

NEW YORK CITY  
DEPARTMENT OF CONSUMER AFFAIRS

Rules Hearing on License Enforcement

42 Broadway, 5th Floor

New York, NY 10004

July 18, 2019

INDEX

Carlos Ortiz, Hearing Officer, Director of Legislative Affairs	3
Melissa Ader, Staff Attorney, Legal Aid Society	4
Steven Dunn, Senior Staff Attorney, Community Service Society of New York	5

1 HEARING OFFICER CARLOS ORTIZ: Good morning.  
2 My name is Carlos Ortiz. I have been designated as  
3 the hearing officer for the public hearing on the  
4 amendment to the rule the Department of Consumer  
5 Affairs has proposed regarding license enforcement.  
6 This hearings being held in the fifth-floor conference  
7 room where the Department's office is at 42 Broadway  
8 in lower Manhattan. It is now 10:05 on Thursday, July  
9 18, 2019, and I'm hereby convening the public hearing  
10 on this proposed rule.

11 The proposed was published in the City  
12 record on June 18, 2019. Copies of the published  
13 notice and rules are available at the desk by the door  
14 as well as online. The Department has proposed these  
15 rules pursuant to the authority vested in the  
16 Commissioner of Consumer Affairs by sections 1043,  
17 1049(b), 2203(c), 2203(f), 23-, 2203(h)(1) of the City  
18 -- of New York City Charter, and sections 2104(b) of  
19 the Administrative Code of the City of New York.

20 This hearing affords the public the  
21 opportunity to comment on all aspects of the rules the  
22 Department has proposed. The Department will  
23 carefully review all testimony and written comments  
24 received at this hearing and will give due weight and  
25 consideration to all adequately substantiated

1 proposals and recommendations that are submitted for  
2 the record at this hearing. To ensure that everyone  
3 seeking to testify has the opportunity to do so, I  
4 will strictly follow these ground rules:

5 Signing in and order of appearance. Anyone  
6 seeking to testify must complete a registration card  
7 so you can be correctly identified in the hearing  
8 record. Witnesses will be called to testify in the  
9 order that they have signed in. Anyone who does not  
10 appear when his or her name is called will be deemed  
11 to have passed over the opportunity to testify.  
12 Persons who are passed over will be called at the --  
13 again at the end of the hour. Persons who do not --  
14 still do not appear must then sign in again if they  
15 still wish to testify.

16 Time limits on testimony. Each witness will  
17 have a maximum of three minutes to testify. To be  
18 fair to everyone is seeking to testify, I will  
19 strictly apply the three-minute limit to every  
20 speaker. Unofficially not so strict.

21 MS. MELISSA ADER: Your system just shut  
22 down.

23 HEARING OFFICER ORTIZ: This thing?

24 MS. ADER: Yeah.

25 HEARING OFFICER ORTIZ: Oh, no, I'm not

1 using that.

2 MS. ADER: Okay, sorry.

3 HEARING OFFICER ORTIZ: That's in the  
4 record, I guess. If your comments take longer than  
5 three minutes, synthesize your oral testimony and  
6 leave a written copy for the record.

7 Written testimony. Unlike the limit on time  
8 for testimony, there's no limit on the number of pages  
9 you can submit as written comments or as documents for  
10 the record. The written submission will be made part  
11 of the record as exhibits presented with your  
12 testimony.

13 I will make a couple of housekeeping  
14 announcements about the physical layout of the fifth-  
15 floor conference room area. Emergency exit ca-, exits  
16 are located out this door to the left. Restrooms are  
17 also out the door and to the left. Please turn out  
18 all c-, turn off all cell phones or put them to  
19 vibrate if you can, please. And I will now call the  
20 first witness. And also, folks, if you filled out  
21 registration cards, can you pass them toward me as  
22 well? Thank you.

23 First witness -- and I can bring a chair up  
24 for you if you want -- Steven Dunn.

25 MR. STEVEN DUNN: Thank you.

1 HEARING OFFICER ORTIZ: Okay. You can  
2 start.

3 MR. DUNN: Good morning. My name is Steven  
4 Dunn. I'm a senior staff attorney with the Community  
5 Service Society of New York. I thank you for the  
6 opportunity to testify. We are concerned that as a  
7 consequence as some of these proposed amendments,  
8 otherwise eligible applicants with conviction  
9 histories are gonna be denied licenses and face steep  
10 fines due to good faith and harmless errors in the  
11 application process.

12 At our Next Door Project, we help clients  
13 obtain, review, and correct their rap sheets. We also  
14 hope to ensure that they have a firm knowledge of  
15 their conviction histories, which is essential when  
16 you're applying for a job or a license.

17 In many cases, we find that our clients have  
18 long been mistaken about the contents of their  
19 criminal records. They may think that they were  
20 convicted for an arrest charge when that's not the  
21 case. They may confuse a misdemeanor with a non-  
22 criminal conviction, or it may be years or even  
23 decades since they were convicted, and they might  
24 forget about the specific conviction on which they  
25 were charged.

1           The proposed amendments put forth by DCA  
2           will harm applicants like our clients and anyone who  
3           doesn't have a specific knowledge of their criminal  
4           history, anyone who tries their best to honestly  
5           answered DCA's questions but fails in the attempt.  
6           Section 1-01.1 permits the Commissioner to deny any  
7           application or renewal where an applicant fails to  
8           provide complete and truthful responses, conceals any  
9           information, makes a false statement, or falsifies any  
10          document associated with the application. Likewise,  
11          section 1-04 allows the Commissioner, Commissioner to  
12          deny any license application or renewal if the  
13          applicant has made a false representation to the  
14          Department. Section 6-11 then imposes steep financial  
15          penalties on top of the license denial or revocation.

16                 DCA's basic individual license application  
17          contains questions that an applicant might justifiably  
18          get wrong. It asks, for example, whether the  
19          applicant has ever pled guilty or been convicted of  
20          any crime or offense. If yes, please explain.  
21          Determining how to answer this legal overbroad  
22          question is a conundrum even for experts, and it's  
23          reasonable that the average person would, would get  
24          that question wrong.

25                 At the Next Door Project, we do what we can

1 to make sure the clients can comfortably and  
2 accurately discuss their conviction histories and  
3 answer questions like that. We, you know, are able to  
4 serve over 700 clients a year, but unfortunately,  
5 we're not able to get to everyone. You know, there's  
6 over 6 million New Yorkers with criminal histories.  
7 So there's gonna be countless numbers of people whose  
8 applications or licenses are denied due to, you know,  
9 harmless error or omission.

10 And I purposely use the word harmless  
11 because the ultimate decision to deny a license based  
12 on conviction history is not based on that initial  
13 application question. DCA obtains the full rap sheet  
14 from DCJS. It also sends out the -- to the applicant,  
15 a request for explanation of criminal history. Based  
16 on that information, DCA then conducts its analysis of  
17 the conviction history person to Article 23-A of the  
18 New York Correction Law, not that initial application  
19 question.

20 Nonetheless, DCA has the authority under  
21 these proposed amendments to deny an application based  
22 on its initial question that amounts to little more  
23 than a gotcha, you know, to try to catch people out in  
24 what are assumed to be, but almost never are,  
25 intentional misstatements.

1 My time is up. I'll try just in, in  
2 closing, I, you know, we urge DCA to remove that  
3 initial question about convictions from its  
4 application form. We appreciate that there's due-  
5 process language in the new amendments, but we can't  
6 imagine it's a process that would adequately protect  
7 someone who doesn't have a firm knowledge of their  
8 conviction history or the resources to, to -- and  
9 connections to services to get that knowledge. So we  
10 urge you to remove that question. If DCA feels like  
11 they're not able to remove that question, then we urge  
12 to amend the language of the amendment such that only  
13 people who willfully mislead the agency are denied a  
14 license or application.

15 HEARING OFFICER ORTIZ: Thank you.

16 MR. DUNN: Thank you.

17 HEARING OFFICER ORTIZ: Thank you for your  
18 testimony. May I please call Melissa Ader? Apologies  
19 if I pronounce your name wrong. Whenever you're good  
20 to go.

21 MS. MELISSA ADER: Good morning. My name is  
22 Melissa Ader. I'm a staff attorney at the Legal Aid  
23 Society in our Worker Justice Project. Thank you to  
24 the Department of Consumer Affairs for the opportunity  
25 to testify today.

1           The Worker Justice Project is an initiative  
2           of Legal Aid's criminal defense practice, and we use  
3           litigation advocacy and policy perform to combat  
4           discrimination faced by workers with arrest or  
5           conviction records living in New York City. We  
6           regularly represent and advise people who hold DCA-  
7           issued licenses or seek to obtain DCA-issued licenses.  
8           Our testimony today, like that of the Community  
9           Service Society, concerns DCA's proposed amendments to  
10          Section 1-01.1 of Title VI, which is the section that  
11          permits DCA to disqualify license applicants who do  
12          not accurately report their criminal record on their  
13          license application.

14           I agree in full with the testimony that CSS  
15          delivered today, and I want to add a specific story of  
16          a client of mine who was significantly harmed by DCA's  
17          policy of disqualifying people who unintentionally  
18          failed to accurately disclose their criminal record.  
19          My former client, who I'll call Mr. H, is an elderly  
20          man who has ten convictions and significant evidence  
21          of rehabilitation since the time of his offenses. He  
22          worked as a ticket seller for five years and applied  
23          for a ticket seller license from DCA shortly after New  
24          York City began requiring such licenses.

25           On his ticket seller license application,

1 Mr. H disclosed 8 of his convictions, but he did not  
2 disclose 2 convictions that were more than 30 years  
3 old. His failure to disclose these 30-year-old  
4 convictions was clearly unintentional. He disclosed  
5 convictions that were more recent and more serious  
6 than the convictions that he did not disclose.

7 When DCA subsequent- subsequently obtained  
8 Mr. H's rap sheet from DCJS, they denied his  
9 application on the ground that he had made a false  
10 statement by failing to disclose the 2 30-year  
11 convictions, 30-year-old convictions. Legal Aid  
12 requested reconsideration, explained that Mr. H's  
13 failure to disclose was unintentional, but DCA still  
14 would not permit Mr. H to reapply for a license for a  
15 full year from the date that he failed to disclose.

16 During that year, Mr. H was unable to work  
17 in his chosen profession of ticket sales. He applied  
18 for jobs in industries that he had never worked in  
19 before, but he was unable to find employment in a new  
20 industry. It almost 70 years old, he was forced to  
21 apply for public assistance.

22 After Mr. H completed the disqualification  
23 period, the Legal Aid Society helped him submit a new  
24 application for a ticket seller license and to its  
25 credit, DCA thoughtfully considered Mr. H's evidence

1 of rehabilitation and undertook an individualized  
2 assessment of his conviction record. DCA issued Mr.  
3 H's ticket seller license 14 months after his original  
4 application, and he was, at that point, able to find a  
5 job as a ticket seller. Unfortunately, Mr. H's 14-  
6 month disqualification period created unnecessary and  
7 significant harm, both to Mr. H and to the taxpayers  
8 of New York City, who were required to provide public  
9 assistance to someone who desperately wanted to work  
10 and was qualified for available positions.

11 Based on the Legal Aid Society's work with  
12 thousands of New Yorkers with arrest or conviction  
13 records, we are aware that Mr. H's situation is not  
14 nu-, not unique. Many New Yorkers, as Mr. Dunn  
15 testified, don't understand their criminal record.  
16 The criminal legal system is very complicated. As an  
17 example, one of the two convictions that Mr. H did not  
18 disclose was directly related to a conviction that he  
19 did disclose. He was sentenced for the two  
20 convictions on the same date, and he didn't realize  
21 that the two convictions were in fact separate  
22 criminal convictions because he had been sentenced at  
23 the ta-, same time.

24 Other times, New Yorkers simply forget about  
25 certain convictions, especially when the convictions

1 are old or relatively minor. The second conviction  
2 that Mr. H did not disclose was a 31-year-old  
3 misdemeanor. Mr. H had no memory of the decades-old  
4 misdemeanor, even after DCA told him he had failed to  
5 disclose it. If Mr. H had had -- yep.

6 HEARING OFFICER ORTIZ: You have -- if you  
7 want to wrap up your comments--

8 MS. ADER: Okay.

9 HEARING OFFICER ORTIZ: --go ahead.

10 MS. ADER: I will wrap up my comments by  
11 speaking about the solution, which I think is, you  
12 know, very clear here. I appreciate that DCA is  
13 trying to create due process by providing notice and  
14 an opportunity to be heard before disqualifying an  
15 applicant who provide inaccurate information, but the  
16 proposed amendment is insufficient because under that  
17 amendment, DCA would still be allowed to disqualify  
18 somebody like Mr. H.

19 First, DCA should remove all questions with  
20 criminal history from its application forms for  
21 licenses that require fingerprinting and should amend  
22 its rules to require the removal of such questions.  
23 DCA gets a clear application of an applicant's  
24 criminal record from the applicant's rap sheet, and  
25 if, after DCA reviews the rap sheet, they learn about

1 -- they want more information about the applicant's  
2 criminal record, they can send the applicant a request  
3 for explanation of criminal history letter.

4 And finally, DCA should amend section 1-01.1  
5 to make clear that DCA may only take adverse action  
6 against a license applicant who misrepresents their  
7 criminal record if the a-, misrepresentation was  
8 intentional or willful. And applicants and licensees  
9 should have the opportunity to prove that their  
10 misrepresentation was not intentional or willful at a  
11 hearing. Thank you for your consideration.

12 HEARING OFFICER ORTIZ: Thank you for your  
13 testimony. Now I just wait, I think, till other  
14 people show up, but that's it. I don't know if  
15 anybody has written testimony to present perhaps.

16 MR. DUNN: Is it best if we submit it to you  
17 right now?

18 HEARING OFFICER ORTIZ: You can either give  
19 it to me right now, or you can e-mail it to me as  
20 well.

21 MR. DUNN: Which do you prefer?

22 HEARING OFFICER ORTIZ: Both. You could,  
23 you could submit it to me right now if you'd like.

24 MR. DUNN: I'll follow up with an e-mail.

25 HEARING OFFICER ORTIZ: Yeah, 'cause we get

1 to have an electronic version as well because I'm  
2 gonna compile everything for the RGC. Thank you very  
3 much.

4 MR. DUNN: Okay. And the e-mail address I  
5 should use to send it to you?

6 HEARING OFFICER ORTIZ: C-O-R-T-I-Z--

7 MR. DUNN: C-O-R-T-I-Z.

8 HEARING OFFICER ORTIZ: --at DCA dot NYC dot  
9 gov. [cortiz@dca.nyc.gov]

10 MR. DUNN: Great, thank you.

11 HEARING OFFICER ORTIZ: And I'm director of  
12 legislative affairs.

13 MR. DUNN: Okay, thank you.

14 MS. ADER: Thank you.

15 HEARING OFFICER ORTIZ: Yeah, thank you.

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CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of Rules Hearing on License Enforcement on July 18, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: August 2, 2019

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018