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In New York, Some Judges Are Now Skeptical About Debt Collectors' Claims

By WILLIAM GLABERSON

As New Yorkers have tumbled into credit card debt in large numbers during the great recession, bill collectors have inundated the courts to get what they say is due. In turn, the courts have issued hundreds of thousands of orders against residents. Some consumer groups argue that by doing so, the courts have become little more than an arm of the debt collection industry.

Now, a few judges in New York State are suggesting that they agree, at least in part, with the consumer groups. They have fumed at debt collectors and their lawyers, scolding them for interest as high as 30 percent a year and berating them for false statements and abusive practices.

Some of the rulings have even been sarcastic or incredulous. In December, a Staten Island judge said debt collectors seemed to think their lawsuits were taking place in a legal Land of Oz, where everyone was supposed to follow anti-consumer rules invented by some unseen debt-collection wizard.

Last month, a Manhattan appeals court threw out a credit card case, saying a debt collection company had sued the wrong person but pursued the case anyway.

"I think these judges are outraged at the status quo, and they're trying to change it," said Janet Ray Kalson, a Manhattan lawyer who is the chairwoman of a City Bar Association committee that has studied the deluge of credit card cases.

Debt-buyer businesses purchase debts — along with lists of names and amounts supposedly due — for pennies on the dollar from credit card companies and sometimes have no real evidence about whom they are suing or why. They then file tens of thousands of suits, often with little to back up their claims.

A Nassau County District Court judge said recently, for example, that one of New York City's high-volume debt collection law firms, which has close ties to a debt-buying company, did not

provide “a scintilla of evidence” that there was even a debt in a case against a Long Island woman.

The suit received an unusual amount of attention. The judge, Michael A. Ciaffa, said that it “regrettably, involves a veritable ‘perfect storm’ of mistakes, errors, misdeeds and improper litigation practices.” Judge Ciaffa said the law firm, Eltman, Eltman & Cooper, ignored court orders, made a “demonstrably false” assertion and harassed the woman for payment even after its suit was dismissed.

The case before Judge Ciaffa ended with an order that is far from typical in a credit card suit. The woman who had been sued, Patricia Bohnet, a bookkeeper and single mother, did not have to pay anything. But Eltman, Eltman & Cooper had to pay \$14,800 in sanctions for violating ethical rules at least 18 times. Under the judge’s order, \$4,800 is to go to Ms. Bohnet and the remainder to a state fund that works to reimburse clients for dishonest conduct by lawyers.

“They don’t care if you’re sick; they don’t care if you’re poor,” Ms. Bohnet said in an interview at her job in Woodmere. “Their only job is to collect money, and they’ll do it in any way possible.”

In response to questions, the law firm said in a written statement that Judge Ciaffa had not had all the facts but that the firm would not appeal. “As with any firm or business that handles this type of volume,” it added, “there exists a potential for errors or omissions in the normal course of business.”

Eltman, Eltman & Cooper was one of 35 law firms sued last July by the state, which claimed that they had improperly obtained more than 100,000 judgments in consumer-debt cases. Separate files in Federal District Court in Brooklyn show that without admitting fault, the Eltman law firm settled a class-action suit in 2006 that claimed it used “false, misleading and deceptive means” to collect debts.

Privately, some judges say they are embarrassed that in many New York courts, debt-collection lawyers have grown so comfortable that they give the impression they are in charge of the proceedings and do not need prove their claims with strong evidence.

In the recent pro-consumer rulings, skepticism of the debt collectors’ claims has been obvious. A Civil Court judge in Brooklyn, Noach Dear, has written decisions that come close to saying that the collection cases are sometimes based on falsehoods.

In a case in August, Judge Dear observed that there was nothing to substantiate a lawyer's claim that she somehow remembered mailing a document to the credit card holder that was the foundation of the collection suit. The document, Judge Dear noted archly, had been mailed three and a half years earlier.

Behind the legalese of the credit card suits, some judges have suggested, there is often a disorganized jumble of documentation. A Mount Vernon City Court judge noted that one case was based on little more than "a self-serving computer printout." A Manhattan judge said one company that bought debt claims from credit card companies had filed suit against a cardholder although it did not own that particular debt.

In the Staten Island case, the judge, Philip S. Straniere, said a credit card company was claiming interest of 28 percent on the balance due, which would be illegal as usury under New York law. The company argued that the credit card issued to a New Yorker that seemed to be from a national company had actually been issued by a one-branch bank in Utah, which had no usury law.

"Like the Land of Oz, run by a Wizard who no one has ever seen," Judge Straniere wrote, "the Land of Credit Cards permits consumers to be bound by agreements they never sign, agreements they may never have received, subject to change without notice and the laws of a state other than those existing where they reside."

The judge ruled that the supposed agreement allowing unlimited interest charges was not enforceable in New York.

Industry officials said that tales of abusive collection cases were misleading. "There are certainly colorful stories," said Joann Needleman, an officer of the National Association of Retail Collection Attorneys. "People think that handful is the rule, not the exception, but it's not."

But Ms. Bohnet, the Long Island woman who was sued by a New York law firm, said just one case could be harrowing. When she received a call last year at the charity where she keeps the books for \$39,000 a year, the voice on the other end told her the debt collectors had a five-year-old court judgment against her for a \$4,861 debt. She had to pay, or they would start taking money out of her salary, she said she was told.

The address of the debt-collection firm and its lawyers at Eltman, Eltman & Cooper seemed to be the same, she noticed.

Ms. Bohnet did not know she had ever been sued. She started to cry, she said, worried that with a chunk of money taken every month, she might lose the modest apartment she needed to share custody of her teenage daughter.

“I was in all-out fear,” she said, adding, “After I got off the phone, I realized I didn’t even know what the debt was for.” She might have had an old credit card debt, but she had had some years of problems with alcohol and drugs and tangled financial problems. In recovery, she said, she had worked to clean up her financial affairs.

The next time the collectors called, she said, she told them that she was willing to pay if she owed any money but that she needed to see some proof that they had the right person. Then, without a lawyer, she went to the court, in Hempstead, to check into the order the debt collectors said they had against her.

After some digging, she found the case. The debt-buyer’s lawyers had filed a sworn statement that they said was proof she had been given notice of the suit. A process server for Eltman, Eltman & Cooper claimed she had been given a copy of the suit personally on July 30, 2004.

Judge Ciaffa doubted that. Ms. Bohnet, he wrote, “hadn’t lived at that address since 1998.”