrupulous debt settlement companies, its provisions will only be effective if city, state and federal enforcement agencies aggressively monitor the industry's compliance with the new rules. Our committees urge the Department of Consumer Affairs and Office of Financial Empowerment to strictly monitor noncompliance, and to make it a priority to educate New Yorkers about their rights with respect to these companies. These agencies should be given adequate resources to do so. Moreover, the City Council and the New York State Legislature should follow the example of

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Illinois and other jurisdictions and enact strong legislation imposing restrictions on debt settlement abuses.

The Committees thank the City Council for the opportunity to testify, and look forward to working with the Council towards the shared goal of protecting New Yorkers against abuses by the debt settlement industry.

Respectfully submitted,

Anamaria Segura
On behalf of the
Civil Court and Consumer Affairs Committees
New York City Bar Association
November 18, 2010

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