

CIVIL COURT OF THE CITY OF NEW YORK

ADVISORY NOTICE

Subject: Consumer Debt Cases;
CPLR § 3015 (e); Validation;
Allocutions of Stipulations

Class: AN-9
Category: GP-10
Eff. Date: June 21, 2008
Amending AN of 10/23/07

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This notice amends the Advisory Notice signed on October 23, 2007. CPLR §§ 3015 (e) requires that debt collection agencies seeking to collect a consumer debt in Civil Court must allege as a cause of action in the complaint that the plaintiff is licensed with the New York City Department of Consumer Affairs and list the license number. Plaintiff may move to amend the complaint pursuant to the provisions of CPLR § 3025 to include the required information provided that the plaintiff was licensed at the time that the action was commenced. Upon failure to amend, the defendant may move to have the complaint dismissed. See B & F Building Corp. v. William J. Liebig, 76 N.Y. 2d 689.

The New York City Department of Consumer Affairs maintains a website listing all debt collection agencies that are licensed. The website link is: http://www.nyc.gov/html/dca/html/licenses/license_check.shtml. The New York City Department of Consumer Affairs has requested that any unlicensed agency be reported on a form that will be provided to you.

Many Judges and the New York City Department of Consumer Affairs have raised concerns that some plaintiffs are unable to validate the debt that is sought in an action and the defendants do not know if they owe the money claimed in the action. It should be noted that the Association of Credit and Collection Professionals' Code of Ethics and Code of Operations (approved July 25th, 2007) requires its member debt collector agencies not to initiate time barred debt collection litigation, to cease collection efforts of debts that can not be verified, and to "seek to obtain access to accurate and complete information about any accounts being purchased by the member and obtain evidence of the chain of title to the debts being purchased." Accordingly, a debt collection agency acting in good faith will be able to produce validation of a debt.

It is advised that prior to ordering a stipulation when the defendant is not represented by an attorney, that the judge should ascertain the following:

1. The identity of the defendant before you.
2. Whether the complaint alleges the plaintiff is licensed. If it does not, was the plaintiff licensed at the time that the action was commenced. If the plaintiff was licensed the Judge should ascertain if the defendant wishes to proceed and agrees to amend the complaint. If the plaintiff was not licensed, the Judge should ascertain if defendant understands the requirements of the CPLR and wishes to proceed. If the defendant does not understand or know whether to proceed, s/he should be referred to the Resource Center.
3. If lack of service is raised in the answer, if the defendant understands what a traverse

hearing is, the possible results of a traverse hearing, and if s/he wishes to proceed to a traverse hearing. If s/he does not understand or know how to proceed, refer him/her to the Resource Center

4. When the debt was incurred and if the action is time-barred. Ascertain that the defendant understands the concept of time limitations. If s/he does not understand or know how to proceed, refer him/her to the Resource Center.

5. Whether the defendant acknowledges the debt and does s/he agree with the amount the plaintiff alleges is owed. If the defendant does not acknowledge the debt, the Judge should either ask the plaintiff if s/he consents to produce validation of the debt or, absent consent of the plaintiff, set the matter down for trial if the defendant so desires.

6. Whether the defendant understands the remainder of the provisions of the stipulation including the consequences of defaulting in any payment plan. If there is a final judgment agreed to, the defendant should be made aware of what a final judgment is. The defendant should also be made aware that a final judgment may effect the defendant's credit report and a default in payment may result in garnishment of wages or loss of bank accounts or other property.

7. Whether the defendant's income is exempt from garnishment.

8. That both parties understand that upon the full payment of any judgment the plaintiff must provide the defendant with a satisfaction of judgment pursuant to CPLR § 5020.

The judge's court attorney may assist the judge with ascertaining the above information, however the final responsibility rests with the judge. See, Seamen Assoc. v. Jaiman, NYLJ, 11/5/96, p. 25, c. 2 (At1), Table Run Estate Inc. v. Perez, NYLJ, 2/23/94, p. 21, c. 2 (AT1), 221 Sherman Assoc. v. Fulgenico, NYLJ, 10/29/96, p. 26, c. 1 (AT1) in which appellate courts have upheld vacating stipulations when pro se litigants failed to understand the consequences of stipulations or when stipulations were overreaching.

Date 06/21/2007

/s/
Hon. Fern A. Fisher
Administrative Judge