



Comments Received by the Department of  
Consumer and Worker Protection on  
Proposed Rules related to Home Improvement Business Trust  
Fund

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

**From:** Julia B <laplanchadora191@gmail.com>  
**Sent:** Thursday, June 29, 2023 5:37 PM  
**To:** rulecomments (DCWP)  
**Subject:** [EXTERNAL] Home Improvement contractors trust fund

I am would like to agree with the cogent and well thought out comments by Susan Kassapian.

Thank you,  
Julia Bryant

- **Susan Kassapian**

I once again commend DCWP for trying to add to its ability to invade this fund for consumers. However, until DCWP resumes bringing hearings on behalf of consumers to the Office of Administrative Trials and Hearings (OATH), any effort will fall short. This proposal is in particular grossly inadequate. It only tinkers at the margins of the problem resulting from DCWP's failure to bring hearings against licensed Home Improvement Contractors (HICs) based on complaints filed by consumers who have been told to go to court since on or about November 2017 before DCWP will bring charges against the HIC. The best way forward, based on my many years of expertise in this area, is explained in detail in my June 9, 2022 letter to the Mayor and Comptroller. See attached: <https://rules.cityofnewyork.us/wp-content/uploads/2022/12/Letter-to-Mayor-and-Comptroller-June-9-2022.pdf>.

Moreover, no doubt DCWP will have to dedicate at least one or two attorneys to implement its plan for these limited invasion reviews. A much better approach would be to dedicate one or two attorneys to draft the hearing notices and mediate the cases, which I did full time starting in Sept of 2012. The chart attached to my letter gives the statistics for the two-year period of Sept. 2012 to Sept. 2014, showing that during this period I calendared 437 hearings, settled 204 cases for \$1.3M in restitution for consumers, Administrative Law Judges settled another 41 cases for \$267,680 in restitution for consumers, and 115 inquests and 31 hearings resulted in nearly \$2.3M in additional restitution for consumers. None of the restitution amounts were capped at any amount and several of my settlements were in excess of \$25K. The drafting would be much easier than when I was doing this work since DCWP thereafter started using a simpler template rather than the hyper-detailed approach I had been told to implement. The summonses being used before DCWP stopped bringing hearings were so form-like a consumer could even fill in their own particulars with just a few sentences.

Here are my specific objections to the rule as proposed:

1. The limited \$5K TF invasion for consumers who meet the requirements in the proposed rule will not help the vast majority of consumers since the vast majority of these complaints seek damages well in excess of \$5K.

2. Similarly, the limited \$5K TF invasion will not help the most aggrieved consumers who have suffered significant damages of at least \$25K, the current cap of TF invasions for restitution.

3. This rule change memorializes a total abandonment of enforcement of the relevant laws and rules in connection with these invasions — no charges or sanctions imposed on the licensees who have violated the relevant laws and rules. That means that HICs who have abandoned or deviated from contracts (Adm. Code 20-393(1)), failed to perform work in a skilled and competent manner (Adm. Code 20-393(11)), or failed to include important disclosures in their contracts (6 RCNY 2-221(a) et seq.), have no incentive to comply with these laws/rules and will continue to put other consumers at risk.

4. There is no need to stop making limited invasions if the TF has a balance that goes below \$5M as set forth in subparagraph (d)(3). The gross hoarding of TF funds must end. Approx. \$2M in new funds come in every two years at license renewal and the contribution amount of \$200 has not been raised since 1992.

Assuming you will proceed with your approach for limited TF invasion, here are my suggested revisions to the rule:

1. Raise the limited invasion amount to at least \$10K so that consumers with damages up to \$10K don't have to still go to Small Claims Court (SCC) to seek the balance of their damages. Making these consumers go to DCWP and then SCC is unduly onerous. It will also confuse the SCC judges and make them less likely to award additional damages.

2. I would alternatively suggest a limited invasion amount of \$15K since a very significant number of HIC complaints are at least \$15K and this amount is still quite limited compared to the \$25 cap otherwise allowed by the TF.

3. Clarify in subparagraph (d)(1) that a consumer has fully cooperated in an unsuccessful mediation when an HIC fails to reply to a complaint or engage at all with DCWP.

4. If a limited invasion occurs and a second complaint against the same HIC is filed within a three-year period, the HIC should have to reimburse the TF for any invasions and be subject to license suspension or revocation for failure to do so.

5. The reference to "award from the Commissioner" in subparagraph (d)(7) should be clarified to explain whether this means awards after a hearing at OATH.

Comment added June 20, 2023 5:23pm

SUSAN KASSAPIAN  
44 Prospect Park West #F6  
Brooklyn, NY 11215  
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917-282-5244

June 9, 2022

Dear Mayor Eric Adams and Comptroller Brad Lander:

To quote Mayor Adams, *"In order for our city to operate effectively and carry out its core functions, we need fair, expeditious, and just administrative trials and hearings."*<sup>1</sup> I am writing to make you both aware of a critical instance where this is not happening. The problem can be easily fixed and the city would even see increased revenues as a result.

**The Department of Consumer and Worker Protection (DCWP) Is Not Filing Individual Consumer Restitution Cases For Hearings At The Office of Administrative Trials and Hearings (OATH), Without Requiring Consumers To First Obtain A Judgment In Regular Court**

In 2017 DCWP ended its decades-long practice of filing consumer restitution cases for hearings and has required consumers to first go to court to obtain a judgment. As a result, there are tremendous delays and unnecessary roadblocks for consumers seeking restitution. Millions of dollars in trust funds are not being distributed in a timely fashion to pay consumers their restitution or to pay fines owed to the city.

**My 35 Years of Experience And Expertise In This Area**

I worked for 28+ years at what was formerly known as the Department of Consumer Affairs (DCA), as General Counsel and Assistant Commissioner, Special Counsel, and Principal Administrative Law Judge (ALJ). I then worked at OATH for the past six years as Deputy Commissioner. I retired in February 2022.

**There Are Millions of Dollars In Trust Funds From Which Unpaid Restitution and Fines Can Be Paid, But Only After There Is A Hearing And Order By OATH**

There are two Trust Funds established to provide restitution and fines when a DCWP licensee fails to pay -- the Home Improvement Contractor (HIC) Trust Fund and the Tow Truck Trust Fund. **The more important of these is the HIC Trust Fund which as of late last year had amassed \$12M.** The Comptroller may not invade these Trust Funds, for either restitution or fines, until OATH holds a hearing, finds the licensee in violation of the relevant license laws, and orders restitution and fines.

**Consumers Left in the Lurch/Many Unable to Pursue Their Claims**

There is no question that many, if not most, of the consumers turned away by DCWP since 2017 have not pursued their cases in court. The reasons include claims being above the Small Claims Court monetary cap and the difficulty in initiating and pursuing a case in Civil Court or State Supreme Court without an attorney to help.<sup>2</sup> In fact, as of the end of last year, only about two dozen HIC consumer restitution hearings had been filed with OATH after the consumer obtained a judgment.<sup>3</sup> Of those, all had had many years of lag time. In the last few years DCWP has curiously filed one or two cases with OATH without the consumer first obtaining a court judgment, raising serious questions of special access and a lack of fairness.

<sup>1</sup> *The Record of Law & Commerce*, March 23-30, 2022.

<sup>2</sup> In many cases the cost of an attorney is prohibitive because discovery and motions takes years in court. This is why DCWP is supposed to facilitate the bringing of expeditious administrative hearings in the city's tribunal.

<sup>3</sup> Most of these cases were drafted by law interns and are no simpler to draft than the pre-court judgment cases.



### **Failure To Ensure That Licensees Comply With The Relevant Licensing Laws**

DCWP's long delays in bringing charges against licensees, and then only on a sliver of cases where a consumer returns after obtaining a court judgment, fails to ensure that licensees will comply with the relevant laws and rules. Moreover, after so many years of not filing these cases for hearings, licensees must be aware that DCWP will not likely ever bring such cases against them. It makes a mockery of the license laws meant to protect consumers. It also makes for an uneven playing field for the licensees who comply with the laws!

### **The Need To Resume Hearings At OATH Is Most Critical In The Home Improvement Area**

Home Improvement issues have always been one of the most frequent consumer complaints and they involve the greatest amounts of restitution sought. They are, also, the most difficult to resolve by DCWP's Consumer Services Division, and most often had to be referred to the General Counsel's Office to draft the papers for hearings. It is only when faced with a hearing and the possible imposition of both restitution and fines that there is a strong enough incentive for licensees to settle the cases.

### **Failure To Protect the Most Vulnerable; Many Forced To Live In Unsafe Conditions**

Abandoning expeditious hearings for those consumers who have come to DCWP for help and who are often elderly, minority, or immigrants, and without the financial means to fend for themselves, too often leaves them with no timely refunds and no justice. Consumers risk living in a house or apartment in disrepair or being unable to rent a part of their house, losing income that may be critical to keeping their homes. Many of the cases I worked on over the years in this area were heart-breaking and involved serious unsafe living conditions. Consumers who had taken out home equity loans were often unable to repay them until monies came from the Trust Fund, helping avoid foreclosures.

### **OATH's Past Outreach to DCWP To Help Mediate These Cases Inexplicably Refused**

OATH reached out to DCWP in the Spring of 2020 about the HIC cases not coming to OATH. Then Commissioner Joni Kletter offered the mediation services of OATH's Center for Creative Conflict Resolution (CCCR) to reduce the number of cases that would have to go to a hearing since DCWP's main objection to filing these cases was it had to assign an attorney to prosecute cases in OATH's Hearings Division. DCWP inexplicably rejected the offer even though with effective mediation very few of these cases would ever go to hearing so there would be little need for DCWP attorneys to have to prosecute these cases.

### **If Calendared At OATH, Fewer Than 10% Of Filed HIC Cases Should Require A Contested Hearing**

Based on my experience, most cases will not require contested hearings. I always had an excellent record of settling HIC restitution cases as an ALJ at DCA. Then, in 2012, I requested a re-assignment from my ALJ position, back to being Special Counsel in the General Counsel's Office, to dedicate myself to clearing a backlog of cases that needed to be drafted. **Between Sept. 2012 and Sept. 2014, there were 437 cases sent for hearings. Of those, 235 cases were settled either by me or one of the ALJs. In total, \$1.6M in restitution was achieved via these settlements.** (See attached report submitted at the time; relevant totals are from the sums listed on pages 1 and 3.) **There were 31 contested hearings and 115 cases where the HIC defaulted resulting in inquests. Of the combined 146 inquests and hearings, \$2.3M was awarded in restitution and \$2.3M in fines.** Of the 437 calendared cases, 20 were withdrawn. That leaves a remainder of 36 cases which would not yet have come up for their hearing dates. **Bottom line: During that two-year period, of the 437 cases calendared, 401 had come up for their hearing dates and only 31 cases (8 %) led to contested hearings. Plus, excellent settlement results were achieved through mediation!**

### **Leverage To Settle These Cases Does Not Exist in Court**

HIC cases are particularly amenable to a settlement because the licensee typically faces \$7K to \$10K in fines, which DCWP has always offered to waive if the HIC settles the restitution claim. This leverage is lost when a consumer is forced to go to court. It also means that when a consumer obtains a court judgment and DCWP refers the case for a hearing at OATH, the HIC will have onerous fines imposed which could have been avoided. Many will needlessly have to close their businesses once their licenses are revoked for failing to pay these fines. We should do what we can to avoid more businesses closing.

### **Suggested Way to Go Forward**

The non-HIC cases can be filed with OATH's Hearing Division as there are few such cases and they are generally simple, involving less than \$1K. The HIC cases, which typically come in at about 15 to 20 per month, are better filed with OATH's Trials Division, which unlike the Hearings Division, conducts settlement conferences. If a respondent defaults, the case could be transferred to the Hearings Division for a computer-generated default decision; no inquest required. The contested HIC cases involving under \$10,000 can also be transferred to the Hearings Division and should be allowed to proceed to a hearing without a DCWP attorney – just like in Small Claims Court.<sup>4</sup> The contested HIC cases involving more than \$10,000 can be heard at the Trials Division. As most should settle with effective mediation efforts, a DCWP lawyer will not often have to prosecute the case.<sup>5</sup>

### **I Will Volunteer My Time Two Days a Week**

I am willing to volunteer at least two days a week to help fix this problem. I am willing to train the Trials Division ALJs, as I previously trained OATH's Hearing Officers<sup>6</sup> to handle these cases. I would also mediate as many cases as possible either under the auspices of the CCCR or the Trials Division.

### **WIN-WIN For Consumers, Licensees Who Are Complying With The Laws, The City**

The return to traditional practice will afford consumers the assistance they always received prior to 2017, provide a level-playing field for businesses who do right by consumers, and generate revenue from more timely fines being paid by licensees or from the two existing Trust Funds. The City is in the enviable position of being able to right a long-time wrong committed by the prior administration by once again providing an expeditious forum for the consumers it is meant to serve. I know that you are both dedicated to affordable housing and achieving equity for vulnerable New Yorkers. This would help in both of these regards.

Sincerely,



Susan Kassapian

cc: DCWP Commissioner Vilda Vera Mayuga; OATH Commissioner Asim Rehman; Deputy Mayor Maria Torres-Springer; Chief Counsel to the Mayor, Brendan McGuire; Corporation Counsel

*This letter is dedicated to Robert Martin, former General Counsel at DCA, who was helping me to right this wrong, until he died of a 9/11 cancer in March of this year.*

<sup>4</sup> OATH may need to promulgate a simple rule to allow this, which would match an existing Trials Division rule.

<sup>5</sup> OATH could also possibly expand this area for the appointment of pro bono attorneys.

<sup>6</sup> Working with Ray Kramer at OATH's CCCR, I was responsible for organizing the Continuing Legal Education classes for the Hearing Officers from 2018 until I retired in 2022, and I was always an instructor for the DCWP classes.



Consumer Dockets  
Charge Drafting and Settlement Report

Date of Report: Sept. 15, 2014 for Week Ending Sept. 12, 2014

I. Status Update – Weekly Snapshot (Short week – Labor Day; week back from vacation)

	Week Ending 9-5-14	Week ending 9-12-14
Cases Assigned for Charge Drafting	4	2
Cases Drafted, but Awaiting Final Review	5	10
Cases Filed with the Tribunal	0	1
Cases where DCA is Awaiting info from Consumer	14	17
Cases Settled	3	3
Total Restitution in Settlements	\$3,986.09	\$22,000.00
Appeals Filed by Respondents	0	0
Appeals or Oppositions Filed by DCA	0	0

II. From Project Beginning (Sept. 2012) to Present

	Week Ending 9-5-14	Week Ending 9-12-14
Cases Assigned for Charge Drafting	531	533
Cases Sent for Filing with the Tribunal	436	437
Cases Withdrawn or Closed without Going to Hearing	43	43
Cases to be drafted	26	18
Cases where DCA is Awaiting info from Consumer	14	17
Cases Awaiting a Final Decision on Whether to Proceed, Withdraw	7	8
Cases in Review or Needs Revision Post Review	5	10
Cases Settled	201	204
Total Restitution in Settled Cases	\$1,302,780.02	\$1,324,780.02

III. Cases on Hold (8)

Case name	Date Referred	Reason
C1035614 Ryncarz v. Mike Masonry	8/18	Unlic. HIC
C0948614 Haymando v. Top City	6/30	Concrete case
C0556114 Maffeo v. Steam-N-Stone	4/28	Concrete case
C0339614 Fenster v. Cracovia	4/4	Liquidated damages
C0233714 Hasenfeld v. Custom Wreckers	3/31	JC handling
C0108214 Warren v. Bil-ray	3/4	Expect to settle
C0428313 Jackson v. Trademark	12/13	Letters of administration
CD5-134284 Mullings v. Bil-Ray	9/13	Expect to withdraw

IV. Cases Awaiting Info From Consumers (17)

Case Name	Date Referred	Info Needed Awaiting Est (E) C review (C) Other (O)
C1190214 Horen v. Tipperary	8/18	C/E
C1079514 Werner v. Bellerose Const.	8/18	C/E
C1313714 Gheraldi v. World of Stone	8/11	C/atty
C1163514 Staffa v. Wild Bird Const.	8/11	C/E
C1237114 Adams v. Driscilla	8/11	C/E
C1235514 Zhong v. Boscaino/Speedway	8/11	C
C1029814 Ruboko v. Seaport Parking	7/28	O/Info
C1158814 Hanan v. Nari/Firestone	7/28	E
C0951114 Toscano v. Bella Home	7/28	C/E
C1250314 Carter v. Sherman Industry	7/28	C/E/O
C1060814 Cabrera v. 4 Kings	7/14	C/E
C0996114 Franklin v. 4 Seasons	7/14	C/E
C0844314 Sheperd v. BNI	7/7	C/E
C0892614 Frances v. Allstate	7/7	C/E
C0820514 Schlenoff v. Classico	6/16	C
C0619614 Almonte v. NYC Sunrise	5/19	C/E
C0214314 Brenner v. Heathrow Const.	3/24	E/O Work def.

V. ALJ Report – Inquests, Hearings, Settlements, Withdrawn

	Yr to Date for Week Ending 9-5-14	Yr to Date Week Ending 9-12-14
Inquests	115	115
Hearings	31	31
Settlements (plus 2 by SK as ALJ)	40	41
Withdrawn or Consumer Defaulted	20	20
Total Restit. on Settlements (plus 2 by SK=\$15.5K)	\$267,680.96	\$
Total Restitution on Inquests/Hearings	\$2,287,521.79	\$2,287,521.79
Total Fines (Combined Company and Salesperson)	\$2,293,475.00	\$2,293,475.00

X

- **Lori Ciruolo**

The proposed rule change is a step in the right direction, but it falls far short of providing reasonable benefits to consumers.

Unfortunately, many individuals are still left to navigate the system alone, as the rule only provides limited restitution with a cap of \$5,000.

The situation is particularly unfair for those who have suffered losses exceeding the Small Claims Court threshold of \$10,000. My analysis of the data available on [opendata.gov](https://opendata.gov) shows that these cases are the most challenging for DCWP to resolve in mediation, with a staggering 99% of complaints resulting in failure when the claim is in excess of \$10,000. It is unacceptable that these individuals will still be left to fend for themselves under the proposed rule change since \$5K is of little benefit to them.

To address this issue, I propose that the limited restitution maximum amount be raised to \$15,000. Additionally, for cases above \$15,000, DCWP must bring those cases to OATH for adjudication. It is crucial to ensure that no aggrieved consumer is left stranded without proper recourse.

In addition to the proposed changes, DCWP must take immediate action to enforce their rules, laws, and regulations to protect consumers, hold HICs accountable, and ensure justice. This is crucial to safeguard consumers from rogue HICs who promote deceptive or unsafe work practices. DCWP cannot abandon what was in the past their #1 complaint category and must do more to protect consumers. It is essential to take swift and decisive action to ensure that consumers are not left vulnerable to unscrupulous HICs.

Comment added June 24, 2023 2:55pm

- **Karen Miller**

Please restore the ability of consumers to invade the home improvement trust fund to fully compensate them for their losses. Consumers badly need the protection we once offered them. In order to regulate the marketplace we need to insure that consumers are treated fairly. Dedicating staff to the effort is the type of work the City should be proud to do.

Comment added June 29, 2023 4:29pm

- **Gil Perez**

Here are my specific objections to the rule as proposed:

1. The limited \$5K TF invasion for consumers who meet the requirements in the proposed rule will not help the vast majority of consumers since the vast majority of these complaints seek damages well in excess of \$5K.

2. Similarly, the limited \$5K TF invasion will not help the most aggrieved consumers who have suffered significant damages of at least \$25K, the current cap of TF invasions for restitution.

3. This rule change memorializes a total abandonment of enforcement of the relevant laws and rules in connection with these invasions — no charges or sanctions imposed on the licensees who have violated the relevant laws and rules. That means that HICs who have abandoned or deviated from contracts (Adm. Code 20-393(1)), failed to perform work in a skilled and competent manner (Adm. Code 20-393(11), or failed to include important disclosures in their contracts (6 RCNY 2-221(a) et seq.), have no incentive to comply with these laws/rules and will continue to put other consumers at risk.

4. There is no need to stop making limited invasions if the TF has a balance that goes below \$5M as set forth in subparagraph (d)(3). The gross hoarding of TF funds must end. Approx. \$2M in new funds come in every two years at license renewal and the contribution amount of \$200 has not been raised since 1992.



Assuming you will proceed with your approach for limited TF invasion, here are my suggested revisions to the rule:

1. Raise the limited invasion amount to at least \$10K so that consumers with damages up to \$10K don't have to still go to Small Claims Court (SCC) to seek the balance of their damages. Making these consumers go to DCWP and then SCC is unduly onerous. It will also confuse the SCC judges and make them less likely to award additional damages.

2. I would alternatively suggest a limited invasion amount of \$15K since a very significant number of HIC complaints are at least \$15K and this amount is still quite limited compared to the \$25 cap otherwise allowed by the TF.

3. Clarify in subparagraph (d)(1) that a consumer has fully cooperated in an unsuccessful mediation when an HIC fails to reply to a complaint or engage at all with DCWP.

4. If a limited invasion occurs and a second complaint against the same HIC is filed within a three-year period, the HIC should have to reimburse the TF for any invasions and be subject to license suspension or revocation for failure to do so.

5. The reference to "award from the Commissioner" in subparagraph (d)(7) should be clarified to explain whether this means awards after a hearing at OATH."

Comment added June 29, 2023 4:31pm

- **Nick Commins**

I agree with the comments of Susan Kassapian above that these hearings should be brought to the Office of Administrative Trials and Hearings. If DCWP continues to fail to bring the hearing to OATH, and rather sends consumers seeking restitution through another process like the one described in this proposal, then the limited invasion amount ought to be at least \$15k, not the \$5k proposed here.

Comment added June 29, 2023 6:00pm

- **Elizabeth Lang**

I agree with and fully endorse the comments submitted by Susan Kassapian who knows whereof she comments.

Comment added June 29, 2023 7:49pm

- **Robert J Newhouser**

I concur with the comments posted by Susan Kassapian, a retired City of NY attorney. Her comments are attached below.

Comment added June 30, 2023 10:02am

From: **NYC Rules** <[noreply@rules.cityofnewyork.us](mailto:noreply@rules.cityofnewyork.us)>

Date: Tue, Jun 20, 2023 at 5:23 PM

Subject: Thank you for your comment on NYC Rules - "Home Improvement Contractor Trust Fund"

To: <[kassapians@gmail.com](mailto:kassapians@gmail.com)>

Thank you for your submission! Your comment will be reviewed and you will receive a separate email when it is approved and posted on the "Home Improvement Contractor Trust Fund". Please see our [Comment & Posting Policy](#) for additional information.

This is the comment under review:

"I once again commend DCWP for trying to add to its ability to invade this fund for consumers. However, until DCWP resumes bringing hearings on behalf of consumers to the Office of Administrative Trials and Hearings (OATH), any effort will fall short. This proposal is in particular grossly inadequate. It only tinkers at the margins of the problem resulting from DCWP's failure to bring hearings against licensed Home Improvement Contractors (HICs) based on complaints filed by consumers who have been told to go to court since on or about November 2017 before DCWP will bring charges against the HIC. The best way forward, based on my many years of expertise in this area, is explained in detail in my June 9, 2022 letter to the Mayor and Comptroller. See attached: <https://rules.cityofnewyork.us/wp-content/uploads/2022/12/Letter-to-Mayor-and-Comptroller-June-9-2022.pdf>.

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- **Jeffrey Irish**

I wholeheartedly agree and support Susan Kassapian's issues and fight described in her June 9, 2022, letter and her comments to the proposed rule I could have benefited from a restitution hearing. I should have been allowed to represent myself in a restitution hearing and I should not have been referred to court, and expected to take on the cost of litigation when I was financially raped by a contractor and could not afford legal representation. This matter was never taken to court, it was not affordable to me. A \$5K limited invasion is just too little.

Comment added June 30, 2023 10:16am

- **Barbara Turkewitz**

I think it is outrageous that the Department of Consumer Affairs and Work Protection (DCWP) has stopped taking action to protect consumers with significant complaints against home improvement contractors (HICs), and have failed to use the fund to reimburse these people for their losses when the contractors go out of business.

I support the other comments posted in response to this proposed rule change. As the Policy Analyst assigned to the Consumer Affairs Committee of the City Council when much of this was being regulated, I don't think that the \$5,000 limit makes sense, as it was our intention to cover most of the complaints by people of limited means at the time. This will not address most of the complaints that consumers are least likely to be able to cover for themselves. I think that even the most reputable businesses can occasionally have a problem that they are not financially able to address so it is very nice that this fund can cover some of these contingencies. However, when the same contractor has multiple fund invasions within a limited period of time (I would support the three-year period) they should be subject to a hearing, and if found liable, sanctions including reimbursement of the fund should be required. Moreover, I think that for many poor and/or limited English consumers, going to court and

then trying to collect when “bad contractors” screw up their homes or fail to provide the repairs for which they contracted, is an enormous hurdle. The Department of Consumer Affairs was established to assist these consumers, not force them to do significant paperwork and make their case in front of courts. Being as there is a mechanism for OATH to conduct hearings to adjudicate consumer complaints I think DCWP should be bringing these cases to OATH. If we don't take care of our most vulnerable consumers when they face the most damaging financial consequences, why are we bothering. If the consumers can only get \$5,000 max we are essentially forcing them to go to court or forego most of their damages.

Comment added June 30, 2023 11:51am

- **Ida Ciraolo**

I am a widowed senior citizen and the primary caretaker for my adult son with special needs who has suffered the distressing aftermath of a licensed Home Improvement Contractor who callously took advantage of my vulnerability, leaving me shouldering the heavy burden of a significant financial loss.

In our relentless pursuit of a just resolution, we pleaded for the Department of Consumer and Worker Protection (DCWP) to adjudicate our complaint at the Office of Administrative Trials and Hearings (OATH), only to be met with their regrettable denial to do so. Despite our repeated explanations that the New York State Courts were not a viable avenue for us, they persistently redirected us towards that path, leaving us feeling disheartened and trapped in a frustrating cycle.

It is unjust for consumers to be directed towards the courts by an agency that is meant to safeguard their interests. The proposed limited Trust Fund invasion amount of \$5,000 holds little value for most individuals, including myself, as our losses far exceed this



threshold. Consequently, consumers like me are left stranded and without recourse, under these proposed rules changes.

To address this issue, I strongly advocate for an increase in the limited Trust Fund invasion amount to \$15,000 from the \$5,000 that's proposed. Additionally, any claims surpassing this cap should necessitate adjudication at OATH, ensuring that no consumer is left abandoned and without the means to seek proper resolution.

Lastly, in this industry category, there is an urgent need for oversight to prevent the exploitation of countless individuals by unscrupulous contractors. This cycle of abuse must come to an end. It is imperative that we implement strict regulations and impose fines on both licensed and unlicensed home improvement contractors to ensure accountability and deter unethical practices. By establishing robust oversight measures, we can protect consumers from falling victim to deceitful contractors and create a safer and more trustworthy environment within the industry.

Comment added June 30, 2023 6:53pm

- **Marianne Ringel**

As a condo owner who has used and will use contractors I agree with Susan Kassapian's comments – an expert in the field. Thank you for your attention and please give consumers their full rights by not limiting compensation.

Comment added July 1, 2023 2:25pm

- **Valentina Tsisin**

Numerous individuals who have engaged with Home Improvement Contractors have a tale to tell – whether it be their own personal experience or those shared by acquaintances – and unfortunately, a significant portion of these narratives are nothing short of chilling. The prevalence of HICs who deceitfully pocket deposits without ever fulfilling their commitments, or those who perform only the bare

minimum before abruptly abandoning the project site, is alarmingly high.

This industry undeniably requires comprehensive oversight to protect vulnerable individuals, including but not limited to the elderly, uneducated, disabled, women, immigrants, and others who may be targeted by unscrupulous HICs. It is imperative to recognize that this industry also serves as a significant revenue stream that the city has regrettably abandoned since they are failing to properly enforce their rules, laws and regulations.

Undoubtedly, the repercussions of a contractor's failure to meet their obligations fall unjustly on consumers, imposing an unfair burden. Unfortunately, the attempts made by DCWP to mediate these issues often fall short, leaving consumers without a satisfactory resolution and, astonishingly, being advised by the very agency responsible for their protection to "sue in court." The daunting task of navigating the legal system without proper legal representation only adds to the already overwhelming challenges faced by individuals who have already suffered significant losses. Moreover, the exorbitant costs associated with legal proceedings are simply unattainable for most, compounding their difficulties.

Indeed, the proposed \$5,000 limited trust fund invasion threshold holds little significance for the majority of consumers. I concur with the previous remarks suggesting that this amount should be increased to \$15,000. Additionally, cases exceeding this cap should be handled by DCWP and brought to the Office of Administrative Trials and Hearing for fair adjudication. These measures would provide an ironclad assurance that no consumer is left stranded and devoid of any means to seek justice.

Comment added July 3, 2023 10:53am

- **Basil Edward**

The NYC Department of Consumer and Worker Protection (DCWP) is in dire need of improving their enforcement of rules, laws, and regulations pertaining to the home improvement industry. This urgency arises from the alarming rise in rogue contractors who consistently fail to complete their assigned tasks in compliance with NYC DOB approved plans and guidelines. These contractors are well aware that they can act with impunity, as there are no penalties or repercussions to fear.

To address this issue, DCWP must take proactive measures to ensure that homeowners have a more accessible means of seeking justice when dealing with contractors who fail to fulfill their obligations. Currently, the judicial process is both time-consuming and financially burdensome, making it difficult for homeowners to seek redress. Therefore, it is crucial for DCWP to streamline the mediation process and make it easier for homeowners to tap into the City's Home Improvement Business Trust Fund.

To achieve this, it is strongly recommended that the City significantly increase the proposed limited trust fund invasion from \$5,000 to \$15,000. This enhanced coverage will provide a wider safety net for homeowners who have been wronged by unscrupulous contractors. By increasing the payout, DCWP can ensure that aggrieved homeowners have the necessary resources to rectify the damages caused by these rogue contractors. This will not only restore faith in the system but also act as a deterrent for future misconduct.

Furthermore, it is imperative for the City of New York and the NYC Council to take decisive action by introducing legislation that effectively regulates the home improvement industry. This legislation should aim to create a fair and balanced environment for homeowners, ensuring that they are not left vulnerable to the deceitful practices of rogue contractors.

Currently, the industry operates in a manner reminiscent of the wild, wild west, where these unscrupulous contractors face no consequences for their failure to fulfill their obligations. This lack of accountability not only harms homeowners but also undermines the integrity of the industry as a whole.

By implementing comprehensive regulations, the City and the NYC Council can level the playing field and establish clear guidelines for both homeowners and contractors. These regulations should address issues such as dispute resolution, ensuring that homeowners have a reliable and efficient process to resolve conflicts with contractors.

Moreover, the legislation should include strict penalties and consequences for contractors who engage in deceptive practices or fail to perform their duties. This will serve as a deterrent and discourage rogue contractors from taking advantage of unsuspecting homeowners.

By introducing legislation that regulates the industry and holds contractors accountable, the City of New York and the NYC Council can restore trust and confidence in the home improvement sector. This will not only protect homeowners but also promote a fair and ethical business environment for all parties involved.

The current situation regarding payment disputes between homeowners and contractors is highly imbalanced. Contractors have the ability to place mechanic's liens on properties when homeowners refuse to pay for completed work, giving them significant leverage to collect payment. On the other hand, when contractors perform subpar work or abscond with down payments, homeowners are left with limited and unsatisfactory options. They are often forced to navigate the costly and burdensome judicial process, which frequently results in judgments against limited liability companies (LLCs) without any assets.

Given these circumstances, it is crucial for the city to intervene and safeguard honest and hard-working homeowners from the exploitative practices of rogue contractors. Immediate action is necessary to rectify this imbalance and provide homeowners with adequate protection.

By implementing fair and equitable measures, the City can ensure that homeowners have recourse when faced with unscrupulous contractors. This may involve establishing a more accessible and affordable dispute resolution process, allowing homeowners to seek redress without incurring exorbitant costs. Additionally, the City should consider implementing stricter regulations and penalties for contractors who engage in fraudulent or deceptive practices, ensuring that they are held accountable for their actions.

Ultimately, the city's intervention is essential to create a level playing field and protect homeowners from being taken advantage of by rogue contractors. By addressing these issues, the city can instill confidence in the home improvement industry and provide homeowners with the necessary support and protection they deserve.

Comment added July 3, 2023 5:45pm

- **Kim Maxwell / Deceased, Albert Maxwell**

I am writing to express my deep disappointment in the Department of Consumer and Worker Protection (DCWP) and the sluggishness with which they addressed not only my concerns but also those of multiple families in our community. Both my neighbor and I filed cases with the DCWP after falling victim to the same fraudulent contractor, Steven Rivers from Restoration Management Plus. Our shared experience has been disheartening, particularly considering that this was an elder abuse case and considering the historical significance of our neighborhood, Addisleigh Park, which was once home to renowned jazz musicians such as Louis Armstrong, Ella Fitzgerald, Billie Holiday, Count Basie, and Dizzy Gillespie. As a third-



generation homeowner, my primary objective was to restore my house to its former glory through a renovation project. Given that my neighbor was also undertaking renovations, it seemed sensible to engage the same contractor for services such as kitchen remodeling, stucco work, window replacements, and fence installation. However, it was devastating when we discovered that the person we hired turned out to be a scam artist and con man.

While I acknowledge the efforts made by the DCWP in proposing enhanced consumer protection measures, I cannot overlook the disappointment I feel regarding the existing agencies' lack of sufficient protection for consumers. The predicament we faced underscores the urgent need for stronger safeguards to prevent such incidents and ensure the well-being of consumers when dealing with unscrupulous contractors.

Therefore, I would like to provide both objections and proposed revisions to the proposed rule, with a specific focus on benefiting consumers who have suffered significant losses:

**Objection: Increase the Limited Trust Fund (TF) Invasion Amount:** The proposed limited \$5,000 TF invasion for eligible consumers is insufficient to compensate those who have incurred significant financial losses. To provide meaningful restitution, I recommend increasing the limited invasion amount to a minimum of \$25,000. This revision would better align the compensation with the actual damages suffered by consumers and help them recover from substantial financial burdens caused by unscrupulous contractors.

**Objection: Inadequate Response and Support:** I am deeply concerned about the timeliness of the DCWP's response to consumer complaints and cases. Delays in investigation and resolution processes only exacerbate the distress and financial burden experienced by affected individuals and families. I urge the DCWP to allocate ample resources and streamline internal procedures to ensure prompt responses to consumer complaints and provide the necessary support during these trying times.

**Objection: Insufficient Contractor Screening and Background Checks**

To prevent the recurrence of fraud and protect vulnerable consumers, it is imperative for the DCWP to implement stricter screening and background check protocols for contractors. This should include thorough investigations into licenses, certifications, references, and past customer reviews. By establishing comprehensive vetting processes, the DCWP can mitigate the risk of consumers falling victim to deceptive contractors.

#### Objection: Lack of Public Awareness

The disappointment I and many other consumers have experienced underscores the need for enhanced public awareness campaigns. Many of us place our trust in contractors based on recommendations or assumptions of adequate consumer protection. I strongly urge the DCWP to launch targeted public awareness campaigns to educate homeowners about potential risks, red flags, and best practices when hiring contractors. By promoting consumer awareness and encouraging due diligence, the DCWP can empower individuals to make informed decisions and avoid falling prey to fraudulent schemes.

Considering these objections, I propose the following revisions to the proposed rule:

#### Revision: Timely Response and Support

The proposed rule should explicitly outline specific timelines and guidelines for the DCWP to address consumer complaints and cases promptly. By establishing clear expectations and holding the department accountable, consumers will benefit from more efficient resolution processes and the support they need during challenging circumstances.

#### Revision: Enhanced Contractor Screening and Background Checks

To strengthen consumer protection, the proposed rule should mandate rigorous screening and background checks for contractors. The DCWP should collaborate with relevant agencies to ensure comprehensive evaluations of licenses, certifications, references, and customer feedback. By making these checks mandatory, the DCWP can significantly reduce the risk of consumers falling victim to

fraudulent contractors.

Revision: Robust Public Awareness Campaigns

The proposed rule should allocate resources and funding for impactful public awareness campaigns. These campaigns should educate homeowners about their rights and responsibilities, potential risks in the contracting industry, and best practices for hiring contractors. By equipping consumers with knowledge and empowering them to make informed decisions, the DCWP can foster a more secure and trustworthy marketplace.

In conclusion, I urge the DCWP to consider these objections and proposed revisions to the proposed rule. By enhancing consumer protection measures, improving responsiveness, strengthening contractor screening processes, and investing in public awareness campaigns, we can collectively work towards a more secure and fair marketplace that benefits all consumers.

Thank you for considering my comments and suggestions.

[Comment attachment](#)

1524-2021-CMPL-Closing-letter.pdf

Comment added July 3, 2023 6:46pm



Lorelei Salas  
Commissioner

42 Broadway  
9th Floor  
New York, NY 10004

Dial 311  
(212-NEW-YORK)

[nyc.gov/consumers](http://nyc.gov/consumers)

KIM MAXWELL  
17302 113<sup>TH</sup> AVE  
JAMAICA, NY 11433-4003

July 29, 2021

RE: 1524-2021-CMPL – RESTORATION MANAGEMENT PLUS INC

Dear Mr. Kim Maxwell:

This is to follow up on our recent phone contact with you. As discussed, despite our best efforts, no satisfactory resolution between you and RESTORATION MANAGEMENT PLUS INC could be reached. If you so choose, you may pursue your complaint in Small Claims Court. We have enclosed a guide which you may find helpful.

Thank you for bringing this matter to our attention.

Sincerely,

Rosario Torres  
Consumer Services Division

- **Sandra Hernandez**

I am a shareholder of an income-restricted coop in East Harlem and the single mother of a then-two-year-old child (at the time of the events). I fully support the request and arguments presented by Ms. Susan Kassapian in her comments to your proposed rule to allow a limited Trust Fund invasion of \$5K. Though I believe that any amount below \$25K will not be efficient to compensate the damages suffered by homeowners or the resources used by NYC if the complaint is transferred to OATH.

In 2017, I tried to renovate my apartment and was the victim of a DCA-licensed home improvement contractor (DCA being former DCWP). I hired a lawyer to mediate his return to work and paid \$5K. The contractor refused to return to work in compliance with NYC rules and regulations or to reimburse me. At this point, my losses summed up to about \$75K.

From May 2017 to March 2018, I submitted three complaints to DCA and went through an unsuccessful mediation. DCA was also UNABLE to oblige the contractor to comply with NYC rules and regulations, including to complete the work and/or reimburse me. DCA closed my complaints and told me that it no longer transferred complaints to OATH, and I had to go to court.

Meanwhile, my Coop Board turned against us threatening to evict my young child and me from our apartment and stopping the work. I had to sue my Coop to prevent them from taking away our only property and to complete the renovation. My young child and I have been in this horrendous nightmare ever since. From 2017 to today, we lost about \$400K in legal fees, additional construction fees, etc. for which I continue to pay every month.

My daughter and I have been suffering financially, psychologically and physically because of the inaction of DCA against its licensee and

the refusal of DCA to transfer my complaint to OATH since 2017. We should have had the right to an expedited hearing at OATH and DCA deprived us of our right. A \$5K limited invasion is too little to be of any help to us and most aggrieved homeowners.

The City of New York gives licenses to home improvement contractors and those licenses should come with obligations and responsibilities. Currently, NYC does not oblige its licensees to comply with the City's laws, rules and regulations, including to respect the contracts with their clients. NYC has the responsibility to OVERSEE contractors' compliance with its own laws, rules and regulations, and correct/punish them if they do not comply.

I ask you to do what is right. NYC has accumulated about \$14 million in funding that is not being used for its purpose while citizens of NYC are being ripped off by DCA and DOB licensees whom NYC authorized to work in our homes. You have the responsibility to take action and help the people affected by those contractors, the same people you represent, and you work for.

Comment added July 3, 2023 9:59pm

- **Fred Cantor**

I am writing in wholehearted support of Susan Kassapian's comment. I am a retired attorney who had the privilege of working with Susan for more than a decade at the former Department of Consumer Affairs; part of my work was on HIC-related matters.

I can't think of anyone who is more knowledgeable than Susan about HIC issues—and I can't think of anyone who has spent more time and effort in trying to ensure that appropriate remedies are in place for consumers who have suffered harm as the result of shoddy and/or deceptive HIC practices.

What Susan is proposing seems, quite frankly, like a common-sense approach that would do the most public good in this area.



I guess my question is: why would anyone be against what Susan is proposing?

Thank you for your consideration,  
Fred Cantor

Comment added July 5, 2023 2:51pm

- **Debra Silberstein**

I worked as a hearing officer/ALJ in OATH's Appeals Unit for roughly 8 years (and my husband, Fred Cantor, worked at DCA for many years as described in his comment).

I fully support Susan Kassapian's comment.

Comment added July 5, 2023 2:57pm

- **Ava Alterman**

As a retired attorney I concur with the comments of Susan Kassapian, reproduced below. DCWP should fully enforce the Administrative Code of the City of New York, resume hearings at OATH and appropriately recompense consumers who have been unfairly taken advantage of and harmed by HICs. As a shareholder in a cooperative building, I have had significant work done in my apartment; the proposed \$5,000 payment is woefully inadequate to address the damages which can be caused by unscrupulous contractors. With the Trust Fund and the expertise of OATH, DCWP is in a position to truly protect the most needy of consumers.

"I once again commend DCWP for trying to add to its ability to invade this fund for consumers. However, until DCWP resumes bringing hearings on behalf of consumers to the Office of Administrative Trials and Hearings (OATH), any effort will fall short. This proposal is in particular grossly inadequate. It only tinkers at the margins of the problem resulting from DCWP's failure to bring hearings against licensed Home Improvement Contractors (HICs) based on complaints

filed by consumers who have been told to go to court since on or about November 2017 before DCWP will bring charges against the HIC. The best way forward, based on my many years of expertise in this area, is explained in detail in my June 9, 2022 letter to the Mayor and Comptroller. See attached: <https://rules.cityofnewyork.us/wp-content/uploads/2022/12/Letter-to-Mayor-and-Comptroller-June-9-2022.pdf>.

Moreover, no doubt DCWP will have to dedicate at least one or two attorneys to implement its plan for these limited invasion reviews. A much better approach would be to dedicate one or two attorneys to draft the hearing notices and mediate the cases, which I did full time starting in Sept of 2012. The chart attached to my letter gives the statistics for the two-year period of Sept. 2012 to Sept. 2014, showing that during this period I calendared 437 hearings, settled 204 cases for \$1.3M in restitution for consumers, Administrative Law Judges settled another 41 cases for \$267,680 in restitution for consumers, and 115 inquests and 31 hearings resulted in nearly \$2.3M in additional restitution for consumers. None of the restitution amounts were capped at any amount and several of my settlements were in excess of \$25K. The drafting would be much easier than when I was doing this work since DCWP thereafter started using a simpler template rather than the hyper-detailed approach I had been told to implement. The summonses being used before DCWP stopped bringing hearings were so form-like a consumer could even fill in their own particulars with just a few sentences.

Here are my specific objections to the rule as proposed:

1. The limited \$5K TF invasion for consumers who meet the requirements in the proposed rule will not help the vast majority of consumers since the vast majority of these complaints seek damages well in excess of \$5K.

2. Similarly, the limited \$5K TF invasion will not help the most aggrieved consumers who have suffered significant damages of at least \$25K, the current cap of TF invasions for restitution.

3. This rule change memorializes a total abandonment of enforcement of the relevant laws and rules in connection with these invasions — no charges or sanctions imposed on the licensees who have violated the relevant laws and rules. That means that HICs who have abandoned or deviated from contracts (Adm. Code 20-393(1)), failed to perform work in a skilled and competent manner (Adm. Code 20-393(11)), or failed to include important disclosures in their contracts (6 RCNY 2-221(a) et seq.), have no incentive to comply with these laws/rules and will continue to put other consumers at risk.

4. There is no need to stop making limited invasions if the TF has a balance that goes below \$5M as set forth in subparagraph (d)(3). The gross hoarding of TF funds must end. Approx. \$2M in new funds come in every two years at license renewal and the contribution amount of \$200 has not been raised since 1992.

Assuming you will proceed with your approach for limited TF invasion, here are my suggested revisions to the rule:

1. Raise the limited invasion amount to at least \$10K so that consumers with damages up to \$10K don't have to still go to Small Claims Court (SCC) to seek the balance of their damages. Making these consumers go to DCWP and then SCC is unduly onerous. It will also confuse the SCC judges and make them less likely to award additional damages.

2. I would alternatively suggest a limited invasion amount of \$15K since a very significant number of HIC complaints are at least \$15K and this amount is still quite limited compared to the \$25 cap otherwise allowed by the TF.

3. Clarify in subparagraph (d)(1) that a consumer has fully cooperated in an unsuccessful mediation when an HIC fails to reply to a complaint or engage at all with DCWP.

4. If a limited invasion occurs and a second complaint against the same HIC is filed within a three-year period, the HIC should have to reimburse the TF for any invasions and be subject to license suspension or revocation for failure to do so.

5. The reference to "award from the Commissioner" in subparagraph (d)(7) should be clarified to explain whether this means awards after a hearing at OATH."

Comment added July 5, 2023 6:35pm

SUSAN KASSAPIAN  
44 Prospect Park West #F6  
Brooklyn, NY 11215  
kassapians@gmail.com  
917-282-5244

June 9, 2022

Dear Mayor Eric Adams and Comptroller Brad Lander:

To quote Mayor Adams, *"In order for our city to operate effectively and carry out its core functions, we need fair, expeditious, and just administrative trials and hearings."*<sup>1</sup> I am writing to make you both aware of a critical instance where this is not happening. The problem can be easily fixed and the city would even see increased revenues as a result.

**The Department of Consumer and Worker Protection (DCWP) Is Not Filing Individual Consumer Restitution Cases For Hearings At The Office of Administrative Trials and Hearings (OATH), Without Requiring Consumers To First Obtain A Judgment In Regular Court**

In 2017 DCWP ended its decades-long practice of filing consumer restitution cases for hearings and has required consumers to first go to court to obtain a judgment. As a result, there are tremendous delays and unnecessary roadblocks for consumers seeking restitution. Millions of dollars in trust funds are not being distributed in a timely fashion to pay consumers their restitution or to pay fines owed to the city.

**My 35 Years of Experience And Expertise In This Area**

I worked for 28+ years at what was formerly known as the Department of Consumer Affairs (DCA), as General Counsel and Assistant Commissioner, Special Counsel, and Principal Administrative Law Judge (ALJ). I then worked at OATH for the past six years as Deputy Commissioner. I retired in February 2022.

**There Are Millions of Dollars In Trust Funds From Which Unpaid Restitution and Fines Can Be Paid, But Only After There Is A Hearing And Order By OATH**

There are two Trust Funds established to provide restitution and fines when a DCWP licensee fails to pay -- the Home Improvement Contractor (HIC) Trust Fund and the Tow Truck Trust Fund. **The more important of these is the HIC Trust Fund which as of late last year had amassed \$12M.** The Comptroller may not invade these Trust Funds, for either restitution or fines, until OATH holds a hearing, finds the licensee in violation of the relevant license laws, and orders restitution and fines.

**Consumers Left in the Lurch/Many Unable to Pursue Their Claims**

There is no question that many, if not most, of the consumers turned away by DCWP since 2017 have not pursued their cases in court. The reasons include claims being above the Small Claims Court monetary cap and the difficulty in initiating and pursuing a case in Civil Court or State Supreme Court without an attorney to help.<sup>2</sup> In fact, as of the end of last year, only about two dozen HIC consumer restitution hearings had been filed with OATH after the consumer obtained a judgment.<sup>3</sup> Of those, all had had many years of lag time. In the last few years DCWP has curiously filed one or two cases with OATH without the consumer first obtaining a court judgment, raising serious questions of special access and a lack of fairness.

<sup>1</sup> *The Record of Law & Commerce*, March 23-30, 2022.

<sup>2</sup> In many cases the cost of an attorney is prohibitive because discovery and motions takes years in court. This is why DCWP is supposed to facilitate the bringing of expeditious administrative hearings in the city's tribunal.

<sup>3</sup> Most of these cases were drafted by law interns and are no simpler to draft than the pre-court judgment cases.



### **Failure To Ensure That Licensees Comply With The Relevant Licensing Laws**

DCWP's long delays in bringing charges against licensees, and then only on a sliver of cases where a consumer returns after obtaining a court judgment, fails to ensure that licensees will comply with the relevant laws and rules. Moreover, after so many years of not filing these cases for hearings, licensees must be aware that DCWP will not likely ever bring such cases against them. It makes a mockery of the license laws meant to protect consumers. It also makes for an uneven playing field for the licensees who comply with the laws!

### **The Need To Resume Hearings At OATH Is Most Critical In The Home Improvement Area**

Home Improvement issues have always been one of the most frequent consumer complaints and they involve the greatest amounts of restitution sought. They are, also, the most difficult to resolve by DCWP's Consumer Services Division, and most often had to be referred to the General Counsel's Office to draft the papers for hearings. It is only when faced with a hearing and the possible imposition of both restitution and fines that there is a strong enough incentive for licensees to settle the cases.

### **Failure To Protect the Most Vulnerable; Many Forced To Live In Unsafe Conditions**

Abandoning expeditious hearings for those consumers who have come to DCWP for help and who are often elderly, minority, or immigrants, and without the financial means to fend for themselves, too often leaves them with no timely refunds and no justice. Consumers risk living in a house or apartment in disrepair or being unable to rent a part of their house, losing income that may be critical to keeping their homes. Many of the cases I worked on over the years in this area were heart-breaking and involved serious unsafe living conditions. Consumers who had taken out home equity loans were often unable to repay them until monies came from the Trust Fund, helping avoid foreclosures.

### **OATH's Past Outreach to DCWP To Help Mediate These Cases Inexplicably Refused**

OATH reached out to DCWP in the Spring of 2020 about the HIC cases not coming to OATH. Then Commissioner Joni Kletter offered the mediation services of OATH's Center for Creative Conflict Resolution (CCCR) to reduce the number of cases that would have to go to a hearing since DCWP's main objection to filing these cases was it had to assign an attorney to prosecute cases in OATH's Hearings Division. DCWP inexplicably rejected the offer even though with effective mediation very few of these cases would ever go to hearing so there would be little need for DCWP attorneys to have to prosecute these cases.

### **If Calendared At OATH, Fewer Than 10% Of Filed HIC Cases Should Require A Contested Hearing**

Based on my experience, most cases will not require contested hearings. I always had an excellent record of settling HIC restitution cases as an ALJ at DCA. Then, in 2012, I requested a re-assignment from my ALJ position, back to being Special Counsel in the General Counsel's Office, to dedicate myself to clearing a backlog of cases that needed to be drafted. **Between Sept. 2012 and Sept. 2014, there were 437 cases sent for hearings. Of those, 235 cases were settled either by me or one of the ALJs. In total, \$1.6M in restitution was achieved via these settlements.** (See attached report submitted at the time; relevant totals are from the sums listed on pages 1 and 3.) **There were 31 contested hearings and 115 cases where the HIC defaulted resulting in inquests. Of the combined 146 inquests and hearings, \$2.3M was awarded in restitution and \$2.3M in fines.** Of the 437 calendared cases, 20 were withdrawn. That leaves a remainder of 36 cases which would not yet have come up for their hearing dates. **Bottom line: During that two-year period, of the 437 cases calendared, 401 had come up for their hearing dates and only 31 cases (8 %) led to contested hearings. Plus, excellent settlement results were achieved through mediation!**



### **Leverage To Settle These Cases Does Not Exist in Court**

HIC cases are particularly amenable to a settlement because the licensee typically faces \$7K to \$10K in fines, which DCWP has always offered to waive if the HIC settles the restitution claim. This leverage is lost when a consumer is forced to go to court. It also means that when a consumer obtains a court judgment and DCWP refers the case for a hearing at OATH, the HIC will have onerous fines imposed which could have been avoided. Many will needlessly have to close their businesses once their licenses are revoked for failing to pay these fines. We should do what we can to avoid more businesses closing.

### **Suggested Way to Go Forward**

The non-HIC cases can be filed with OATH's Hearing Division as there are few such cases and they are generally simple, involving less than \$1K. The HIC cases, which typically come in at about 15 to 20 per month, are better filed with OATH's Trials Division, which unlike the Hearings Division, conducts settlement conferences. If a respondent defaults, the case could be transferred to the Hearings Division for a computer-generated default decision; no inquest required. The contested HIC cases involving under \$10,000 can also be transferred to the Hearings Division and should be allowed to proceed to a hearing without a DCWP attorney – just like in Small Claims Court.<sup>4</sup> The contested HIC cases involving more than \$10,000 can be heard at the Trials Division. As most should settle with effective mediation efforts, a DCWP lawyer will not often have to prosecute the case.<sup>5</sup>

### **I Will Volunteer My Time Two Days a Week**

I am willing to volunteer at least two days a week to help fix this problem. I am willing to train the Trials Division ALJs, as I previously trained OATH's Hearing Officers<sup>6</sup> to handle these cases. I would also mediate as many cases as possible either under the auspices of the CCCR or the Trials Division.

### **WIN-WIN For Consumers, Licensees Who Are Complying With The Laws, The City**

The return to traditional practice will afford consumers the assistance they always received prior to 2017, provide a level-playing field for businesses who do right by consumers, and generate revenue from more timely fines being paid by licensees or from the two existing Trust Funds. The City is in the enviable position of being able to right a long-time wrong committed by the prior administration by once again providing an expeditious forum for the consumers it is meant to serve. I know that you are both dedicated to affordable housing and achieving equity for vulnerable New Yorkers. This would help in both of these regards.

Sincerely,



Susan Kassapian

cc: DCWP Commissioner Vilda Vera Mayuga; OATH Commissioner Asim Rehman; Deputy Mayor Maria Torres-Springer; Chief Counsel to the Mayor, Brendan McGuire; Corporation Counsel

*This letter is dedicated to Robert Martin, former General Counsel at DCA, who was helping me to right this wrong, until he died of a 9/11 cancer in March of this year.*

<sup>4</sup> OATH may need to promulgate a simple rule to allow this, which would match an existing Trials Division rule.

<sup>5</sup> OATH could also possibly expand this area for the appointment of pro bono attorneys.

<sup>6</sup> Working with Ray Kramer at OATH's CCCR, I was responsible for organizing the Continuing Legal Education classes for the Hearing Officers from 2018 until I retired in 2022, and I was always an instructor for the DCWP classes.

**Consumer Dockets**  
**Charge Drafting and Settlement Report**

Date of Report: Sept. 15, 2014 for Week Ending Sept. 12, 2014

**I. Status Update – Weekly Snapshot (Short week – Labor Day; week back from vacation)**

	Week Ending 9-5-14	Week ending 9-12-14
Cases Assigned for Charge Drafting	4	2
Cases Drafted, but Awaiting Final Review	5	10
Cases Filed with the Tribunal	0	1
Cases where DCA is Awaiting info from Consumer	14	17
Cases Settled	3	3
Total Restitution in Settlements	\$3,986.09	\$22,000.00
Appeals Filed by Respondents	0	0
Appeals or Oppositions Filed by DCA	0	0

**II. From Project Beginning (Sept. 2012) to Present**

	Week Ending 9-5-14	Week Ending 9-12-14
Cases Assigned for Charge Drafting	531	533
Cases Sent for Filing with the Tribunal	436	437
Cases Withdrawn or Closed without Going to Hearing	43	43
Cases to be drafted	26	18
Cases where DCA is Awaiting info from Consumer	14	17
Cases Awaiting a Final Decision on Whether to Proceed, Withdraw	7	8
Cases in Review or Needs Revision Post Review	5	10
Cases Settled	201	204
Total Restitution in Settled Cases	\$1,302,780.02	\$1,324,780.02

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III. Cases on Hold (8)

Case name	Date Referred	Reason
C1035614 Ryncarz v. Mike Masonry	8/18	Unlic. HIC
C0948614 Haymando v. Top City	6/30	Concrete case
C0556114 Maffeo v. Steam-N-Stone	4/28	Concrete case
C0339614 Fenster v. Cracovia	4/4	Liquidated damages
C0233714 Hasenfeld v. Custom Wreckers	3/31	JC handling
C0108214 Warren v. Bil-ray	3/4	Expect to settle
C0428313 Jackson v. Trademark	12/13	Letters of administration
CD5-134284 Mullings v. Bil-Ray	9/13	Expect to withdraw

IV. Cases Awaiting Info From Consumers (17)

Case Name	Date Referred	Info Needed Awaiting Est (E) C review (C) Other (O)
C1190214 Horen v. Tipperary	8/18	C/E
C1079514 Werner v. Bellerose Const.	8/18	C/E
C1313714 Gheraldi v. World of Stone	8/11	C/atty
C1163514 Staffa v. Wild Bird Const.	8/11	C/E
C1237114 Adams v. Driscilla	8/11	C/E
C1235514 Zhong v. Boscaino/Speedway	8/11	C
C1029814 Ruboko v. Seaport Parking	7/28	O/Info
C1158814 Hanan v. Nari/Firestone	7/28	E
C0951114 Toscano v. Bella Home	7/28	C/E
C1250314 Carter v. Sherman Industry	7/28	C/E/O
C1060814 Cabrera v. 4 Kings	7/14	C/E
C0996114 Franklin v. 4 Seasons	7/14	C/E
C0844314 Sheperd v. BNI	7/7	C/E
C0892614 Frances v. Allstate	7/7	C/E
C0820514 Schlenoff v. Classico	6/16	C
C0619614 Almonte v. NYC Sunrise	5/19	C/E
C0214314 Brenner v. Heathrow Const.	3/24	E/O Work def.



V. ALJ Report – Inquests, Hearings, Settlements, Withdrawn

	Yr to Date for Week Ending 9-5-14	Yr to Date Week Ending 9-12-14
Inquests	115	115
Hearings	31	31
Settlements (plus 2 by SK as ALJ)	40	41
Withdrawn or Consumer Defaulted	20	20
Total Restit. on Settlements (plus 2 by SK=\$15.5K)	\$267,680.96	\$
Total Restitution on Inquests/Hearings	\$2,287,521.79	\$2,287,521.79
Total Fines (Combined Company and Salesperson)	\$2,293,475.00	\$2,293,475.00

X

- **Anne McNeill**

In February 2018, my family's cherished 4-story brownstone fell victim to a blaze, reducing it to wreckage. Determined to rebuild it, I entrusted a contractor with the task, Stephen Rivers of Restoration Management Plus, compensating him with more than \$200,000. Sadly, my dreams were shattered as the repairs remained incomplete, leaving me stranded and without a roof over my head.

For more than 5 long and painful years, I have been forced to live away from the place I call home, while the project remains incomplete and was exposed to nature's elements. Now, at the age of 77, I am working towards obtaining a loan that will pave the way for my long-awaited return to my family home – an additional burden I am forced to assume in the midst of this nightmare.

The contractor hired for my repairs had exploited numerous other minority seniors, preying on our vulnerability. Disturbing complaints had been lodged against him in the past with the Department of Consumer Affairs and Worker Protection (DCWP), shedding light on his unscrupulous practices. If only these complaints had been pursued and brought to justice by the DCWP during a hearing at the Office of Administrative Trials and Hearings (OATH), perhaps other consumers, including myself, could have been spared from his predatory grasp.

Determined to seek justice, I took action by submitting complaints to the BBB and talking to the DCWP about my pending complaint filing. I also sought legal assistance, which was well beyond my financial means, and filed a complaint with the Brooklyn District Attorney's Office in January 2021.

Regrettably, my complaint was disregarded by the BBB, and the DCWP advised against filing it due to my pending legal proceedings. In April 2023, the District Attorney's Office informed me that they

were unable to proceed with my case. Justice has been nowhere to be found!!

Considering the significant number of complaints filed against this contractor, it is only fair that DCWP should have prosecuted the complaints and all these aggrieved homeowners should have all been granted expeditious hearings at OATH. The number of complaints should have demanded immediate attention, ensuring that our concerns were promptly addressed and resolved, and preventing any further exploitation of unsuspecting individuals.

The proposed limit of \$5,000 for trust fund invasion holds no significance in our particular situations and will likely provide minimal benefit to countless others. I agree with with others here advocating for an increase in this limit, as it holds the potential to aid countless consumers, who have long awaited their rightful compensation.

Homeowners, such as myself, who have suffered injustices require the unwavering support and aid of DCWP and OATH, rather than being left to fend for ourselves during our most vulnerable moments.

Comment added July 5, 2023 8:10pm

- **Anne McNeill**

In February 2018, my family's cherished 4-story brownstone fell victim to a blaze, reducing it to wreckage. Determined to rebuild it, I entrusted a contractor with the task, Stephen Rivers of Restoration Management Plus, compensating him with more than \$200,000. Sadly, my dreams were shattered as the repairs remained incomplete, leaving me stranded and without a roof over my head.

For more than 5 long and painful years, I have been forced to live away from the place I call home, while the project remains incomplete and was exposed to nature's elements. Now, at the age of almost 77 years old, I am working towards obtaining a loan that will pave the



way for my long-awaited return to my family home – an additional burden I am forced to assume in the midst of this nightmare.

The contractor hired for my repairs had exploited numerous other minority seniors, preying on our vulnerability. Disturbing complaints had been lodged against him in the past with the Department of Consumer Affairs and Worker Protection (DCWP), shedding light on his unscrupulous practices. If only these complaints had been pursued and brought to justice by the DCWP during a hearing at the Office of Administrative Trials and Hearings (OATH), perhaps other consumers, including myself, could have been spared from his predatory grasp.

Determined to seek justice, I reached out to the DCWP and spoke to an attorney there who could not offer me any assistance. I also sought legal representation to pursue my matter in court, which was well beyond my financial means. Unfortunately, I am unable to sustain the financial burden required to proceed with this legal action.

Additionally, I filed a complaint with the Brooklyn District Attorney's Office in January 2021.

Regrettably, in April 2023, the District Attorney's Office informed me that they were unable to proceed with my case. Justice has been nowhere to be found!!

Considering the significant number of complaints filed against this contractor, it is only fair that DCWP should have prosecuted the complaints and all these aggrieved homeowners should have all been granted expeditious hearings at OATH. The number of complaints should have demanded immediate attention, ensuring that our concerns were promptly addressed and resolved, and preventing any further exploitation of unsuspecting individuals.

The proposed limit of \$5,000 for trust fund invasion holds no significance in our particular situations and will likely provide minimal benefit to countless others. I agree with others here advocating for an

increase in this limit, as it holds the potential to aid countless consumers, who have long awaited their rightful compensation.

Homeowners, such as myself, who have suffered injustices require the unwavering support and aid of DCWP and OATH, rather than being left to fend for ourselves during our most vulnerable moments.

Comment added July 5, 2023 8:30pm

- **Susan Lee**

My elderly mother who has a language barrier and I (a female with a physical disability) were swindled by more than one crooked contractor in October 2022. The first contractor created more problems and damaged our property when we called them to fix a tiny leak which only required a small pail to be emptied, if that, after a downpour. However, after their substandard work, there were rivers of water pouring down our walls as well as leaks in different areas in the middle of the ceiling; above, the cement they laid on the porch crumbled and was uneven, creating pools all over the porch. We are appalled that the Department of Consumer Affairs (DCA) allow such unskilled people to be licensed in the first place. These contractors ruined our porch causing over \$20K worth of damages, and after some detective work, we discovered that the business name they gave us was a DBA name (Doing Business As name), so these crooked contractors tried to conceal their real name which they were licensed under at the DCA. After an internet search using their real name (the name they are licensed under at the DCA), it was discovered that these contractors had pulled the same stunt with many other customers who each wrote a very familiar story — exactly what these crooked contractors did to us was done to several other innocent customers — but those reviews were under their DCA license name, which they did not share with us; their business card and contract had their DBA name. If their DBA name is Googled — the name they presented us with — there are seemingly fake glowing reviews of

their business, and their true reviews of wronged customers are not accessible due to them giving a different name to customers.

We had to hire a second contractor to correct the extensive damages created by the first contractor, but the second contractor never actually fixed the leaks. In addition — after already paying them for the complete project but yet the leaks remained — when we called them out for not actually fixing the leaks, they came to our home unannounced several times threatening violence with hammers in their hands to “destroy the work they did and [they] would use hammers to destroy their work” out of their greed and spite while my mother was in the hospital undergoing an emergency procedure right after another family member’s traumatic passing. I had to hire a lawyer to write a cease & desist letter to those second set of crooked thug contractors. All the awful things that occurred should never have happened. These crooked male contractors prey on the elderly, non-English speaking persons, the disabled and women.

We went to the NYC DCA for help, but they did nothing and even bullied us at times. The DCA are not what they used to be. It was much better when Susan Kassapian was there and working there as an attorney when they actually helped wronged consumers (back when it was called Department of Consumer Affairs).

Vulnerable populations such as the elderly, non-English speaking persons, the disabled, and women make up the majority of those swindled and abused by these crooked contractors. In a city and state where health care providers are not overseen, and those health care providers have lives in their hands that end up dying or seriously injured due to lack of oversight, maybe one shouldn’t be surprised that there is no oversight for contractors and the agency that is supposed to help wronged consumers. Having oversight and more stringent rules to become licensed contractors as well as oversight for the employees at DCA who are supposed to help wronged consumers would be welcome.

Please have the agency simply focus on Consumer Affairs. The name, up until some years ago, was the NYC Department of Consumer Affairs, and the agency should focus on that only — Consumer Affairs. Worker Protection should be its own department separate from Consumer Affairs because the two are totally unrelated, which might explain why the employees currently there that are supposed to help wronged consumers just push paper (our written complaints), don't actually help consumers and are wasting the city's money by getting paid for doing absolutely nothing but creating stress for consumers. Please hire people who actually care about properly addressing wronged consumers' claims and make the process clear and streamlined. When an agency loses focus on their mission, everyone loses.

I support what Susan Kassapian wrote in her comment and proposal. However, after reading the several comments here and with knowledge of other cases, I believe every case is different, each with unique circumstances and unique damages, so there should not be a cap or limit on the invasion amount because, by and large, most consumers who were wronged have damages that are well within what the DCA can afford to invade the trust which, I am told, has millions of dollars in it. If there must be a limit, that should be calculated based on the amount in the trust and how many cases and invasion dollar amounts are expected in a certain time period based on trends so the trust has proper time to be replenished. The remedy and dollar amount should be tailored to each specific case. Susan Kassapian worked for many years at the DCA, so she knows what they should be doing to help wronged consumers. I have attached her comments here.

[Comment attachment](#)

230630-Kassapian-Comments-1.docx

Comment added July 5, 2023 9:11pm

From: **NYC Rules** <[noreply@rules.cityofnewyork.us](mailto:noreply@rules.cityofnewyork.us)>  
Date: Tue, Jun 20, 2023 at 5:23 PM  
Subject: Thank you for your comment on NYC Rules - "Home Improvement Contractor Trust Fund"  
To: <[kassapians@gmail.com](mailto:kassapians@gmail.com)>

Thank you for your submission! Your comment will be reviewed and you will receive a separate email when it is approved and posted on the "Home Improvement Contractor Trust Fund". Please see our [Comment & Posting Policy](#) for additional information.

This is the comment under review:

"I once again commend DCWP for trying to add to its ability to invade this fund for consumers. However, until DCWP resumes bringing hearings on behalf of consumers to the Office of Administrative Trials and Hearings (OATH), any effort will fall short. This proposal is in particular grossly inadequate. It only tinkers at the margins of the problem resulting from DCWP's failure to bring hearings against licensed Home Improvement Contractors (HICs) based on complaints filed by consumers who have been told to go to court since on or about November 2017 before DCWP will bring charges against the HIC. The best way forward, based on my many years of expertise in this area, is explained in detail in my June 9, 2022 letter to the Mayor and Comptroller. See attached: <https://rules.cityofnewyork.us/wp-content/uploads/2022/12/Letter-to-Mayor-and-Comptroller-June-9-2022.pdf>.

Moreover, no doubt DCWP will have to dedicate at least one or two attorneys to implement its plan for these limited invasion reviews. A much better approach would be to dedicate one or two attorneys to draft the hearing notices and mediate the cases, which I did full time starting in Sept of 2012. The chart attached to my letter gives the statistics for the two-year period of Sept. 2012 to Sept. 2014, showing that during this period I calendared 437 hearings, settled 204 cases for \$1.3M in restitution for consumers, Administrative Law Judges settled another 41 cases for \$267,680 in restitution for consumers, and 115 inquests and 31 hearings resulted in nearly \$2.3M in additional restitution for consumers. None of the restitution amounts were capped at any amount and several of my settlements were in excess of \$25K. The drafting would be much easier than when I was doing this work since DCWP thereafter started using a simpler template rather than the hyper-detailed approach I had been told to implement. The summonses being used before DCWP stopped bringing hearings were so form-like a consumer could even fill in their own particulars with just a few sentences.

Here are my specific objections to the rule as proposed:

1. The limited \$5K TF invasion for consumers who meet the requirements in the proposed rule will not help the vast majority of consumers since the vast majority of these complaints seek damages well in excess of \$5K.

2. Similarly, the limited \$5K TF invasion will not help the most aggrieved consumers who have suffered significant damages of at least \$25K, the current cap of TF invasions for restitution.

3. This rule change memorializes a total abandonment of enforcement of the relevant laws and rules in connection with these invasions -- no charges or sanctions imposed on the licensees who have violated the relevant laws and rules. That means that HICs who have abandoned or deviated from contracts (Adm. Code 20-393(1)), failed to perform work in a skilled and competent manner (Adm. Code 20-393(11)), or failed to include important disclosures in their contracts (6 RCNY 2-221(a) et seq.), have no incentive to comply with these laws/rules and will continue to put other consumers at risk.

4. There is no need to stop making limited invasions if the TF has a balance that goes below \$5M as set forth in subparagraph (d)(3). The gross hoarding of TF funds must end. Approx. \$2M in new funds come in every two years at license renewal and the contribution amount of \$200 has not been raised since 1992.

Assuming you will proceed with your approach for limited TF invasion, here are my suggested revisions to the rule:

1. Raise the limited invasion amount to at least \$10K so that consumers with damages up to \$10K don't have to still go to Small Claims Court (SCC) to seek the balance of their damages. Making these consumers go to DCWP and then SCC is unduly onerous. It will also confuse the SCC judges and make them less likely to award additional damages.

2. I would alternatively suggest a limited invasion amount of \$15K since a very significant number of HIC complaints are at least \$15K and this amount is still quite limited compared to the \$25 cap otherwise allowed by the TF.

3. Clarify in subparagraph (d)(1) that a consumer has fully cooperated in an unsuccessful mediation when an HIC fails to reply to a complaint or engage at all with DCWP.

4. If a limited invasion occurs and a second complaint against the same HIC is filed within a three-year period, the HIC should have to reimburse the TF for any invasions and be subject to license suspension or revocation for failure to do so.

5. The reference to "award from the Commissioner" in subparagraph (d)(7) should be clarified to explain whether this means awards after a hearing at OATH."

- **Susan LaCova**

As a homeowner, I strongly agree with the suggested proposed changes as suggested by Ms. Susan Kassapian who is a subject matter expert in this field.