

April 6, 2006

Tracy Seabrook
Executive Director
National Association of Professional
Background Screeners
P.O. Box 3159
Durham, NC 27715-3159

Dear Ms. Seabrook:

The Legal Action Center is a public interest organization specializing in legal and policy issues concerning people with criminal records. We have noticed a disturbing pattern in which credit reporting agencies performing consumer reports for employment purposes are illegally collecting, maintaining and reporting information about non-criminal "violation" convictions incurred in New York State. We urge you to notify your members about the need to halt these practices immediately and to comply with all applicable state and federal laws.

The Federal Fair Credit Reporting Act (FCRA) governs the accurate reporting of public records and credit-related information and was enacted to control abuses in the reporting methods of consumer reporting agencies. Credit reporting agencies have responsibilities under the FCRA to, among other things, accurately and completely report information obtained from public records. *See* 15 U.S.C. § 1681.

Credit reporting agencies also must comply with applicable state laws governing consumer reports. For example, Section 380 of the New York Fair Credit Reporting Act, General Business Law, clearly states:

No consumer reporting agency shall **report or maintain** in the file on a consumer, information relative to an arrest or a criminal charge unless there has been a **criminal conviction** for such offense, or unless such charges are still pending.

§ 380-j(a)(1) (emphasis added). Under New York State law, only certain categories of offenses are considered to be "crimes." Misdemeanors" and "felonies" are crimes under New York law, whereas offenses which are classified as "violations" are not. P.L. § 10.00 (1),(3),(4),(5),(6) . The offense of "disorderly conduct," for example, is a violation, and

therefore not a crime under New York state law. In addition, convictions for most violations are sealed under state law in order to protect individuals whose cases are terminated in a non-criminal offense from experiencing the stigma that accompanies a criminal conviction.

As a result of this apparently widespread and illegal practice by credit reporting agencies, many individuals have been denied jobs and have suffered great economic and emotional harm. We urge you to ensure that consumer reports prepared by your member companies comply with appropriate federal and state laws – both in New York and elsewhere.

Also, please inform your member companies that if they have maintained or reported non-criminal conviction information, they must promptly correct or expunge it, refrain from reporting it in subsequent reports, notify the consumer that upon consumer's request the CRA must notify any person who has received the non-criminal conviction information during the previous year that the error existed and furnish that person and the consumer with a free corrected report. G.B.L. § 380-f.

Please feel free to contact Laurie Parise, Esq. at (212) 243-1313 should you have any questions or concerns. Thank you very much for your cooperation.

Sincerely,

Laurie Parise
Equal Justice Works Fellow

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