Division 2
Antitrust, Trade Regulation & Consumer Affairs
Of The District of Columbia Bar

December 23, 1985

Hon. John Ray, Chair
Committee on Consumer and Regulatory Affairs
Council of the District of Columbia
District Building
District of Columbia

Dear Chairman Ray:

Since its enactment in 1976, the District of Columbia Consumer Protection Procedures Act (CPPA), D.C. Code Sec. 28-3901 et. seq. (1981), has been the principal consumer protection law of the District of Columbia. The bill established an Office of Consumer Protection and empowered the Director of that Office to receive and resolve complaints from consumers. The Office was directed to attempt to settle such complaints on terms acceptable to all parties, but where merchants violated the District's consumer protection laws (including prohibitions contained in the Act itself), the Director of the Office was empowered to present the complaint to an administrative law judge who could order any of several forms of relief for the protection of the individual complainant and the general public. (The Mayor's Reorganization Plan No. 1 of 1983 merged the Office of Consumer Protection into the Department of Consumer and Regulatory Affairs (DCRA), which now exercises the authority granted under the Act.)

This system has worked increasingly well over the years, but experience with the Act has suggested that some procedural amendments would strengthen it as an instrument for protection of the public.

Council Chair David Clarke recently introduced Bill 6-340, which would correct the principal problems that the passage of time has revealed. The Bill has been referred to your Committee. The Consumer Affairs Committee of Division 2 of the D.C. Bar strongly supports this legislation and recommends that you schedule a hearing on it early in 1986.*

In this letter, we will tell you why we believe that the bill is important, and we suggest the names of several experts who would be willing to testify in its support, either in a round table or other type of legislative hearing.

Section 2(a) (Statute of Limitations)

Section 2(a) of the bill would toll the statute of limitations while consumers' complaints are pending before the Department of Consumer and Regulatory Affairs. Under the statutory deadlines established in the CPPA, many months may pass while the agency is investigating and hearing the case; appeals could add still more months to the process. In the end, the consumer may find that he or she still has a valid claim against the respondent, but that the DCRA lacked jurisdiction over the subject matter or over the respondent, and the consumer must begin again in court. The time spent in the administrative process may have caused the period specified by the applicable statute of limitations to have passed, however. To avoid punishing consumers for delays that are built into the administrative process, and to avoid creating a disincentive to use that process rather than the courts, the statute of limitations should temporarily be tolled.

Section 2(b) (Attorneys' fees for legal services organizations)

Section 2(b) of the bill would permit the DCRA administrative law judge to award counsel fees, payable by a merchant found to be in violation of the law, to a legal services organization (such as Neighborhood Legal Services) even if that organization would not charge fees to the consumer. This provision would promote the policies of the Consumer Protection Procedures Act by imposing the cost of a valid case on the offending seller, and by making it possible for legal services organizations with limited resources to represent consumers without depleting their budgets. It has now become standard practice for courts to award counsel fees to legal services organizations on the same basis that they award them to private attorneys, and DCRA already awards counsel fees to members of the bar who prevail in cases before the administrative law judge. The amount of the fee should be set by the judge based on the market rate for time spent.

Section 2(c) (Enforcement of DCRA Orders)

Section 2(c) of the bill would provide significant assistance to consumers who had prevailed in DCRA. It would remove a needless obstacle that the current law interposes between their successful hearing at DCRA and their collection of money from a merchant who violated the law.

When a District of Columbia consumer has been injured by a violation of the consumer protection laws, he or she may seek redress in either of two fora. The consumer may file a lawsuit in Superior Court. Unfortunately, unless the claim is under $2000 (entitling the consumer to bring the suit in the small claims branch), this traditional manner of seeking redress presents some serious obstacles. First, the consumer must pay a $45 filing fee. Second, the consumer must wait for a year or more before the case is tried. Finally, the consumer must either obtain counsel or be prepared to confront the intricacies of the court's rules on a pro se basis. It is very difficult to obtain counsel for consumer cases, because the factual investigation and legal research required in such cases often is as great as the work that would be required in cases involving much larger sums of money.

The Council wisely created an alternate dispute settling mechanism when it passed the Consumer Protection Procedures Act. Consumers can file a simple complaint with DCRA under Title 28, Sec. 3905 of the D.C. Code. If the matter is not settled during the course of a preliminary investigation and settlement conference, the matter can be set for hearing before an administrative law jude of the Section of Hearings. There is no filing fee, the waiting time can be as short as a month or two, and no attorney is necessary. Indeed, DCRA permits complainants to be represented by persons of their choice, including, for example, law students. Both George Washington University's National Law Center and Georgetown University Law Center have programs in which law students actively represent consumers in this forum.

DCRA is an efficient and effective mechanism for obtaining consumer redress where the District's consumer protection laws have been violated, but the statutory scheme includes one flaw that must be corrected. If the administrative law judge orders monetary redress in favor of the consumer, and the merchant choses to ignore the order, the Department or the consumer must at present file a lawsuit in the Superior Court for enforcement of the order. The consumer is somewhat better off than if he or she had never gone to the Department of Consumer and Regulatory Affairs in the first place, in that he or she need prove only the existence of the DCRA order, as opposed to the truth of the underlying allegations. In practice, however, the consumer has merely wasted several months by filing the complaint with the Department. To enforce the administrative law judge's order, he or she must still pay the $45 filing fee in Superior Court, wait perhaps a year to obtain a judgment, and contend with the relatively intricate procedures of the judiciary. Only then can he or she obtain a judgment on which execution may be taken against assets of the respondent.

This procedure burdens the court as well as the complainant, for it consumes valuable resources of the clerks and judges to grant enforcement of an order where no issues are being contested, and all that needs to be done is to transform an administrative order (granted after the respondent has had an opportunity for a full due process hearing, including judicial review under the D.C. Administrative Procedure Act) into an enforceable award. The law should provide for an expedited procedure so that this ministerial act will not require the payment of fees or the passage of a substantial amount of time.

Section 2(c) of the bill would permit consumers to apply to the Clerk of the Superior Court to have judgment entered after awards are ignored by respondents. Under the bill a respondent could prevent this entry of judgment only by showing that the Department of Consumer and Regulatory Affairs had no personal jurisdiction. In the ordinary case, where the respondent was simply not willing to pay the complainant pursuant to the order, he or she would not be able to take advantage of the backlog in the Superior Court just to avoid a debt. At the same time, this expedited procedure would help to reduce the burden on the judges of the court.

The principal precedent for this procedure is Sec. 14(f) of the Commodity Exchange Act, 7 U.S.C. Sec. 18. Under this section, the Commodity Futures Trading Commission (CFTC) has the authority to order reparations to consumers injured by violations of the act. A reparations order issued by the Commission after decision by a hearing officer or administrative law judge may be filed in the United States District Court and thereby transformed into a judgment on which execution can be taken. No judicial proceeding is necessary; the administrative order is to be treated as a "local judgment" when it is filed with the clerk of the court. CFTC Interpretive Letter No. 79-4, Commodities Futures Law Reports Paragraph 20,875 (August 2, 1979).

Attorneys' fees in court

Section 2(d) of the bill is a companion to Section 2(b). It would authorize courts, as well as the DCRA, to award counsel fees to legal services organizations.

If the Committee on Consumer and Regulatory Affairs takes up this bill, you might also want to use this occasion to change the words "Office of Consumer Protection" and "Office" to "Department of Consumer and Regulatory Affairs" and "Department" to reflect the changes that were effected by the Mayor's reorganization.

Should you wish to hold a hearing or round table discussion of this legislation, I would be willing to testify on behalf of the Consumer Affairs Committee of Division 2 of the DC Bar. Other potential witnesses who have told me that they would be willing to contribute are the following:

Professors Philip G. Schrag and David A. Koplow, of Georgetown University Law Center

Lisa G. Lerman, of the law firm of Lobel, Novins and Lamont

Professor David Medine of George Washington University Law Center

Thank you for your consideration of this important legislation. Please let me know if there is anything that I could do to assist you or the Committee on Consumer and Regulatory Affairs.

Sincerely yours,

Mark H. Steinbach
Co-chair, Committee on
Consumer Affairs

Encl: Bill 6-340

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* The views expressed herein represent only those of the Consumer Affairs Committee of Division 2 (Antitrust, Trade Regulation and Consumer Affairs) of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.