



Jonathan Mintz
Commissioner

██████████
General Counsel and
Deputy Commissioner for
Legal Affairs

42 Broadway
8th Floor
New York, NY 10004

██████████ tel
██████████ fax

nyc.gov/consumers

June 7, 2010

By email and regular mail

██████████
██████████ ██████████ ██████████

██████████
██████████ ██████████ ██████████

**Re: Industry Concerns Regarding Final Rules Implementing Local Law
No. 15**

Dear ██████████

The New York City Department of Consumer Affairs (the “Department”) issues this letter in response to your inquiry (attached) seeking clarification of Section 20-493.1 of the New York City Administrative Code (the “Code”) and of the rules promulgated by the Department on March 25, 2010, codified in Title 6, Chapter 2, Subchapter S of the Rules of the City of New York (the “Rules”).

First, you asked whether a “communication” in Section 20-493.1 of the Code means “the conveying of information regarding a debt directly or indirectly to any person through any medium,” as in 15 U.S.C. Section 1692a(2). That is correct, to the extent such communication is permitted by other City, State and/or Federal law.

Next, you asked whether “communication” includes “any voicemail message, e-mail, or text message.” The answer is yes, to the extent such communication is permitted by City, State and/or Federal law. We note that certain means of communication may not be appropriate or permissible to transmit particular types of information, and this letter should not be construed to state or suggest that all forms of communication are permitted under all circumstances.

Next, you asked whether, under Section 20-493.1(a)(ii) of the Code, a debt collection agency may use a d/b/a or other business name registered with the New York Secretary of State or the Department in any permitted communication. A debt collection agency may use a trade name only if it is contained in the debt collection agency’s application for a license from the Department. Section 20-113 of the Code provides that a license is “valid only for activities conducted under the name of the person or organization to whom such license was issued or under the trade name stated in the application therefor....” Note that, under Section 20-113, except in very limited circumstances, “[n]o license shall be issued for more than one trade name, and no licensed activity may be carried out under more than one such name....”

Next, you asked whether Section 20-493.1(a)(iv) of the Code, requiring debt collection agencies to give the name of a person to call back in all permitted communications,



“only applies to oral communications initiated by an individual debt collector to a consumer.” The answer is no, as the law does not contain this limitation. This provision explicitly applies to “any permitted communication” and therefore applies to all permitted communications.

Next, you asked whether under Section 20-493.1(a)(iv) of the Code the first written communication between a debt collection agency and a consumer must give the name of a person to call back. The answer is yes. Again, the law applies to “any permitted communication” and makes no exception for an initial communication.

Next, you asked if this provision permits the use of an alias unless otherwise prohibited by law. The answer is yes, subject to Section 5-77(d)(16) of the Rules and any other relevant laws or regulations. Section 5-77(d)(16) of the Rules prohibits a debt collector from making any false, deceptive, or misleading representation, including “the use of any name that is not the debt collector’s actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector’s employer has the name on file so that the true identity of the debt collector can be ascertained.”

Next, you asked whether Section 20-493.1(a)(v) of the Code, requiring a debt collection agency to give the consumer the amount of the debt at the time of the communication in all permitted communications, “requires a debt collection agency to provide accurate information concerning the amount of the debt when actually and directly speaking with the consumer.” This provision requires a debt collection agency to state, in any *permitted* communication, whether written or oral, the amount of the debt at the moment of the communication. The Department does not interpret this provision to require debt collection agencies to violate any other City, State, or Federal law.

Next, you asked what level of accuracy is required by Section 20-493.1(a)(v) given that “the total amount of debt is often fluctuating.” Again, the amount stated to the consumer must be the total amount of the debt at the time of the communication, including all interest and fees.

Next, you again asked for clarification on the meaning of the term “amount of debt” in Section 20-493.1(a)(v). Again, this amount should be the total amount of the debt, including all interest and fees, at the time of the communication, as explained above.

Finally, you asked whether Section 2-191 of the Rules (presumably, you mean Section 2-193 of the Rules), requiring a debt collection agency to record conversations with consumers, applies only to calls made to consumers located in New York City. The answer is yes, with the qualification that for these purposes, a consumer’s location is based on his or her address.

For more information about New York City’s laws and rules regulating debt collection agencies, please visit the Department’s web site at www.nyc.gov/consumers.

Thank you very much.

Sincerely,

A redacted signature and name. The signature is a handwritten scribble in black ink, and the name below it is completely obscured by a solid black rectangular box.

Encl.