

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of Crystal Ball Group, Inc., (Terrace on the Park) with Its License Agreement and Its Payment of License Fees Due the City April 1, 1999–March 31, 2002

FL03-102A

February 26, 2004



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

Pursuant to Chapter 5, Section 93 of the New York City Charter, we have examined the compliance of Crystal Ball Group, Inc., (Crystal Ball) with its license agreement with the New York City Department of Parks and Recreation (Parks). Under the terms of the agreement, Crystal Ball is to renovate, operate and maintain the Terrace on the Park (Terrace) restaurant and catering facility in Flushing Meadows-Corona Park. In addition, Crystal Ball is required to pay license fees to the City based on gross receipts generated at the facility. The results of our audit, which are presented in this report, have been discussed with officials from Crystal Ball and Parks, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that private concerns conducting business on City property are complying with the terms of their agreements, properly reporting revenues, and paying the City all fees due.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-3747 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WTC/GR

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

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Crystal Ball Group, Inc., (Terrace on the Park)
With Its License Agreement and Its Payment of
License Fees Due the City
April 1, 1999–March 31, 2002**

FL03-102A

AUDIT REPORT IN BRIEF

We performed an audit on the compliance of Crystal Ball Group, Inc. (Crystal Ball), with its license agreement, awarded by the Department of Parks and Recreation (Parks) for the renovation and operation of the Terrace on the Park (Terrace) restaurant and catering facility in Flushing Meadows-Corona Park, Queens. The agreement required that Crystal Ball pay the City an annual fee of nine percent of its gross receipts for the period October 1, 1998–March 31, 2000, (referred to in the contract as the “construction period”). For the period April 1, 2000–March 31, 2009, Crystal Ball is required to pay the City either a minimum annual operating fee of \$2,000,000 or 20 percent of its gross receipts, whichever is greater. The annual minimum increases to \$2,500,000 for the period April 1, 2009–March 31, 2020, when the agreement concludes. For the 1999, 2000, and 2001 operating years, Crystal Ball reported a total of \$23,363,573 in gross receipts and paid the City \$4,545,409 in fees.

Audit Findings and Conclusions

Terrace generally complied with certain non-revenue requirements of its license agreement. By reviewing the insurance certificates, we verified that Terrace maintained the required insurance coverage and confirmed that the City was named as an additional insured. Furthermore, we verified that Terrace remitted the required security deposit to the City; paid its design review fee; and paid its utility bills.

However, because of weak internal controls over banquet contracts, we cannot be assured that all banquet revenue was recorded on Crystal Ball’s books and was reported to Parks, and that appropriate fees were paid. Moreover, Crystal Ball took \$524,477 in improper deductions from gross receipts resulting in \$100,179 in additional fees and related interest and penalties due the City. Finally, Crystal did not expend the amount required under its license agreement for capital improvements. Consequently, Crystal Ball could owe the City as much as \$5,212,125.

Audit Recommendations

To address these issues, we recommend that Crystal Ball should:

- Issue pre-numbered banquet contracts in sequential order. In this regard, Crystal Ball should maintain copies of all contracts (whether completed or canceled) to document reasons for gaps in contract numbers.
- Retain all books and records, including banquet calendars, for six years, in accordance with the license agreement.
- Ensure that revenue is accurately reported to Parks and the appropriate fees are paid, in accordance with the license agreement.
- Ensure that all deductions from gross receipts are in accordance with the license agreement and pay the City \$100,178 in additional fees and related interest and penalties for the improper deductions cited in this report.
- Make arrangements with Parks to complete the remaining capital improvements according to a specific timetable. When Parks determines that capital improvements are complete, Crystal Ball should pay the City the amount, if any, that capital improvements do not meet the minimum amounts specified in the license agreement.

Additionally, we recommend that Parks should:

- Determine whether additional capital improvements are necessary to meet the requirements of the license agreement. If it is determined that no additional improvements are required, Parks should issue a Certification of Final Completion and collect any unspent funds.
- Issue a Notice to Cure to Crystal Ball requiring that it comply with the audit's recommendations.

INTRODUCTION

Background

On April 24, 1998, the New York City Department of Parks and Recreation (Parks) entered into a license agreement with Crystal Ball Group, Inc., (Crystal Ball) to renovate, operate and maintain the Terrace on the Park (Terrace) restaurant and catering facility in Flushing Meadows-Corona Park, Queens. The agreement required that Crystal Ball pay the City an annual fee of nine percent of its gross receipts for the period October 1, 1998–March 31, 2000, (referred to in the contract as the “construction period”). For the period April 1, 2000–March 31, 2009, Crystal Ball is required to pay the City either a minimum annual operating fee of \$2,000,000 or 20 percent of its gross receipts, whichever is greater. The annual minimum increases to \$2,500,000 for the period April 1, 2009–March 31, 2020, when the agreement concludes. The license agreement defines gross receipts as all revenue (including revenues received from subcontracted concessions), excluding collected sales tax as well as gratuities and service charges received on behalf of employees.

The lease agreement also requires that Crystal Ball: spend a minimum of \$8,000,000 on capital improvements, post a \$625,000 security deposit with the City, carry certain types and amounts of insurance coverage, submit statements of gross receipts, and pay all required taxes and utility charges related to the facility.

For the 1999, 2000, and 2001 operating years, Crystal Ball reported a total of \$23,363,573 in gross receipts and paid the City \$4,545,409 in fees.

Objectives

Our audit objectives were to determine whether Crystal Ball:

- Maintained adequate internal controls over the recording and reporting of gross receipts;
- Properly reported its total gross receipts and correctly calculated and paid fees owed the City; and
- Complied with the other non-revenue-related requirements of the license agreement.

Scope and Methodology

This audit covered the period April 1, 1999, through March 31, 2002. To achieve our audit objectives, we reviewed the license agreement between Parks and Crystal Ball and noted the requirements of the agreement. At Parks, we reviewed correspondence, revenue reports, and other relevant documents. We analyzed the Parks concessionaire ledger for the gross receipts reported and paid to the City, and determined whether payments were received on time.

To obtain an understanding of Crystal Ball's operating procedures for recording and reporting gross receipts, we interviewed management personnel, conducted a walk-through of the operations on January 9, 2003, and documented our understanding of the operating controls in place through written narratives.

To determine whether Crystal Ball accurately reported its gross receipts to Parks, we traced the reported gross receipts to Crystal Ball's sales journal and bank account. We requested all banquet contracts for the period of December 1, 2000, through December 31, 2000. For each contract provided, we compared the amount charged according to the contract to the amount recorded on the customer invoice. We then traced the contract amounts to the sales journal and general ledger.

To determine whether the appropriate gratuity amounts were deducted from reported gross receipts, we traced the deducted amounts to Crystal Ball's payroll records and general ledger.

We examined documents on file with the Comptroller's Office to confirm whether Crystal Ball remitted the required security deposit. We reviewed Parks records to determine whether Crystal Ball complied with the insurance requirements of the agreement. We reviewed Crystal Ball utility bills to determine whether bills were paid on time, and we examined canceled checks and invoices to determine

whether Crystal Ball expended \$8,000,000 on capital improvements in accordance with the agreement.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller, as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with Crystal Ball and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Crystal Ball and Parks officials on May 30, 2003, and discussed at an exit conference held on June 13, 2003. On November 10, 2003, we submitted a draft report to Crystal Ball and Parks officials with a request for comments. We received written comments from Parks on November 21, 2003, and from Lawrence and Walsh, P.C. Attorneys at Law (Crystal Ball's attorney) on November 24, 2003.

With the exception of a portion of our findings pertaining to capital improvements, Parks officials agreed with the audit findings and recommendations. In that regard, it issued a Notice to Cure to Crystal Ball requiring that it implement the report's recommendations. Crystal Ball's attorney, however, strongly disagreed with the audit findings. The specific comments raised by Parks and by Crystal Ball's attorney and our rebuttals are contained in the relevant sections of this report. The full texts of their comments are included as addenda to this report.

FINDINGS

Terrace generally complied with certain non-revenue requirements of its license agreement. By reviewing the insurance certificates, we verified that Terrace maintained the required insurance coverage and confirmed that the City was named as an additional insured. Furthermore, we verified that Terrace remitted the required security deposit to the City; paid its design review fee; and paid its utility bills.

However, because of weak internal controls over banquet contracts, we cannot be assured that all banquet revenue was recorded on Crystal Ball's books and was reported to Parks, and that appropriate fees were paid. Moreover, Crystal Ball took \$524,477 in improper deductions from gross receipts resulting in \$100,179 in additional fees and related interest and penalties due the City. Finally, Crystal did not expend the amount required under its license agreement for capital improvements. Consequently, Crystal Ball could owe the City as much as \$5,212,125.

These issues are discussed in detail in the following sections of this report.

Lack of Accounting for Banquet Contracts

Crystal Ball's records did not account for 1,943 contract numbers for the audit period. Crystal Ball issues pre-numbered contracts to patrons who schedule banquets at the facility. According to Crystal Ball's records, the contract numbers for the audit period began with #1 and ended with #3740.

Thus, it would appear that 3,740 contracts were entered into during the audit period. However, according to the Crystal Ball sales journal, only 1,797 contracts were reported to Parks. We asked Crystal Ball officials to provide 100 of the missing contracts, but only 45 were provided. (The 45 contracts were for events that took place outside of our audit period.) Since these contracts were not provided, we requested banquet calendars, which list events by date and contract number, for 1999 to 2002. Crystal Ball did not provide these calendars for periods prior to 2002, since, according to Crystal Ball officials, banquet calendars prior to 2002 were discarded. This violates Section 5.2 of the License Agreement, which states "Licensee shall maintain each year's records, books of account and data for a minimum of six years."

Without the contracts or banquet calendars, we cannot be assured that all banquet revenue was recorded on Crystal Ball's books and reported to Parks, and that appropriate fees were paid.

Subsequent to the exit conference, Crystal Ball provided us with 1,058 of the 1,943 missing contracts. Based on the documentation provided, 704 of these contracts were for events scheduled outside our audit period and the remaining 354 were for events that were canceled. To determine whether these events were actually cancelled, we attempted to contact the individuals listed as "patrons" on the 354 contracts. We were able to contact patrons for only 112 contracts; the remaining 242 contained phone numbers that were changed or disconnected. Of these 112 contracts, nine were for events that, according to the patrons, were held, and the remaining 103 contracts were for events that were actually canceled. In addition, patrons for 27 of the 103 cancelled contracts indicated that their deposits, totaling \$62,100, were not returned by Crystal Ball. However, Crystal Ball did not report this revenue to Parks, which raises further concerns about the accuracy of the revenue reported by Crystal Ball.

On August 21, 2003, we received a letter from Crystal Ball's attorney demanding that the Comptroller's Office "cease and desist from any further direct or indirect telephonic communications with the customers of Terrace on the Park." The letter further stated that "should [the Comptroller's Office] fail to comply with this demand immediately upon your receipt of this letter, we have been authorized by our client to commence appropriate legal proceedings against your office and otherwise expose those individuals who authorized these actions to sanctions and fines." See Attachment A for a copy of the letter from Crystal Ball's attorney. Since the results of the telephone calls to the patrons of the 112 "canceled" contracts had already indicated evidence of misrepresentation, we saw no reason to contact the patrons of the 704 contracts to determine whether the contracts were for events outside the audit period, as claimed by Crystal Ball.

Crystal Ball Response: In his response, Crystal Ball's attorney stated:

"In the preliminary audit report it was claimed that Crystal Ball did not account for 1,943 contract numbers for the audit period. At the exit conference it was explained to the auditors that the contract numbers on the pre-printed contracts used by Crystal Ball started at number 503 so that 502 of the allegedly missing contract numbers never existed. Thus, only 1441 contract numbers were allegedly in question. Moreover, it was further explained that not every contract number represents a revenue producing event. Contracts are delivered to potential patrons, and are only returned, if such patron elects to book their event at Terrace on the Park. The draft report erroneously acknowledges that subsequent to the exit conference the auditors received 1,058 of the allegedly missing contracts, when in actuality 1,260 were accounted for to the auditors. The report acknowledges that 704 (actually 966) were for events scheduled outside in the audit period and 354 were for events that were cancelled. Thus, only (1441-1260) 181 of the allegedly missing contract numbers were not available to the auditors, and that is because they were never returned by the potential patrons and produced no revenues. The report also acknowledges that the auditors actually contacted 112 patrons of the 354 cancelled contracts and 103 confirmed that their contracts had been cancelled. The auditors claim that nine of the 112 patrons held events, but they fail to identify either the name or the contract numbers of these patrons making it impossible for Crystal Ball to verify whether and when these events were allegedly held. Nevertheless, if these events were held, Crystal Ball reported all revenues generated therefrom in its gross receipts.

"The allegation implying that Crystal Ball improperly retained deposits from 27 cancelled contracts (again the auditors fail to identify the patrons or contract numbers) in the aggregate amount of \$62,100, and failed to report this revenue to Parks is not only false, but a clear indication that the auditors did not examine the data and documentation available to them. Firstly, it is the practice of Crystal Ball to report all revenues, including deposits, as received. The cancellation of a contract does not generate any additional revenues. Moreover, all Crystal Ball contracts clearly state that if an event is cancelled and Crystal Ball can not re-book a substitute event for the same time, the patron is liable for a cancellation fee equal to the difference between the total contract price and the cost of performance. Hence, the retention of the alleged 27 deposits, if accurate, was in full accordance with the contract terms. The statement in the report that 'Since the results of the telephone calls to the patrons of the 112 cancelled contracts had already indicated evidence of misrepresentation, we saw no reason to

contact the patrons of the 704 contracts to determine whether the contracts were for events outside the audit period is an absolute outrage in direct contravention of the above facts and documentation stated in the report, and warrants a written apology to be included in the final report. There is no evidence of any misrepresentation of any kind, and this statement was obviously included to justify the auditors improper contact of Crystal Ball's customers, which they did in an insidious manner that not only tarnished the reputation of Terrace on the Park, but implied that these customers had done something wrong. Fortunately, the auditors acquiesced to our demand of August 20, 2003 that they cease and desist before further damage was done."

Auditor Comment: Despite the protestations of Crystal Ball's attorney, we were provided with only 1,058 contracts for the audit period. Moreover, the attorney's assertion that Crystal Ball's contract numbers started at 503 directly contradicts the information presented in Crystal Ball's sales journal and in its gross receipt reports to Parks. In fact, 160 contract numbers between 1 and 502 appear in the sales journal for events held at Terrace. We verified that the revenue from these events was correctly reported to Parks. Obviously, the attorney's explanation is erroneous.

In addition, it is obvious from the attorney's response that he does not understand Crystal Ball's method of recording and reporting revenue since it is not Crystal Ball's practice, as stated by the attorney, to "report all revenues, including deposits, as received." Crystal Ball reports revenue when earned—*after* an event takes place. This was confirmed through our walkthrough of Crystal Ball's operations, interviews with its banquet manager, accountant, and controller, and subsequent fieldwork.

Furthermore, the attorney's statement that if the nine events mentioned in the report were actually held, "Crystal Ball reported all revenues generated therefrom in its gross receipts" is both fallacious and illogical, since these contracts were first listed by Crystal Ball as missing and then reported by Crystal Ball as canceled. Thus, it is evident that the revenue from these events was neither included in Crystal Ball's sales journal nor reported to Parks.

Moreover, the report neither implies that Crystal Ball's customers did something wrong with regard to canceled events, nor does it allege that Crystal Ball improperly retained deposits from the canceled contracts. Rather, the report states that Crystal Ball did not *report* the deposits retained from these events as revenue to Parks and pay the appropriate fees. As previously stated, Crystal Ball does not report revenue as being earned until after an event takes place. Obviously, since these events never took place, no revenue was reported.

Finally, as previously stated, we did not discontinue our telephone calls based on the August 20, 2003, letter from Crystal Ball's attorney. Rather, our calls to patrons of 112 "canceled" contracts indicated sufficient evidence of misrepresentation to make further calls unnecessary. In any case, we maintain that all banquet revenue was not recorded on Crystal Ball's books and reported to Parks, and that appropriate fees were not paid.

Improper Deductions from Reported Gross Receipts

During the audit period, Crystal Ball reported gross receipts of \$23,363,573 and paid the City \$4,545,409 in fees. However, Crystal Ball owes the City \$100,179 in additional fees (\$47,203) and

related interest and penalties (\$52,976) because it made the following improper deductions from its gross receipts:

- \$428,038 in salaries paid to various employees, including sales managers, chefs, maintenance staff, head steward, and housekeeping staff. The amounts deducted were improperly categorized as “tips” to justify the deductions. For example, a sales manager was paid \$1,250 per week. According to the payroll register, \$250 of this amount was categorized as wages, and the remaining \$1,000 was categorized as tips. In another example, the head chef was paid \$1,000 per week of which \$800 was categorized as tips. In a third example, the head steward was paid \$1,250, of which \$1,000 was categorized as tips.
- \$96,439 in gratuities, which, according to Crystal Ball’s books and records, were retained by Crystal Ball rather than distributed to its employees. According to the Crystal Ball license agreement, “gratuities [that] were paid to employees and staff *in addition to* [emphasis added] their regular salaries” are excludable from gross receipts.

Crystal Ball Response:

“The refusal of the auditors to accept ‘gratuities’ as a deduction from Gross Receipts is in direct violation of the License Agreement and attempts to impose arbitrary rules upon Crystal Ball which do not appear in the Agreement. In the second bullet point in this section of the report, the auditors acknowledge that the License Agreement provides that gratuities paid to employees and staff are excludible from gross receipts, but they misquote the actual section of the Agreement. Section 2.1(d)(iv) states in pertinent part:

‘[T]hat any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. Licensee shall provide documentation satisfactory to Parks that such gratuities were paid to employees and staff in addition to their regular salaries.’

“*Employees and staff* includes everyone, without exception, and the attempted distinction by the auditors between various categories of workers to justify the disallowance of gratuities as a deduction is blatantly improper. This is emphasized by the auditors erroneously naming the housekeeping staff and the maintenance staff as receiving tips, when the records clearly show that no members of either staff received gratuities during the audit period.

“Complete payroll records for all employees for the audit period were made available to the auditors, and the report acknowledges in the first bullet point of this section that the employee records show that wages, and tips (gratuities) in addition to wages, were paid to each employee for whom a gratuity deduction was made. There is nothing in the License Agreement which in any way defines or mandates what constitutes ‘regular salaries,’ yet the auditors have arbitrarily, without any standard, rejected the amounts paid by Crystal Ball as wages. Crystal Ball has the sole discretion and authority as employer to determine the amount of salaries or wages it pays its employees, as well as the amount of additional compensation it pays employees through the distribution of gratuities. Notably, the report does not dispute, nor can it dispute, that the amount of

gratuities paid to employees was received by Crystal Ball as gratuities from its customers, and not as fees and charges for catering services.

“The \$96,439 in gratuities which the report alleges was retained by Crystal Ball is incorrect. The audit period ended on March 31, 2002, whereas Crystal Ball’s overlapping fiscal year ended December 31, 2002. All of said gratuities were paid to employees in addition to their salaries in the fiscal year period following the audit period and constitute a proper deduction from gross receipts.

“The auditors have absolutely no basis for the rejection of the gratuity deduction of \$428,038 and the imposition of additional fees of \$100,179, interest of \$17,203 and penalties of \$52,976. It is unjustified, arbitrary and unsupported under the terms of the License Agreement, and the documentation and data provided, and must be withdrawn and deleted in its entirety from the final report.”

Auditor Comment: Contrary to the attorney’s response, the report does not disallow Crystal Ball’s deductions of gratuities based on the employees’ titles. Rather, the audit identified cases in which Crystal Ball attempted to disguise employees’ salaries as gratuities in order to reduce the fees due the City.

It is again obvious that the attorney does not understand Crystal Ball’s operation, since Crystal Ball’s payroll records (produced by Automatic Data Processing Inc.) show that its housekeeping and maintenance staff received gratuities and that these gratuities were deducted from the gross receipts reported to the City. Had the attorney performed even a cursory review of these documents, he would have realized that his assertion was incorrect.

In addition, as correctly stated in the attorney’s response, Crystal Ball is required to provide documentation satisfactory to Parks that gratuities were paid to employees in addition to their regular wages. Obviously, Crystal Ball did not provide such documentation, given that Parks issued a Notice to Cure to Crystal Ball stating:

“Crystal Ball abused this provision by using it to support a policy that classifies only twenty percent of Crystal Ball’s payroll to its non-wait staff employees e.g. sales managers, chefs, maintenance staff etc, as salary expense. The balance of wages paid to this group was categorized as tips. The gratuity exclusion provision was never intended to serve as a means for a licensee to write-off its payroll expense against reportable gross revenue to the City. Rather, it was implemented to allow for the pass through of tips to wait staff employees.

“In any event, Crystal Ball should discontinue its practice of broadly applying the gratuity exclusion provision of its license agreement to non-wait staff personnel. Also, we require that Crystal Ball now provide the amount taken as a gratuity deduction against gross receipts on its monthly revenue report.”

Finally, contrary to the response, Crystal Ball did not distribute the \$96,439 in gratuities to its employees in the following fiscal year. In fact, Crystal Ball did not distribute an additional

\$625,950 in gratuities it collected from patrons during that year. (The \$625,950 in undistributed gratuities was not cited in the report because its inclusion in reported gross receipts would not have resulted in additional fees to the City.)

Capital Improvements

Crystal Ball is required to make certain capital improvements to the facility specified in the license agreement. The capital improvements listed in the agreement were to cost a minimum of \$8 million. If Crystal Ball completed the improvements (based on the approval of Parks) at a lower cost, Crystal Ball is required to remit the difference to the City as additional license fees.

Although the license agreement dated April 24, 1998, does not indicate when the improvements were to be made, a modification to the agreement, also dated April 24, 1998, and accepted by Crystal Ball on April 27, 1998, indicated that construction would take place between June 30, 1998, and March 31, 2000 (referred to as “Construction Period”).

According to Crystal Ball, as of May 15, 2003, \$5,346,961 in capital improvements have been made to the facility. However, our review of invoices and canceled checks revealed that many of the items claimed as capital improvements were unallowable because of the nature of the expense or were not paid for by Crystal Ball. For example, Crystal Ball included in its reported capital improvements \$824,039 in purchases of expendable equipment such as draperies, tables, chairs, and outdoor patio furniture. Also, Crystal Ball submitted \$1,735,047 in canceled checks from the Marangos Construction Corporation. Accordingly, we calculated that Crystal Ball expended only \$2,787,875 in capital improvements.

Crystal Ball Response:

“Here again, the auditors either misconstrue or ignore the language of the License Agreement in an effort to impose unjustified additional capital improvement obligations upon Crystal Ball. Firstly, the ‘Construction Period’ defined in the Modification of Contract was for the sole purpose of delineating the initial period of the License Agreement in which a reduced license fee of 9%, with no minimum, was applicable. It did not impose any obligation upon Crystal Ball to complete the required capital improvements within such period. The auditors are directed to section 7.1 of the License Agreement which states in pertinent part:

‘Licensee shall, in implementing these Capital Improvements, follow the Capital Timetable set forth in Exhibit A, which delineates a general Capital Improvements schedule.’

“Exhibit A, however, contains no schedule or timetable, and thus implies a reasonable time for the improvements to be completed taking into consideration the magnitude of the work. Moreover, section 7.1 of the License Agreement simply requires that the Capital Improvements be made *during the term of the License* (emphasis added). Nevertheless, all capital improvements have made in accordance with schedules agreed to by Parks, and Crystal Ball will continue to do so.

“The report alleges that certain of the Capital Improvements are not allowable because of the nature of the expense or that they were not paid for by Crystal Ball. It claims that the sum of \$824,039 was for purchases of expendable equipment such as draperies, tables, chairs and outdoor patio furniture, but fails to quantify how much was spent on each such item and whether any other items not identified were included in such category.

“The amount spent by Crystal Ball for tables was not presented to Parks as Capital Improvements and cannot represent any portion of the amount alleged to be not allowable. The amount spent for chairs and patio furniture in the aggregate amount of \$203,815 was inadvertently included, and Crystal Ball’s records have now been corrected to remove such amount as Capital Improvements. Expenditures for draperies, on the other hand, which amounted to \$130,586 cannot be disallowed because draperies unequivocally fall within the definition of Fixed Equipment in the License Agreement. Section 2.1(a) states that ‘Capital Improvements also include Fixed Equipment.’ Section 2.1(m) defines Fixed Equipment as ‘any property affixed in any way to the Licensed Premises whether or not removal of said equipment would damage Licensed Premises.’ Any other items, such as doors, moldings, built-in furniture and the like, which are included in the \$824,000, are allowable expenses. Thus, the blanket disallowance of \$824,000, without quantification of each item of expenditure allegedly disallowed, is clearly not warranted and must be clarified by the Comptroller.

“The disallowance of the expenditures made by Marangos Construction Corporation (‘Marangos’) is another example of the auditors ignoring the clear language of the License Agreement, and arbitrarily imposing conditions that do not exist. There is absolutely no requirement that Crystal Ball itself pay for any improvements. Section 7.1 states:

‘The Licensee shall expend *or cause to be expended* (emphasis added) during the term of this License, a minimum amount of \$8,000,000 for Capital Improvements. . . .’

“The auditors were fully aware that the principals of Marangos were shareholders of Crystal Ball and made such improvements at the behest of the Licensee. Thus, in the language of the Agreement, Crystal Ball clearly caused the expenditures to be made. There is no basis whatsoever for their disallowance, and such disallowance must be withdrawn and deleted from the final report.”

Auditor Comment: The attorney’s response conveniently omits certain important facts pertaining to this finding.

Specifically, the license agreement was dated April 24, 1998, and indicated that the term of the agreement was from January 1, 2000, to December 31, 2019. Clearly, Crystal Ball and Parks considered that construction would take place at the *beginning* of the agreement, not over its 20-year life, as claimed in the attorney’s response. As the agreement stated, “Prior to the beginning of the term, however, the licensee is granted a right of entry onto the Licensed Premises for purposes of performing capital work thereon . . . such Construction Period shall

begin on July 1, 1998 and end on December 31, 1999. A modification to the agreement underscored that mutual understanding. The modification, also dated April 24, 1998, and accepted by Crystal Ball on April 27, 1998, altered the Construction Period to June 30, 1998, to March 31, 2000. (See modification on page 2 in Appendix A.) This time frame is also consistent with Crystal Ball's own January 6, 1997, proposal for the renovation of the facility, which indicated that construction would be completed by May 15, 2000.

In addition, during the construction period Crystal Ball was required to pay Parks only nine percent of its gross receipts, with no required minimum, as opposed to a \$2 million minimum yearly payment or 20 percent of gross receipts beginning April 1, 2000, when the construction period ended. Therefore, Crystal Ball paid Parks \$751,476 in fees during the construction period rather than at least \$3,750,000 that would otherwise have been due. Clearly, Crystal Ball and Parks considered that construction would take place at the beginning of the agreement, not over its 20-year life as stated in the attorney's response.

With regard to the \$824,039 in purchases of expendable items, we maintain that because of the nature of these purchases, the purchases should not have been claimed as capital improvements. In any case, we are pleased that Parks agrees with our position and has adjusted Crystal Ball's claimed costs accordingly. (See the Parks response to recommendation #5 on page 16.)

Finally, we question why Parks chose to accept all \$1,735,047 in items paid for by Marangos Construction Corporation. (See the Parks response to recommendation #5 on page 16.) Had Parks conducted even a cursory review of the documentation, it would have disallowed at least \$1,230,726 of the amount claimed because Crystal Ball included: costs not supported by invoices or contracts (\$855,520); items delivered to locations other than Terrace (\$68,613 including \$450 for a function reservation book); tools and supplies (\$59,479); equipment rentals (\$2,859 including \$649 for portable toilets); and items that could not be linked to capital work done at the facility (\$244,255). We, therefore, recommend that Parks reconsider its position on this matter.

RECOMMENDATIONS

Crystal Ball Group should:

1. Issue pre-numbered banquet contracts in sequential order. In this regard, Crystal Ball should maintain copies of all contracts (whether completed or canceled) to document reasons for gaps in contract numbers.
2. Retain all books and records, including banquet calendars, for six years, in accordance with the license agreement.
3. Ensure that revenue is accurately reported to Parks and the appropriate fees are paid, in accordance with the license agreement.

Crystal Ball Response: The response from Crystal Ball's attorney does not specifically address recommendations #1, #2, and #3. However, he stated that Crystal Ball "has

implemented the Comptroller's recommendations for record keeping to the extent such recommendations were not previously in place."

4. Ensure that all deductions from gross receipts are in accordance with the license agreement and pay the City \$100,179 in additional fees and related interest and penalties for the improper deductions cited in this report.

Crystal Ball Response: The response from Crystal Ball's attorney did not specifically address this recommendation. However, as discussed earlier in this report, the attorney disagreed with our findings pertaining to improper deductions. (See page # of this report.)

Parks Response: "Parks has issued the attached 'Notice To Cure' (NTC) to Crystal Ball requesting that Crystal Ball implement internal control **Recommendation 1, 2 and 3** and that it remit payment in the amount of \$100,178 to comply with **Recommendation 4.**"

5. Make arrangements with Parks to complete the remaining capital improvements according to a specific timetable. When Parks determines that capital improvements are complete, Crystal Ball should pay the City the amount, if any, that capital improvements do not meet the minimum amounts specified in the license agreement.

Crystal Ball Response: In his response, Crystal Ball's attorney states that Crystal Ball "has and will continue to coordinate all Capital Improvements schedules with the Department of Parks and Recreation."

Parks Response: "Crystal Ball has agreed to complete the remaining balance of its capital improvements by December 31, 2005. Contrary to the audit report, Parks has received documentation and has field verified the successful completion of \$5,574,882 worth of improvements to date.

"Parks agrees with the audit finding that expendable items should not apply to the capital improvement total and also has disallowed the \$824,039 in purchases submitted for expendable equipment such as draperies, tables, chairs, and outdoor furniture, plus subsequently submitted non-capital items. The approved 5.575 Million-Dollar total expenditure to date does not include any expenses related to personal equipment or expendable items. The completed work includes renovations to all lobbies and ballrooms, HVAC work, plumbing, lighting, asbestos removal, elevator upgrades, façade repair, the construction of a new café with an outdoor dining area, new fencing, new paving and landscaping.

"However, Parks does not agree with auditor's disallowance of \$1,735,047 of improvements because the work had not been paid for directly by Crystal Ball. Parks has accepted and credited Crystal Ball for all capital construction that was paid for by Marangos Construction Corporation. Section 7.1 of The License agreement states, 'Licensee shall expend or *cause to be expended* during the term of this License, a minimum of \$8,000,000 for Capital Improvements as defined in Article 2.1(a). . . .' Parks verified that the work paid for by Marangos Construction Corporation was completed satisfactorily and was in fact comprised of capital improvements."

Auditor Comment: We are pleased that Parks agrees with our findings pertaining to the \$824,039 in purchases of expendable items and has adjusted Crystal Ball's claimed costs accordingly. However, we question why Parks chose to accept all \$1,735,047 in items paid for by Marangos Construction Corporation. (See the Parks response to recommendation #5 on page 16.) Had Parks conducted even a cursory review of the documentation, it would have disallowed at least \$1,230,726 of the amount claimed because Crystal Ball included: costs not supported by invoices or contracts (\$855,520); items delivered to locations other than Terrace (\$68,613 including \$450 for a function reservation book); tools and supplies (\$59,479); equipment rentals (\$2,859 including \$649 for portable toilets); and items that could not be linked to capital work done at the facility (\$244,255). We, therefore, recommend that Parks reconsider its position on this matter.

Parks should:

6. Determine whether additional capital improvements are necessary to meet the requirements of the license agreement. If it is determined that no additional improvements are required, Parks should issue a Certification of Final Completion and collect any unspent funds.

Parks Response: "This recommendation was addressed under number 5 above. The balance of improvements, \$2.425 million, must be completed by December 31, 2005."

7. Issue a Notice to Cure to Crystal Ball requiring that it comply with the audit's recommendations.

Parks Response: "Requesting that Parks should, 'Issue a Notice to Cure to Crystal Ball requiring that it comply with the audit's recommendations' has been acted upon by our issuance of the attached Notice to Cure."



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Henry J. Stern
Commissioner

Joanne G. Imohiosen
Assistant Commissioner
Revenue

April 24, 1998

Mr. Dimitrios Kaloidis
President
The Crystal Ball Group, Inc.
349 West 37th Street
New York, NY 10018

Letter of Modification to Revenue Contract # Q-99-C-R

Dear Mr. Kaloidis:

This letter shall constitute an amendment to the License Agreement between the Crystal Ball Group, Inc. and New York City/Parks & Recreation for operation of a concession at the "Heliport" structure in Flushing Meadows-Corona Park.

The following changes to the above-referenced agreement shall be effective upon execution of this letter:

- 1) The following language shall be inserted into the agreement at the end of Section 12.7:

"Should any removal of any equipment by existing Licensee, Terrace on the Park, Inc., cause damage to the Licensed Premises, Parks shall grant a credit against the interim license fee for additional construction costs directly caused by said damage, in an amount to be determined by the Commissioner."

- 2) Section 3.1 of this agreement shall now read as follows:

"This License shall become effective upon signing by the parties. This License shall be for a twenty year term ("Term") beginning April 1, 2000 and ending March 31, 2020. However, if construction is completed prior to April 1, 2000, then the Term shall begin on the day after Parks certifies Final Completion and end on the day before the twentieth calendar anniversary thereof. The Term of this License shall not be renewed or extended. Prior to the beginning of the term,

however, Licensee is granted a right of entry onto the Licensed Premises for purposes of performing capital work thereon (hereinafter referred to as "Construction Period"). Such Construction Period shall begin on June 30, 1998 and end on March 31, 2000. All terms of this License shall apply to such Construction Period. Provided all necessary approvals are obtained, Licensee shall be permitted to begin construction on June 30, 1998, and business no earlier than October 1, 1998. For the period between October 1, 1998 and March 31, 2000, Licensee shall pay a monthly fee of 9% of gross receipts, with no minimum. The first operating year shall begin on April 1, 2000. Should Licensee not be able to gain possession of the Licensed Premises on June 30, 1998, the Term and Construction Period shall be extended by the number of days the licensee is unable to gain access. Upon signing, Licensee is permitted to set up a trailer adjacent to the parking lot of the Licensed Premises for purposes of contacting prospective and current customers and booking future events at the Licensed Premises, as well as for other personnel of Licensee. Such trailer shall also be made available for occupancy and use by Parks."

- 3) The following sentence shall be added to the end of Section 15.1:

"If, during the term of this License, Licensee wishes to sublicense the management and operation of any element of the Licensed Premises to another party, the Commissioner may elect to renegotiate this License's (percentage of) gross receipts payments only as it relates to that element Licensee wishes to sublicense."

- 4) The following language shall be inserted after the second sentence in Section 7.1:

"Exhibit A may be amended with the Commissioner's consent, which shall not be unreasonably withheld, at any time until the end of the Construction Period (as described in Section 3.1) to reflect changes in Licensee's allocation of its \$8,000,000 in capital expenditures or changes in the timetable or scheduling of such improvements."

- 5) Section 7.2 shall now read, in its entirety, as follows:

"Licensee shall pay to the City the amount of \$80,000 representing one percent of the cost of the scheduled Capital Improvement activities, as a fee for design review by Parks personnel (the "Design Review Fee"). Such design review fee shall be due upon presentation of Licensee's design plans to Parks. Parks will use its reasonable efforts to approve or disapprove Licensee's design plans within 30 days of receipt thereof."

- 6) The second sentence in 4.4 shall be amended to provide that no late fee shall be assessed until Licensee's monthly license fee is more than 10 days late.

- 7) The last sentence in Section 4.2 shall be amended to read,

"If, at any time, Licensee's annual percentage fee for a particular Operating Year is

applicable, then Licensee shall pay the percentage fee on or before May 31 of the next Operating Year."

8) Exhibit B, "Site Plan," shall be attached to this agreement within a reasonable time. Similarly, Exhibit E, "Fixed Equipment Inventory Schedule" shall be inserted within a reasonable time after the Fixed Equipment to remain on the premises is determined by pending litigation.

9) Section 4.6 (a) shall be amended to state that the "statement of Gross receipts" referred to in the first sentence therein, shall be due quarterly, not monthly.

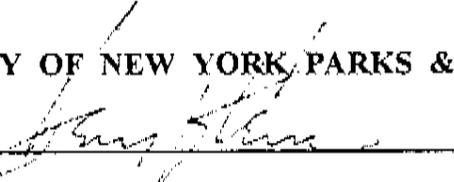
10) The first sentence of Section 9.3 shall now read as follows:

" Prior to affixing any equipment to the Licensed Premises, other than that set forth in Exhibits A and E as they may or may not be amended, Licensee shall..."

11) The last sentence in Section 11.6 shall be amended to require only that Licensee send copies of all advertising and promotion materials to Commissioner within 5 days of its media appearance.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed and sealed on the day and year first above written.

CITY OF NEW YORK PARKS & RECREATION

BY: 

Dated: 24 April 1998

HENRY J. STERN
COMMISSIONER

The CRYSTAL BALL GROUP, INC.

BY: _____

DIMITRIOS KALOUIDIS, PRESIDENT

Dated: _____

applicable, then Licensee shall pay the percentage fee on or before May 31 of the next Operating Year."

- 8) Exhibit B, "Site Plan," shall be attached to this agreement within a reasonable time. Similarly, Exhibit E, "Fixed Equipment Inventory Schedule" shall be inserted within a reasonable time after the Fixed Equipment to remain on the premises is determined by pending litigation.
- 9) Section 4.6 (a) shall be amended to state that the "statement of Gross receipts" referred to in the first sentence therein, shall be due quarterly, not monthly.
- 10) The first sentence of Section 9.3 shall now read as follows:
"Prior to affixing any equipment to the Licensed Premises, other than that set forth in Exhibits A and E as they may or may not be amended, Licensee shall...."
- 11) The last sentence in Section 11.6 shall be amended to require only that Licensee send copies of all advertising and promotion materials to Commissioner within 5 days of its media appearance.

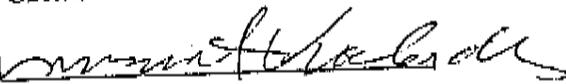
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed and sealed on the day and year first above written.

CITY OF NEW YORK PARKS & RECREATION

BY: _____ Dated: _____

HENRY J. STERN
COMMISSIONER

The CRYSTAL BALL GROUP, INC.

BY: 

DIMITRIOS KALOUIDIS, PRESIDENT

Dated: April 27, 1998

STATE OF NEW YORK)
 ss:)
COUNTY OF NEW YORK)

On this 24th day of April, 1998 before me personally came Henry J. Stern, to me known, and known to be the Commissioner of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in his official capacity and for the purpose mentioned therein.

ANASTASIA GREENEBAUM
Notary Public, State of New York
No. 02GR5085285
Qualified in New York County
Commission Expires September 22, 1999

Anastasia Greenebaum
Notary Public

STATE OF NEW YORK)
 ss:)
COUNTY OF _____)

On this _____ day of _____, 1998 before me personally came _____, who, being duly sworn by me did depose and say that he is the president of the corporation described herein and who executed the foregoing instrument for the purposes mentioned therein.

Notary Public

STATE OF NEW YORK)
 ss:)
COUNTY OF NEW YORK)

On this _____ day of _____, 1998 before me personally came Henry J. Stern, to me known, and known to be the Commissioner of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in his official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)
 ss:)
COUNTY OF NASSAU)

On this 27th day of April, 1998 before me personally came Dimitrios Kalaidis, who, being duly sworn by me did depose and say that he is the president of the corporation described herein and who executed the foregoing instrument for the purposes mentioned therein.


Notary Public

LAWRENCE S. LAWRENCE
Notary Public, State of New York
No. 30-2377425
Qualified in Nassau County
Term Expires November 30, 1999



Lawrence and Walsh, P.C.
Attorneys at Law

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ADDENDUM I
Page 1 of 5

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Michael F. Kennedy
Edward V. Walsh, Jr. (Ret.)

Matia S. Nikolovienis

Gerald N. Daffner
*Steven B. Epstein
**Russell M. Woods
**Alan C. Trembulak

*Also Admitted In CT
** Admitted In NJ

November 24, 2003

BY FAX AND FEDERAL EXPRESS

Greg Brooks
Deputy Comptroller
The City of New York
Office of the Comptroller
One Center St.
New York, NY 10007-2341

Re: Draft Audit Report on the Compliance of Crystal Ball Group, Inc. (Terrace on the Park) with its License Agreement for the period April 1, 1999 - March 31, 2002, Dated November 10, 2003

Dear Mr. Brooks:

This firm is counsel to Crystal Ball Group, Inc. ("Crystal Ball") We are writing in response to your letter of November 10, 2003 requesting written comments to the draft report of the Comptroller's Office forwarded to our client in connection with the above-referenced audit.

Introduction

The draft report essentially repeats and reissues the preliminary draft report, dated May 30, 2003, and in large part mischaracterizes the manner in which Crystal Ball conducted its business at the licensed premises during the audit period, including its accounting for banquets and its payroll practices, and the manner in which it made capital improvements to the premises. Moreover, in issuing the draft report, the auditors substantially ignored and/or misconstrued relevant provisions of the License Agreement, as well as the facts, circumstances, documentation and additional data presented to the auditors at the exit conference on June 13, 2003 and subsequently thereto.

Crystal Ball has complied with and fulfilled all of its obligations under the License Agreement; has timely paid all license fees due; and to date has expended more than \$7,000,000 on Capital Improvements. It has implemented the Comptroller's recommendations for record keeping to the extent such recommendations were not previously in place, and has and will

continue to coordinate all Capital Improvement schedules with the Department of Parks and Recreation ("Parks").

Alleged Lack of Accounting for Banquet Contracts

In the preliminary audit report it was claimed that Crystal Ball did not account for 1,943 contract numbers for the audit period. At the exit conference it was explained to the auditors that the contract numbers on the pre-printed contracts used by Crystal Ball started at number 503 so that 502 of the allegedly missing contract numbers never existed. Thus, only 1441 contract numbers were allegedly in question. Moreover, it was further explained that not every contract number represents a revenue producing event. Contracts are delivered to potential patrons, and are only returned, if such patron elects to book their event at Terrace on the Park. The draft report erroneously acknowledges that subsequent to the exit conference the auditors received 1,058 of the allegedly missing contracts, when in actuality 1260 were accounted for to the auditors. The report acknowledges that 704 (actually 966) were for events scheduled outside in the audit period and 354 were for events that were cancelled. Thus, only (1441-1260) 181 of the allegedly missing contract numbers were not available to the auditors, and that is because they were never returned by the potential patrons and produced no revenues. The report also acknowledges that the auditors actually contacted 112 patrons of the 354 cancelled contracts and 103 confirmed that their contracts had been cancelled. The auditors claim that nine of the 112 patrons held events, but they fail to identify either the name or the contract numbers of these patrons making it impossible for Crystal Ball to verify whether and when these events were allegedly held. Nevertheless, if these events were held, Crystal Ball reported all revenues generated therefrom in its gross receipts.

The allegation implying that Crystal Ball improperly retained deposits from 27 cancelled contracts (again the auditors fail to identify the patrons or contract numbers) in the aggregate amount of \$62,100, and failed to report this revenue to Parks is not only false, but a clear indication that the auditors did not examine the data and documentation available to them. Firstly, it is the practice of Crystal Ball to report all revenues, including deposits, as received. The cancellation of a contract does not generate any additional revenues. Moreover, all Crystal Ball contracts clearly state that if an event is cancelled and Crystal Ball cannot re-book a substitute event for the same time, the patron is liable for a cancellation fee equal to the difference between the total contract price and the cost of performance. Hence, the retention of the alleged 27 deposits, if accurate, was in full accordance with the contract terms. The statement in the report that "Since the results of the telephone calls to the patrons of the 112 cancelled contracts had already indicated evidence of misrepresentation, we saw no reason to contact the patrons of the 704 contracts to determine whether the contracts were for events outside the audit period" is an absolute outrage in direct contravention of the above facts and documentation stated in the report, and warrants a written apology to be included in the final report. There is no evidence of any misrepresentation of any kind, and this statement was obviously included to justify the auditors improper contact of Crystal Ball's customers, which they did in an insidious manner that not only tarnished the reputation of Terrace on the Park, but implied that these customers had done something wrong. Fortunately,

the auditors acquiesced to our demand of August 20, 2003 that they cease and desist before further damage was done.

Alleged Improper Deductions from Gross Receipts

The refusal of the auditors to accept "gratuities" as a deduction from Gross Receipts is in direct violation of the License Agreement and attempts to impose arbitrary rules upon Crystal Ball which do not appear in the Agreement. In the second bullet point in this section of the report, the auditors acknowledge that the License Agreement provides that gratuities paid to employees and staff are excludible from gross receipts, but they misquote the actual section of the Agreement. Section 2.1(d)(iv) states in pertinent part:

that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. Licensee shall provide documentation satisfactory to Parks that such gratuities were paid to employees and staff in addition to their regular salaries.

Employees and staff includes everyone, without exception, and the attempted distinction by the auditors between various categories of workers to justify the disallowance of gratuities as a deduction is blatantly improper. This is emphasized by the auditors erroneously naming the housekeeping staff and the maintenance staff as receiving tips, when the records clearly show that no members of either staff received gratuities during the audit period.

Complete payroll records for all employees for the audit period were made available to the auditors, and the report acknowledges in the first bullet point of this section that the employee records show that wages, and tips (gratuities) in addition to wages, were paid to each employee for whom a gratuity deduction was made. There is nothing in the License Agreement which in any way defines or mandates what constitutes "regular salaries", yet the auditors have arbitrarily, without any standard, rejected the amounts paid by Crystal Ball as wages. Crystal Ball has the sole discretion and authority as employer to determine the amount of salaries or wages it pays its employees, as well as the amount of additional compensation it pays employees through the distribution of gratuities. Notably, the report does not dispute, nor can it dispute, that the amount of gratuities paid to employees was received by Crystal Ball as gratuities from its customers, and not as fees and charges for catering services.

The \$96,439 in gratuities which the report alleges was retained by Crystal Ball is incorrect. The audit period ended on March 31, 2002, whereas Crystal Ball's overlapping fiscal year ended December 31, 2002. All of said gratuities were paid to employees in addition to their salaries in the fiscal year period following the audit period and constitute a proper deduction from gross receipts.

The auditors have absolutely no basis for the rejection of the gratuity deduction of \$428,038 and the imposition of additional fees of \$100,179, interest of \$17,203 and penalties of

\$52,976. It is unjustified, arbitrary and unsupported under the terms of the License Agreement, and the documentation and data provided, and must be withdrawn and deleted in its entirety from the final report.

Capital Improvements

Here again, the auditors either misconstrue or ignore the language of the License Agreement in an effort to impose unjustified additional capital improvement obligations upon Crystal Ball. Firstly, the "Construction Period" defined in the Modification of Contract was for the sole purpose of delineating the initial period of the License Agreement in which a reduced license fee of 9%, with no minimum, was applicable. It did not impose any obligation upon Crystal Ball to complete the required capital improvements within such period. The auditors are directed to section 7.1 of the License Agreement which states in pertinent part:

Licensee shall, in implementing these Capital Improvements, follow the Capital Timetable set forth in Exhibit A, which delineates a general Capital Improvements schedule.

Exhibit A, however, contains no schedule or timetable, and thus implies a reasonable time for the improvements to be completed taking into consideration the magnitude of the work. Moreover, section 7.1 of the License Agreement simply requires that the Capital Improvements be made *during the term of the License* (emphasis added). Nevertheless, all capital improvements have been made in accordance with schedules agreed to by Parks, and Crystal Ball will continue to do so.

The report alleges that certain of the Capital Improvements are not allowable because of the nature of the expense or that they were not paid for by Crystal Ball. It claims that the sum of \$824,039 was for purchases of expendable equipment such as draperies, tables, chairs and outdoor patio furniture, but fails to quantify how much was spent on each such item and whether any other items not identified were included in such category.

The amount spent by Crystal Ball for tables was not presented to Parks as Capital Improvements and cannot represent any portion of the amount alleged to be not allowable. The amount spent for chairs and patio furniture in the aggregate amount of \$203,815 was inadvertently included, and Crystal Ball's records have now been corrected to remove such amount as Capital Improvements. Expenditures for draperies, on the other hand, which amounted to \$130,586 cannot be disallowed because draperies unequivocally fall within the definition of Fixed Equipment in the License Agreement. Section 2.1(a) states that "Capital Improvements also include Fixed Equipment". Section 2.1(m) defines Fixed Equipment as "any property affixed in any way to the Licensed Premises whether or not removal of said equipment would damage Licensed Premises." Any other items, such as doors, moldings, built-in furniture and the like, which are included in the \$824,000, are allowable expenses. Thus, the blanket disallowance of \$824,000, without quantification of each item of expenditure allegedly disallowed, is clearly not warranted and must be clarified by the Comptroller.

Lawrence and Walsh, P.C.

November 24, 2003

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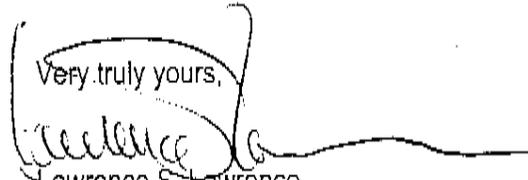
The disallowance of the expenditures made by Marangos Construction Corporation ("Marangos") is another example of the auditors ignoring the clear language of the License Agreement, and arbitrarily imposing conditions that do not exist. There is absolutely no requirement that Crystal Ball itself pay for any improvements. Section 7.1 states:

The Licensee shall *expend or cause to be expended* (emphasis added) during the term of this License, a minimum amount of \$8,000,000 for Capital Improvements...

The auditors were fully aware that the principals of Marangos were shareholders of Crystal Ball and made such improvements at the behest of the Licensee. Thus, in the language of the Agreement, Crystal Ball clearly caused the expenditures to be made. There is no basis whatsoever for their disallowance, and such disallowance must be withdrawn and deleted from the final report.

Conclusion

In light of the foregoing, we strongly recommend and urge the Comptroller to revisit the unjustified allegations and conclusions embodied in the draft audit report and make the appropriate changes to such report to address the objections set forth in this letter.

Very truly yours,

Lawrence S. Lawrence

pc: Joanne G. Imohiosen
pc: Dimitrios Kaloidis



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

(212) 360-3404
joanne.imohiosen@parks.nyc.gov

November 21, 2003

BY FAX AND MAIL

Mr. Greg Brooks
Deputy Comptroller
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007

**Re: Draft Audit Report on Crystal Ball Group, Inc., (Terrace on the Park)
April 1, 1999 to March 31, 2002 FL03-102A, Dated November 10, 2003**

Dear Mr. Brooks:

This letter represents the Parks Department's (Parks) response to the recommendations contained in the subject audit report on Crystal Ball Group, Inc. (Crystal Ball).

Parks has issued the attached "Notice To Cure" (NTC) to Crystal Ball requesting that Crystal Ball implement internal control **Recommendations 1,2 and 3** and that it remit payment in the amount of \$100,178 to comply with **Recommendation 4**. Under **Recommendation 5**, Crystal Ball has agreed to complete the remaining balance of its capital improvements by December 31, 2005. Contrary to the audit report, Parks has received documentation and has field verified the successful completion of \$5,574,882 worth of improvements to date.

Parks agrees with the audit finding that expendable items should not apply to the capital improvement total and also has disallowed the \$824,039 in purchases submitted for expendable equipment such as draperies, tables, chairs, and outdoor furniture, plus subsequently submitted non-capital items. The approved 5.575 Million-Dollar total expenditure to date does not include any expenses related to personal equipment or expendable items. The completed work includes renovations to all lobbies and ballrooms,

Greg Brooks
November 21, 2003
Page 2

HVAC work, plumbing, lighting, asbestos removal, elevator upgrades, facade repair, the construction of a new café with an outdoor dining area, new fencing, new paving and landscaping.

However, Parks does not agree with the auditor's disallowance of \$1,735,047 of improvements because the work had not been paid for directly by Crystal Ball. Parks has accepted and credited Crystal Ball for all capital construction that was paid for by Marangos Construction Corporation. Section 7.1 of The License agreement states, "Licensee shall expend or *cause to be expended* during the term of this License, a minimum of \$8,000,000 for Capital Improvements as defined in Article 2.1(a) . . ." Parks verified that the work paid for by Marangos Construction Corporation was completed satisfactorily and was in fact comprised of capital improvements.

Recommendation 6. states that Parks should:

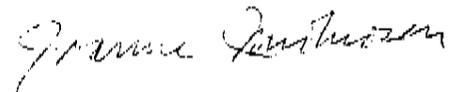
Determine whether additional capital improvements are necessary to meet the requirements of the license agreement. If it is determined that no additional improvements are required, Parks should issue a Certification of Final Completion and collect any unspent funds.

This recommendation was addressed under number 5 above. The balance of improvements, \$2.425 million, must be completed by December 31, 2005.

Recommendation 7. requesting that Parks should, "Issue a Notice to Cure to Crystal Ball requiring that it comply with the audit's recommendations" has been acted upon by our issuance of the attached Notice to Cure.

We wish to thank the Comptroller's audit staff for their work and efforts in performing this review.

Sincerely,



Joanne Imohiosen

cc: Ron Lieberman
Anthony Macari
Alessandro Olivieri
David Stark
Francisco Carlos
Susan Kupferman, Mayor's Office of Operations



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

(212) 360-3404
joanne.imohiosen@parks.nyc.gov

November 20, 2003

BY FAX AND MAIL

Mr. Dimitrios Kaloidis
President
The Crystal Ball Group, Inc.
52-11 111th Street
Flushing Meadows, NY 11368-3396

Re: **NOTICE TO CURE**

Comptroller's Draft Audit Report on Crystal Ball Group, Inc., (Terrace on the Park) April 1, 1999 to March 31, 2002 FL03-102A, Dated November 10, 2003

Dear Mr. Kaloidis:

This letter addresses the findings and recommendations contained in the subject draft audit report on Crystal Ball Group, Inc. (Crystal Ball). Generally, the Comptroller's audit disclosed that because of Crystal Ball's weak internal controls over its banquet contracts, the auditors were unable to verify that all banquet revenue was properly recorded on Crystal Ball's books and reported to the Department of Parks and Recreation (Parks), and that appropriate fees were paid. Furthermore, the audit report states that Crystal Ball took \$524,477 in improper deductions from gross receipts that resulted in \$100,179 in additional fees and related interest and penalties due the City. Finally, the Comptroller's auditors concluded that Crystal Ball did not expend the amount required under its license agreement for capital improvements.

Specifically, the audit report requires that Crystal Ball should:

Recommendation 1. Issue pre-numbered banquet contracts in sequential order. In this regard, Crystal Ball should maintain copies of all contracts (whether completed or canceled) to document reasons for gaps in contract numbers.

Recommendation 2. Retain all books and records, including banquet calendars, for six years, in accordance with the license agreement.

Recommendation 3. Ensure that revenue is accurately reported to Parks and the appropriate fees are paid, in accordance with the license agreement.

Dimitrios Kaloidis
November 20, 2003
Page 2

The audit examination disclosed that Crystal Ball could not account for 1,943 out of 3,740 pre-numbered contracts that it issued to patrons who planned to schedule banquets at the facility. For the audit period, only 1,797 contracts were reported to Parks.

Furthermore, in violation of its license agreement with the City, Crystal Ball could not provide banquet calendars that list events by date and contract number for the years 1999 through 2001. Without the contracts or banquet calendars, the audit team could not be assured that all banquet revenue was properly accounted for.

At the audit exit conference Crystal Ball officials explained that gaps in the sequence of issued contracts represented cancellations, rewritten agreements or contracts for events to be held in the future. However, Crystal Ball could not provide sufficient documentation to the Comptroller's staff to allow for a complete accounting of the missing contracts.

To provide an adequate audit trail and stronger internal controls Crystal Ball should initiate the required record keeping procedures to implement audit recommendations 1,2 and 3. During the exit conference Crystal Ball officials agreed to keep a copy of all contracts and to retain all banquet calendars for the required six-year period.

Recommendation 4. Ensure that all deductions from gross receipts are in accordance with the license agreement and pay the City \$100,178 in additional fees and related interest and penalties for the improper deductions cited in this report.

The auditors found that Crystal Ball improperly categorized \$428,038 of salary expense as "tips" and deducted this amount from its gross receipts reported to Parks. Crystal Ball's license agreement provides for a deduction from gross receipts for gratuities paid to employees and staff in addition to their regular salaries. However, according to the audit report findings, Crystal Ball abused this provision by using it to support a policy that classifies only twenty percent of Crystal Ball's payroll to its non-wait staff employees e.g. sales managers, chefs, maintenance staff etc, as salary expense. The balance of wages paid to this group was categorized as tips. The gratuity exclusion provision was never intended to serve as a means for a licensee to write-off its payroll expense against reportable gross revenue to the City. Rather, it was implemented to allow for the pass through of tips to wait staff employees.

Dimitrios Kaloidis
November 20, 2003
Page 3

The improper deductions by Crystal Ball resulted in an underpayment of license fees for the period from April 1, 1999 to March 31, 2000, totaling \$38,523.42 plus late penalties and interest charges of 43,234.79. The total assessment payable under this finding is \$81,758.21. Note that for the past two years the gratuity deductions identified above have not resulted in additional fees owed to the City. In any event, Crystal Ball should discontinue its practice of broadly applying the gratuity exclusion provision of its license agreement to non-wait staff personnel. Also, we require that Crystal Ball now provide the amount taken as a gratuity deduction against gross receipts on its monthly revenue report.

Furthermore, the audit disclosed that \$96,439 in deducted gratuities were retained by Crystal Ball and not distributed to employees. Only those gratuities that have been paid to Crystal Ball's employees may be deducted from gross receipts. The result of this unallowable deduction is that Crystal Ball owes the City an additional \$8,679.51 in license fees plus \$9,741 in late penalties and interest charges. The total assessment payable under this finding is \$18,420.51.

The total balance owed under Recommendation 4. is summarized as follows:

	<u>Fees Due</u>	<u>Late Penalties & Interest</u> <u>4/1/00 – 5/31/03</u>	<u>Total Fees &</u> <u>Interest</u>
Salary Expenses Improperly Classified as "Tips"	\$38,523.42	\$43,234.79	\$ 81,758.21
Gratuities Retained by Crystal Ball	\$ 8,679.51	\$ 9,741.00	\$ 18,420.51
TOTALS	<u>\$47,202.93</u>	<u>\$52,975.79</u>	<u>\$100,178.72</u>

Crystal Ball is afforded twenty (20) days from the date of this letter to remit a check in the amount of \$100,178.72, made payable to CITY OF NEW YORK PARKS AND RECREATION, to clear the audit assessment.

By copy of this letter to Francisco Carlos, DPR Internal Auditor, I am requesting that he schedule a follow-up review in two months to verify that Crystal Ball has fully complied with the above cited internal control recommendations 1,2 and 3, and recommendation 4.

Dimitrios Kaloidis
November 20, 2003
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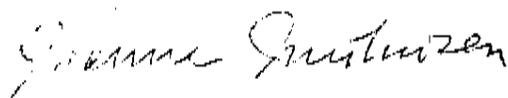
Recommendation 5. Make arrangements with Parks to complete the remaining capital improvements according to a specific timetable. When Parks determines that capital improvements are complete, Crystal Ball should pay the City the amount, if any, that capital improvements do not meet the minimum amounts specified in the license agreement.

The audit report concluded that as of May 15, 2003, Crystal Ball expended only \$2,787,875 in capital improvements out of the \$5,346,961 it claimed to have made to the facility. From the audit examination \$824,039 covering the purchase of expendable equipment was disallowed along with \$1,735,047 representing canceled checks from the Marangos Construction Corporation.

Parks Department records show that it has received documentation and field verified the successful completion of \$5,574,881.85 worth of improvements to date. This figure excludes the \$824,039 of expenses submitted by Crystal Ball for expendable equipment such as draperies, tables, chairs, and outdoor furniture plus subsequently submitted non-capital items. Moreover, Parks has accepted and credited Crystal Ball for the work paid for by Marangos Construction Corporation and will discuss this item in our response to the Comptroller. Also, Parks and Crystal Ball have agreed that the remaining balance of capital improvements, \$2,425,118.15, required to meet the \$8,000,000 minimum total required under Crystal Ball's license agreement, shall be expended by no later than December 31, 2005.

Finally, we wish to thank Crystal Ball for its cooperation during the audit review and anticipate your prompt action and payment regarding the above recommendations.

Sincerely,



Joanne Imohiosen

cc: R. Lieberman
A. Macari
A. Olivieri
D. Stark
F. Carlos