

NEW YORK CITY
DEPARTMENT OF CONSUMER AFFAIRS

Rules Hearing on License Enforcement

42 Broadway, 5th Floor

New York, NY 10004

July 18, 2019

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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



Date: August 2, 2019

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