

NEW YORK CITY
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

DCWP RULES HEARING
HOME IMPROVEMENT BUSINESS TRUST FUND
VIRTUAL PUBLIC HEARING

VIA TELECONFERENCE

July 6, 2023

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1 MS. SUSAN KASSAPIAN: -- to \$14.4 million --

2 MR. CHARLIE DRIVER: Susan, Susan, can I
3 just stop you for a sec? Would you mind just
4 restarting? We just started the recording.

5 MS. KASSAPIAN: Okay, I will start again.
6 As former Assistant Commissioner, General Counsel,
7 Special Counsel, and Principal Administrative Law
8 Judge at Consumer Affairs for nearly 30 years, and six
9 years as Deputy Commissioner at OATH, I know exactly
10 what caused the current predicament of the Home
11 Improvement Trust Fund. The Fund has ballooned to
12 \$14.4 million after Consumer Affairs stopped bringing
13 restitution hearings and, instead, told consumers to
14 first go to court. Few consumers were able to secure
15 court judgments, so the Fund was underutilized. My
16 written comments describe the significant flaws in the
17 proposal to amend the rule, but I hope my suggested
18 revisions can be a starting point to redress the
19 terrible decisions made by OATH in 2016 to require
20 Consumer Affairs to assign an attorney to every
21 individual restitution hearing, followed by Consumer
22 Affairs's decision in 2017 to stop bringing consumer
23 restitution hearings entirely without consumers first
24 going to court.

25 The situ-, the solution works like this.

1 Allow a one-time limited Trust Fund invasion per
2 contractor up to \$15,000.00 after attempting
3 mediation, and resume hearings for all cases with
4 claims above \$15,000.00. This will likely cut the
5 number of cases that need to be drafted for hearings
6 to half.

7 Insist that OATH abide by its own rules to
8 allow the consumers to present their hearings pro se,
9 as was done for decades. To do otherwise is to make
10 permanent OATH's indefensible edict to force Consumer
11 Affairs to assign attorneys for each such case and to
12 sanction the wholesale abandonment of Consumer
13 Affairs's enforcement of the Home Improvement Law.

14 By my calculation, there are 1,000 or more
15 consumers who have been turned away; yet, Consumer
16 Affairs's own rule provided that rest- restitution
17 award after a hearing could be docketed as a court
18 judgment, thereby obviating any need to go to court.
19 The courts are too backlogged for expeditious
20 hearings, impossible to navigate without the expense
21 of a lawyer, especially for immigrants, the elderly,
22 minority and poor, who are so often the victims.
23 Consumer Affairs is unable to mediate 75 percent of
24 these cases and unsuccessful 99 percent of the time
25 where claims are over \$10,000.00. Mediation was never

1 effective in these cases until charges were pending,
2 and is best done by an attorney.

3 On the other hand, when charges are pending,
4 millions of dollars in restitution settlements can be
5 achieved, and very few contested hearings need to take
6 place. Plus, consumers, after a hearing, can get up
7 to \$25,000.00 from the Trust Fund, and the City can
8 collect appropriate fines.

9 Again, please do the right thing. Follow
10 your mission. Stop abandoning consumers. Do not give
11 them short shrift, as your propose limited invasion of
12 \$5,000.00 here would do. Thank you.

13 MS. HALI RADECKER: Thank you so much,
14 Susan. We are going to move on to Lori Ciraolo.
15 Lori, you can begin whenever you would like.

16 MS. LORI CIRAOLLO: Thank you, Hali. First,
17 I'd like to say that I have full support of Susan
18 Kassapian's proposals herein. She is the subject
19 matter expert on this matter. So thank you all.

20 Good morning, everyone. For those who may
21 not know me, my name is Lori Ciraolo. In December of
22 last year, I took the stop of filing a complaint with
23 DCWP on behalf of my 77-year-old mother, who is a
24 senior and the primary caregiver for my adult brother
25 with Down Syndrome. This complaint was in response to

1 an unscrupulous contractor who took advantage of her
2 vulnerability, resulting in significant financial loss
3 and the need to completely redo the renovation work
4 that deviated from the approved plans by the New York
5 City Department of Buildings. Unfortunately, my
6 experience working with DCWP was frustrating and
7 disheartening.

8 As I delved deeper into the challenges my
9 family faced with our complaint and the inadequate
10 mediation efforts at DCWP, it ignited a profound sense
11 of purpose within me. The more I uncovered, the more
12 evident it became that our struggle was not an
13 isolated incident, and DCWP had appeared to have
14 abandoned what was, in the years past, their number
15 one complaint category, as evidenced by the analysis
16 of my FOIL request and information publicly available
17 in OpenData.gov. Their only attempt to help aggrieved
18 consum-, aggrieved homeowners was mediation, which
19 fails more than 75 percent of the time and proves to
20 be lacking.

21 Numerous other homeowners seeking assistance
22 from DCWP have encoun-, have encountered the same
23 disheartening experience of ultimately being turned
24 away. This realization fuels my determination to
25 become a passionate advocate for justice, not only for

1 my family, but for those in desperate need of
2 assistance. The stories shared here, which expose the
3 deeply moving and heart-wrenching experiences of these
4 individuals emphasize the critical importance of the
5 Agency to fulfill its primary mission of safeguarding
6 their interests. Aggrieved home- homeowners
7 rightfully deserve and urgently require a
8 significantly higher level of support and assistance
9 from an agency that is entrusted with their well-
10 being.

11 That said, and with respect to the proposed
12 rule change, these are my comments.

13 Proper oversight. Proper oversight is
14 absolutely necessary for both licensed and unlicensed
15 home improvement contractors. In a city that's
16 actively seeking ways to boost revenue, this presents
17 a remarkable chance for growth. However, this
18 disappointing lack of enforcement by DCWP when it
19 comes to their own rules, laws and regulations,
20 severely undermines the integrity of their licensing
21 system, reducing it to mere mockery. DCWP has the
22 potential and obligation to strive for improvement
23 rather than giving up on this industry category.
24 Oversight is not a mere suggestion; it is essential.

25 Raise the limit, Trust Fund invas-, the

1 limited Trust Fund invasion amount. While the limited
2 Trust Fund invasion may initially appear to be a
3 positive step, it severely limited and leaves many
4 consumers in a vulnerable position. The proposed
5 invasion limit of \$5,000.00 holds little value for
6 most individuals, like my family, and the others who
7 have posted comments on this proposed rule change and
8 those who have previously compa- complained to you
9 about their cases being closed without a hearing. And
10 it fails to provide adequate protection. A more
11 effective approach would be to raise the limit to the
12 Trust Fund invasion cap to \$15,000.00.

13 My data analysis using OpenData.gov provides
14 compelling evidence that when cases involve amounts in
15 excess of \$10,000.00, a staggering 99 percent of
16 mediation efforts end in failure. It is of utmost
17 importance that any com- complaints surpassing the
18 \$15,000.00 threshold undergo an expeditious
19 adjudication at OATH. This approach ensures that
20 consumers re not left to fend for themselves and/or
21 should- shoulder an additional financial burden.
22 Regrettably, most, if not all, of these cases will
23 never reach the courts in New York, for various
24 reasons, rendering the possibility of obtaining a
25 judgment and potential Trust Fund recovery a mere

1 illusion. The significance of expeditious ad-
2 adjudication at OATH cannot be overstated.

3 In closing, while the proposed rules change
4 -- I, while I appreciate the proposed rule changes, I
5 believe that there is more room for further
6 improvement and hope that you'll consider my proposals
7 for the same as stated in here -- herein. Thank you.

8 MS. RADECKER: Thank you, Lori. We're going
9 to move on to Sandra Hernandez, followed by Kevin
10 Gall.

11 MS. SANDRA HERNANDEZ: Good day, everyone.
12 My name is Sandra Hernandez. I'm a shareholder at an
13 HDFC income-restricted income -- income-restricted co-
14 op in East Harlem, and the single mother of a then 2-
15 year-old daughter at the time of the event. So I
16 fully support the request and arguments presented by
17 Susan Kassapian and Lori Ciruolo.

18 In 2017, I tried to renovate my apartment
19 and was the victim of a, of a, literally, a con man, a
20 DCA-licensed home improvement contractor, Samuel
21 [phonetic] Morelli, working with another contractor,
22 DOB-licensed contractor Matthew Kelleher who worked
23 under his wife's name. But I did not know anything.
24 This is my first property, this was my first
25 renovation, so I got caught by these two, these two

1 contractors.

2 So I paid Morelli \$105,000.00 and he walked
3 out of the job after an estimated 35K worth of work,
4 as per the assessment of an independent home
5 improvement contractor. So I have all the receipts of
6 payment. So, therefore, he stole \$70,000.00 from my
7 family.

8 In March and April 2017, I hired a lawyer
9 and we did four rounds of negotiations with Morelli
10 and Kelleher. The two latter refused to return to
11 work unless I paid them more money to do the work
12 according to DOB codes and New York City laws, rules
13 and regulations. This lawyer cost me around
14 \$5,000.00. At this point, I had lost 75K.

15 On 2 -- on the 2nd of May 2017, I submitted
16 a complaint to DCA [unintelligible] [00:08:44] in the
17 mediation, during which Morelli, again, refused to
18 return to work. My complaint was closed, despite the
19 fact that I had the invoices, I had pictures of the,
20 of the work, I had the, the assessment of the
21 independent home contractor, home improvement
22 contractor. DCA just closed my complaint and then I
23 submitted another two complaints.

24 In March 2018, I was told that DCA no longer
25 transferred complaints to OATH and I had to go to

1 court. But in the meantime, and as a result of the
2 complete inactivity of DCA, my HDFC co-op had taken
3 advantage of the situation. They had stopped my work,
4 tried to evict me and my daughter from our apartment.
5 I sued my co-op to prevent them from taking away my
6 only property and to finish my renovations because, at
7 that time, I had to pay for two housing, so my
8 mortgage for my apartment and a second apartment. We
9 lived in a horrible, little apartment with cockroaches
10 and other things.

11 So, from 2017 until today, we lost around
12 400K in legal fees, [unintelligible[]00:09:48] of
13 housing, renew- renewal of permits, architect fees and
14 every other thing that I continued to pay until today.
15 My daughter and I have been suffering financially,
16 psychologically and physically because of the lack of
17 action at DCA and against its own licensees and
18 refusal of DCA to transfer my complaint to OATH since
19 2017. I should have had the right to an expedited
20 hearing at OATH and was deprived of my right.

21 The City of New York gives licenses to home
22 improvement contractors, and those licenses should
23 come with obligations and responsibilities. However,
24 New York City does not control or correct contractors
25 when they do not respect New York City laws and rules

1 and regulations. New York City does not oblige them
2 to comply with their own rules or respect their
3 contracts with their clients. Oversight is the basis
4 of public management and good governance for the
5 greater good of the population of the City of New
6 York. New York City elected officials and amin-
7 administrators have the responsibility to oversee its
8 licensees' compliance with their own rule -- laws,
9 rules and regulations, and to punish them if they do
10 not comply.

11 I ask you to do what is right. New York
12 City has accumulated \$14.4 million in funding that is
13 not being used for its purpose, and citizens of New
14 York are being ripped off by DCA and DOB licensees
15 whom New York City authorized to work in our homes in
16 the first place. You have the responsibility to take
17 action and help the people affected by those
18 contractors, the same people you represent and you
19 work for. Thank you very much.

20 MS. RADECKER: Thank you, Susan. We will
21 move on to Kevin Gall, followed by Suzette Irish.

22 MR. KEVIN GALL: Hi. A fire occurred in
23 December 28th in 2018. We then found our contractor
24 and we paid him \$218,000.00, and he did not complete
25 the job. So we are, we are aggrieved homeowners. We

1 are aggrieved homeowners, and Stephen Rivers, he took
2 advantage of us and other homeowners.

3 The DCP-, the, the DCWP did not help us, nor
4 work with us or the DA's office. We realized that all
5 the homeowners that he took advantage of are
6 minorities and seniors. We lost several hundred
7 thousands of dollars. We need at least \$10,000.00 to
8 \$15,000.00. The limited Trust Fund invasion was not
9 enough money. We highly think that the DC- DCWP needs
10 better oversight. We, we lost a great amount in legal
11 fees because the DCWP did not help us. The DCWP needs
12 to do better in enforcing laws and regulations.

13 We received our first letter from the DCWP
14 in March of 27th, 2021, and a second letter on April
15 16, 2021. Despite -- and, and the DCWP said that,
16 despite your efforts, no spa-, no satisfactory
17 resolution between us and Restoration Management can
18 be -- can reach -- can be reached.

19 That is all.

20 MS. RADECKER: Thank you so much, Kevin. We
21 are going to move on to Suzette. Suzette, you can
22 begin whenever you're ready.

23 MS. SUZETTE IRISH: Good morning. Can you
24 hear me? Okay, good morning. Good morning. My name
25 is Suzette Irish. I am a New York City retiree with

1 over 35 years of service. I am a senior, I am a
2 minority and I am a woman. I'm also a fire victim.

3 Kevin just spoke before me, and I am part of
4 that group. This group has over -- I, I can't even
5 tell you how many people that got ripped off by this
6 contractor. And I was turned away by then-DCP, now,
7 now DWCP [sic]. My case was closed without a hearing.
8 My ha-, my family home had a fire and, and then, in
9 20-, excuse me, 2019, our contractor robbed us out of
10 thousands of dollars. I filed a complaint against
11 him. The case was re-, was then -- I was then told by
12 D- DCA that my -- that I should take him to court for
13 satisfaction and restitution.

14 I was unable to do that because court is
15 just too expensive. This contractor ruined my home
16 and many others. He had barefaced discrepancies in
17 our contract, missing signature, no cancellation
18 clause. He cashed my check at a check cashing
19 facility instead of depositing into a business
20 account. He had blatant misrepresentation and, still,
21 no action was taken by DCA to stop this contract. He
22 continued to defraud several other hardworking
23 consumers, many of them just like myself, senior,
24 minority, woman.

25 If the rules and regulations would have been

1 enforced, if I could have been heard at that point in
2 time, we could have saved many of these other
3 homeowners, such as Kevin. Kevin is speaking on
4 behalf of his mother, who is elderly. It, it could
5 have just saved so many people. Even if I lost the
6 case, even, even if there was a record of the case
7 somewhere, you know, someone could have seen that and
8 could have potentially stopped someone.

9 I could have benefitted from having an OATH
10 hearing instead of just being, you know, casted away
11 and, and on my own to try to navigate the court
12 system, which I couldn't do and never did, so there's
13 really no -- there was really no restitution here.

14 I also agree with Susan's issues and her
15 fight described in her June 9th letter. A limit of
16 \$5,000.00 is just too little. It's, it's just too
17 little. People have spoke here today. We have lost
18 hundreds of thousands of dollars. Our contractor
19 alone, I mean if you add up everything, it adds up to
20 millions of dollars that he has ripped us off for.
21 And, you know, he was the type of person, he was a
22 great talker. He knew that he could get away with
23 these things. There was nothing to stop him. No
24 rules or regulations. Just blatant misrepresentation
25 over and over and over again, and that's how he got

1 all of us. And this needs to stop.

2 We need to depend on our agencies to help
3 us, to help the consumers, to help the minorities, to
4 help the seniors, to help the women, to help everybody
5 out here. This is what we pay our tax dollars for,
6 this is what is expected, and this is what should be
7 done. Thank you.

8 MS. RADECKER: Thank you, Suzette. Susan,
9 you are free to provide your testimony now.

10 MS. SUSAN: Hi, everyone. My elderly
11 mother, who has a language barrier, and I, a female
12 with a physical disability, were swindled by more than
13 one crooked contractor in October 2022. The first
14 contractor created more problems and damaged our
15 property when we called them to fix a tiny leak, which
16 only required a small pail to be emptied, if that,
17 after a downpour. However, after their substandard
18 work, there are rivers of water pouring down our
19 walls, as well as leaks in different areas in the
20 middle of the ceiling above. The cement that they
21 laid on the porch crumbled and was uneven, creating
22 pools of water all over the porch.

23 We were appalled that the DCA allowed such
24 unskilled people to be licensed in the first place.
25 These contractors ruined our porch, causing over

1 \$20,000.00 worth of damage. And after some detective
2 work, we discovered that the business name that they
3 gave us was a doing -- a d/b/a name, which is a doing
4 business as name. So these crooked contractors tried
5 to conceal their real name, which they were licensed
6 under at the DCA. After an internet search using
7 their real name, the name they are licensed under at
8 DCA, it was discovered that these contractors had
9 pulled the same stunt with many other customers, who
10 each wrote a very familiar story. Exactly what these
11 crooked contractors did to us was done to several
12 other innocent customers. But those reviews were
13 under their DCA license name, which they did not share
14 with us. Their business card and contract had their
15 DBA name.

16 If their DBA name is Googled, the name that
17 they presented to us, there are seemingly fake glowing
18 reviews of their business, and their true reviews of
19 wronged customers are not accessible, due to them
20 giving us a different name.

21 We had to hire a second contractor to
22 correct the extensive damages created by the first
23 contractor. But the second contractor never actually
24 fixed the leaks. In addition, after already paying
25 them for the complete project, but the leaks remained,

1 when we called them out for not actually filling --
2 fixing the leaks, they came to our home unannounced
3 several times, threatening violence with hammers in
4 their hands to "destroy the work that they did, and
5 they would use hammers to destroy the work" out of
6 their greed and spite, while my mother was in the
7 hospital undergoing an emergency surgery right after
8 another family member's traumatic death. I had to
9 hire a lawyer to write a cease and desist letter to
10 those second set of crooked thug contractors.

11 All the awful things that occurred should
12 never have happened. These crooked male contractors
13 prey on the elderly, non-English speaking persons,
14 people of color, the disabled and women. We went to
15 the new York City DCA for help, but they did nothing,
16 and even bullied us at times. The DCA are not what
17 they used to be. It was much better when Susan
18 Kassapian was there and working there as an attorney,
19 when they actually helped wronged customers, back when
20 it was called the Department of Consumer Affairs.

21 Vulnerable -- vulnerable populations, such
22 as the elderly, non-English speaking persons, the
23 disabled, people of color and women make up the
24 majority of those swindled and abused by these crooked
25 contractors. In a city and state where healthcare

1 providers are not overseen and those healthcare
2 providers have lives in their hands that end up dying
3 or seriously injured due to lack of oversight, maybe
4 one shouldn't be surprised that there is no oversight
5 for contractors in the agency that is supposed to help
6 wronged cu-, wronged customers. Having oversight and
7 more stringent rules to become licensed contractors,
8 as well as oversight for the employees at DCA who are
9 supposed to help wronged customers, would be welcomed.
10 Please have the Agency simply focus on consumer
11 affairs. The name, up until some years ago, was the
12 New York City Department of Consumer Affairs, and the
13 Agency should focus on that only, consumer affairs.

14 I support what Susan Kassapian wrote in her
15 comment and proposal. However, after reading the
16 several comments here, and with knowledge of other
17 cases, I believe every case is different, each is
18 unique, has a unique set of circumstances and unique
19 damages, so there should not be a cap or a limit on
20 the invasion amount because, by and large, most
21 customers who are wronged have damages that are well
22 within what the DCA can afford to invade the Trust,
23 which I am told has millions of dollars in it. If
24 there must be a limit, there should be cal-, there she
25 be calculated -- that should be calculated based on

1 the amount in the Trust and how many cases and
2 invasion dollar amounts are expected in a certain time
3 period based on trends, so that the Trust has proper
4 time to be replenished. The remedy and dollar amount
5 should be tailored to each specific case.

6 Susan Kassapian worked for many years at the
7 DCA, so she knows that -- what they should be doing to
8 help wronged customers. I have attached her comments
9 in the comment section. Thank you.

10 MS. RADECKER: Thank you so much. So we are
11 going to move on to Anne McNeil [phonetic]. Anne,
12 there is a possibility that you might not have
13 accessibility to provide testimony through the call-in
14 option, in which case we are more than happy to allow
15 you to provide testimony through Lori. You also can
16 provide written testimony, as both of them will be
17 weighed equally when making the decisions on the
18 proposed rules. Thank you, Lori.

19 MS. CIRAILO: -- for Anne, okay. Anne is on
20 the line. We have Anne on the line. This is Anne
21 McNeil, everyone.

22 MS. ANNE MCNEIL: Good morning. My name is
23 Anne McNeil. I have been out of my house now going on
24 six years in January. I had a licensed contractor,
25 and what he did was he did not do any work, and I lost

1 over \$240,000.00.

2 The house next door caught my house on fire
3 [unintelligible] [00:24:16] and was completely,
4 completely ruined. I tried to contact the Department
5 of Consumer Affairs and they would not take the case,
6 would not even listen to me. Several times I
7 contacted them, and they said the reason why was
8 because I had a lawyer. But, again, I tried my best
9 to get some assistance. I had to hire a lawyer for
10 \$7,000.00, which didn't go anywhere. Meanwhile, for
11 almost six years, I have been paying \$2,200.00
12 mortgage so I wouldn't lose my house, plus I've been
13 renting one room for \$1,000.00, and this has been
14 going on.

15 And I filed a complaint with the District
16 Attorney's Office in Brooklyn, they dropped the case.
17 But, meantime, I see that they picked up a case of an
18 unlicensed contractor who took \$192,000.00.

19 Also, what contractors can do is they can
20 get additional money, and how my contractor did was
21 they go to the insurance company and tell them that
22 it's an emergency, and the insurance company did not
23 check, and sent him an additional \$50,000.00.

24 I am a minority woman, 77 years old, and
25 been out of my house six years. Three years of those

1 six years, there was no roof on my house. I finally
2 did save up enough money to get a roof put on. I
3 needed help, I needed assistance and I had nowhere to
4 turn. I had to drop the lawyer, because I couldn't
5 continue paying a mortgage, paying rent and paying the
6 lawyer. So I'm still in this situation where, now,
7 I'm trying to get a loan for \$700,000.00 in order to
8 fix up the house that would have cost \$350,000.00 five
9 years ago. Thank you.

10 MS. RADECKER: Thank you, Anne, and also
11 thank you, Lori. Is there anybody else on the line
12 that would like to provide testimony at this time?

13 Okay. Seeing no one additional present to
14 offer testimony, I'm going to adjourn this meeting, or
15 this hearing, until an individual appears to offer
16 testimony or until 12:00 p.m., whichever comes first.
17 In that time, I'll mute my camera and microphone until
18 someone appears.

19 [OFF THE RECORD]

20 [ON THE RECORD]

21 MS. RADECKER: The time is now 12:00 p.m.,
22 and seeing no one present to offer additional
23 testimony, I will now conclude today's hearing. Thank
24 you all.

25 [END OF HEARING]

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of DCWP Rules Hearing: Home Improvement Business Trust Fund on July 6, 2023, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: August 7, 2023

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