



**Department
of State**

New York State Senate Hearing:

**To examine potentially unfair and deceptive
practices occurring in New York State's primary
and secondary ticket marketplaces for live
events**

Testimony for Submission to:

Senate Standing Committee on Investigations and Government
Operations, and
Senate Standing Committee on Commerce, Economic Development and
Small Business

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Andrew M. Cuomo
Governor

Rossana Rosado
Secretary of State

INTRODUCTION

Thank you for the opportunity to provide testimony to the Senate Standing Committee on Investigations and Government Operations and the Senate Standing Committee on Commerce, Economic Development and Small Business concerning the examination of potentially unfair and deceptive practices occurring in the primary and secondary ticket marketplace for live events.

The Department of State, Division of Licensing Services (the "DLS") is charged with regulating ticket resellers pursuant to Article 25 of the Arts and Cultural Affairs Law. ("Licensing Statute"). A Ticket Reseller license is required for any person, firm or corporation who resells or engages in the business of reselling any tickets to a place of entertainment or who operates an internet website or any other electronic service that provides a mechanism for two or more parties to participate in a resale transaction or that facilitates resale transactions by the means of an auction, or who owns, conducts or maintains any office, branch office, bureau, agency or sub-agency for such business. Licenses are renewed annually and run from the first day of January to the end of the calendar year. Operators and managers of websites that serve as a platform to facilitate resale, or resale by way of a competitive bidding process, solely between third parties and do not in any other manner engage in resales of tickets to places of entertainment are exempt from the licensing requirements of this section.

Statewide, the DLS currently issues occupational licenses to close to a million businesses and individuals. Currently, the DLS has 36 ticket reseller licensees who have renewed their license in 2021. Executive Order 202.11, as continued, extends until May 19, 2021 the expiration date of the 120 licensees who held a ticket reseller license in 2020 but did not file applications to renew their licenses in January 2021. Accordingly, these licensees may continue to practice until May 19, 2021, or any later date established by another extension of Executive Order 202.11.

The Department of State's Division of Consumer Protection (the "DCP") is broadly charged with protecting the State's consumers from economic harm. This includes providing direct assistance and

voluntary mediation services to resolve consumer marketplace complaints.

Upon receipt of a ticket sales complaint, DCP reviews the complaint to determine if it is an allegation of fraud or a marketplace dispute between the ticket seller and the consumer. Any complaints alleging deceptive acts and practices, or fraud are forwarded to the New York State Office of Attorney General for consideration and action. DCP then initiates mediation efforts for all other ticket sales consumer complaints. DCP also refers complaints against licensed ticket resellers to DLS.

CONSUMER COMPLAINTS

The Department of State receives ticket sale complaints to DLS and DCP. Since 2017, DLS has received six (6) complaints about ticket resellers directly from consumers. All six of the complaints were closed with no disciplinary action as the Department of State lacked jurisdiction over the company or issue. One was a complaint against an in-state primary ticket seller, one was for a company and event out of state and four were for unlicensed ticket resellers. The four consumers who complained about unlicensed resellers were referred to the Attorney General's office, which has jurisdiction to investigate unlicensed activity.

In addition, in 2021, nine complaints were referred to DLS from DCP for additional review. These nine complaints are currently being investigated. Seven of the complaints were filed against the same DLS licensed ticket reseller. The two remaining complaints were filed against different ticket resellers. The complaints referred from DCP to DLS concern refund requests for entertainment events that were postponed or cancelled due to the COVID pandemic.

In addition to investigating consumer complaints, DLS conducts state-initiated investigations. Presently, there is one pending DLS initiated inquiry. The inquiry, involves, among other things, the appropriateness of fees charged by one particular licensed ticket reseller.

In the past three years, DCP received 293 complaints regarding ticket sales. Notably, 2020 saw a surge with 221 ticket sales complaints, compared to the 39 total complaints logged in 2019. The nature

of the live ticket sales complaints received are varied due in large part to the COVID pandemic health and safety precautions effect upon live events. Thus, DCP has bifurcated the pre-pandemic complaints from the COVID pandemic response complaints, as each period tells vastly different stories. Please note, DLS only regulates ticket resellers, not the primary market. Third party platforms, which make up the bulk of complaints received by DCP, are exempt from the licensing requirement.

Pre-Pandemic Period

Prior to the onset of the pandemic, DCP received over 50 consumer complaints which collectively portray both the primary and secondary online live event ticket purchasing experience as complicated and tricky.

Consumers purchasing tickets from primary ticket sellers, which are not licensed by DLS, reported difficulties and limitations with the technology utilized for their online ticketing purchases. This included an inability to avail themselves of promotion packages or enter promo codes under the strict time constraint involved in executing an online ticket purchase. Some struggled with receiving clear notice that tickets had been purchased and inadvertently purchased two sets of tickets. Likewise, consumers purchasing tickets from ticket resellers also reported difficulties navigating the technology required for their online ticketing purchases.

For example, a Kings County consumer purchased tickets online from a third-party platform and received an email advising, "This is not your tickets. The tickets are almost yours. Click accept tickets to seal the deal. Decline the tickets if you don't want them." After having reservations about the price, and thinking it was his option to do so, he clicked "decline the tickets." Believing he had canceled the tickets, he bought other tickets for the same event. Thereafter, noticing he was charged for both purchases, he called to complain and obtain a refund for the declined tickets. The seller advised that he agreed to their terms and conditions and refused a refund. After the DCP was engaged, the seller provided a full refund.

Consumers also experienced the great misfortune of purchasing online tickets from primary and

secondary ticket sellers and never receiving the tickets. For example, a New York County consumer purchased two tickets from a primary seller for a Broadway show online, and when they arrived at the venue, it had no tickets to match the order number and could not honor the receipt produced. The consumer contacted the seller while at the venue to obtain access to the show, but the seller advised they needed 14 days to investigate the matter. The consumer's evening was ruined, she was not allowed to see the show. DCP was engaged and she received her refund over a month after she was turned away from the show.

Some consumers contacted DCP with complaints asserting deceptive acts and practices within both the primary and secondary ticket marketplace. The claims were rooted in hidden fees, unclear terms and conditions agreements, and deceptive websites. For example, a Saratoga County consumer used a search engine to find tickets to a Saratoga Performing Arts Center (SPAC) event. She purchased two tickets for \$559 from the first website that was listed and shortly thereafter realized she had been misled. The site was not the official seller and there were plenty of face value seats available. The reseller denied her request for a return and refund. DCP was engaged and a full refund was issued.

Pandemic Period

Since March 7, 2020, DCP has received 238 consumer live event ticketing complaints. Starting early in the pandemic, DCP began receiving complaints from consumers who had tickets to events that were cancelled or postponed. When the Division attempted to mediate these complaints, there was a considerable difference in the ticket resellers responses, and DCP's ability to resolve the consumer concerns depended on whether the event was cancelled, rescheduled, or postponed.

Many consumers purchased their tickets through ticket resellers or third-party platforms such as Stubhub, Vividseats, or Seat Geek. From March 2020 through March 2021, the Division received 124 complaints about Stubhub, who claims to be the world's largest ticket marketplace. In the wake of the pandemic, Stubhub changed their refund policy from a "Fan Protect Guarantee" that promised full

refunds for cancelled events to a policy that offered a 120% credit only. For each Stubhub consumer complaint, DCP informed Stubhub that New York State (NYS) law requires ticket sellers to provide refunds for cancelled events. Stubhub then agreed to provide refunds - with a processing time of about 120 days - to the New York consumers DCP identified. DCP received similar complaints about both primary ticket sellers and other resellers who also changed their refund policies during the pandemic.

Consumers who contacted the DCP about events that were postponed do not have the same protections under NYS law. Many consumers were left holding tickets for events rescheduled for a future date when they would no longer be able to attend, including events that were rescheduled as much as two years into the future. Worse, some events were classified as rescheduled, but there was no future date announced. Consumers had hundreds of dollars tied up in tickets they couldn't use, at a time when many of them needed the money the most.

Many ticket resellers advised their aggrieved consumers to resell their tickets on the reseller's site, but in reality, the consumers would never be able to recoup their costs. The price of tickets on reseller sites is determined by demand, and public interest in attending events and large gatherings has dropped significantly since the pandemic began which would likely result in lower prices. Further, these consumers would need to pay the sales commissions to the company reselling the tickets, which would cost them even more. (This is aside from the fact that it is more challenging to sell tickets and recoup face value for an event that lacks a specific, set rescheduled date.) Finally, most ticket resellers and third-party platforms may not pay the seller for the tickets until after the event has passed, so ticketholders of rescheduled events still may not be able to recoup their spent money for up to two more years. Ultimately, many consumers were left with no convenient, sure, or timely way to recoup the money tied up in their rescheduled event tickets.

Consequently, both the pre-pandemic and pandemic ticket complaints received by DCP depict very real struggles New York consumers are challenged to navigate, endure, and overcome if they

choose to utilize the complex primary and secondary electronic ticketing sales sites.

INDUSTRY REQUESTS

During 2020 and 2021, DOS received requests from ticket resellers to waive or refund a portion of the application fee for license applications that had been received, processed and issued. As application fees are non-refundable, and the relevant statute does not authorize DOS to waive any portion of a fee, these requests could not be granted. The application fee is \$5,000 for an initial application and \$5,000 for each annual renewal of a registration. See generally, Arts and Cultural Affairs Law § 25.13.

CONCLUSION

We appreciate the opportunity to provide testimony to the Senate Standing Committee on Investigations and Government Operations and the Senate Standing Committee on Commerce, Economic Development and Small Business as you explore and examine potentially unfair and deceptive practices occurring in the primary and secondary ticket marketplace for live events. Thank you for your time and consideration in regard to these important matters.