

INTER-OFFICE MEMORANDUM

To: Hugh McDaid
From: Barbara C. Deinhardt
Subject: Allocation of Overpayments

Date: July 11, 1989
Office: A.I.T.E.
Office: Counsel's

Your memo of June 20, 1987 asks whether the Department can allocate overpayments from judgment debtors to other debts owned by the same debtor to the Department.

After conferring with you, I see nothing improper in such an allocation if:

- 1) the judgment has been properly prepared, filed and docketed as required by §5017 and §5018 CPLR: and
- 2) the judgment has not been appealed within the applicable time period.

It would be good practice to notify the judgment debtor of the allocation.

Where the employer specifies that the payment is to be applied to a particular debt there might be a problem applying it any other way without the employer's consent.

If a judgment is satisfied then as you suggest, an entry of satisfaction with the clerk of the county in which it was entered is required under §5021 of the CPLR.

Your memo also asks whether the issuance of a Certificate of Registration can be delayed if the applicant fails to satisfy a money judgment. Section 341.1 permits any apparel industry manufacturer or contractor to obtain a Certificate upon payment of a fee and informing the Commissioner of certain information including labor law violations within the previous year. If an applicant omit mentioning these violations you could delay approval of his or her registration until such time as it is properly corrected and completed. You could refer cases like this to the Attorney General for prosecution of offering a false instrument for filing, Penal Law, Section 175.35. Finally, you may want to consider amending Article 12-A to plug this loophole in the law.

Barbara C. Deinhardt
Deputy Commissioner of Labor
for Legal Affairs

Charles Horwitz

By: Charles Horwitz
Senior Attorney