

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 Central Park Tennis Center, Inc., With Its License Agreement and Payment of License Fees Due the City

FP08-096A

March 10, 2009



THE CITY OF NEW YORK
DEPARTMENT 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:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of Central Park Tennis Center, Inc., with its license agreement for the operation of the tennis center at Central Park.

CPT operates the tennis center at Central Park under a six-year agreement with the Department of Parks. The agreement requires CPT to pay fees to the City and make capital improvements to the facility. We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials of CPT and of Parks, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

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.

WCT/fh

Report: FP08-096A
Filed: March 10, 2009

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

**Audit Report on the
Compliance of Central Park Tennis Center, Inc.,
With Its License Agreement and
Payment of License Fees Due the City**

FP08-096A

AUDIT REPORT IN BRIEF

We performed an audit of the compliance of Central Park Tennis Center (CPT) with its license agreement with the New York City Department of Parks and Recreation (Parks) for the operation of the tennis center at Central Park. The agreement requires CPT to pay the City a minimum annual fee escalating annually to \$70,834 in the final, sixth year, or 10 percent of the gross receipts derived from the operation of the tennis center, whichever is greater. The license agreement also requires CPT to spend a minimum of \$120,000 on capital improvements to the facility. The license agreement expired on November 15, 2007. In the final year of the license agreement, covering the 2007 tennis season, CPT reported to Parks a total of \$838,056 in gross receipts and paid Parks \$84,600 in fees— \$83,806 in license fees and \$794 in late fees.

Audit Findings and Conclusions

CPT had significant internal control weaknesses over the financial operations of the tennis center. As a result of these weaknesses, we could not ascertain whether all of the revenue received by CPT was in fact recorded and was accurately and completely reported to Parks. Nor could we determine whether CPT paid Parks all fees due. However, CPT made capital improvements approved by Parks and maintained the required security deposit.

Based on the documentation provided, we were able to determine that CPT owes additional license fees and late charges totaling \$110,347 for the audit period. In that regard, we found CPT incorrectly deducted wages paid to tennis instructors and did not report all the revenue received, based on our comparison of the amounts recorded on CPT bank statements and the amounts reported on the gross receipts statements submitted to Parks. In addition, CPT did not pay utility charges associated with the operation of the licensed premises, underreported \$24,116 in taxable sales, and as a consequence underpaid its sales tax by \$2,065, and did not maintain the insurance coverage required in the license agreement. CPT did not comply with and fulfill the provisions in its agreement, and Parks failed to adequately monitor CPT's performance and enforce the terms and conditions of its agreement.

Audit Recommendations

We make 10 recommendations to CPT and 4 recommendations to Parks, including the following.

CPT should:

- Pay the City \$110,347 in additional license fees and late charges for underreporting gross receipts.
- Implement a system of internal controls and keep complete and accurate records as well as books of account and data, including daily sales and receipt records that show in detail the total business transacted by CPT and the gross receipts derived therefrom.
- Issue receipts for all payments received.
- Make arrangements with Parks to pay for past water and electricity use.
- Obtain the proper insurance coverage as required by the license agreement.
- Pay \$2,081 in back sales tax to New York.

Parks should:

- Issue a Notice to Cure to CPT requiring that it pay \$110,347 in additional license fees and late charges for underreporting gross receipts.
- Require CPT to comply with the terms and conditions of the license agreement.
- Arrange for the installation of separate electric and water meters for the licensed premises.

INTRODUCTION

Background

On April 5, 2002, the City of New York through Parks entered into a six-year license agreement with Newyorktennis.net, to operate the tennis center at Central Park. On February 9, 2004, Newyorktennis.net transferred the license agreement to CPT. Under the terms of the agreement, the concessionaire is required to pay the City a minimum annual fee of \$55,500 in the first year of operation, escalating annually to \$70,834 in the final year, or 10 percent of the gross receipts derived from the operation of the tennis center, whichever is greater. According to the license agreement, gross receipts include all sales made from operations at the licensed premises, excluding collected sales taxes, net receipts from vending machines, a \$1.00 administrative fee that the licensee collects from the sale of single-play tickets and reservation tickets, and services provided by tennis instructors functioning as independent contractors of CPT. The term of the license agreement expired on November 15, 2007.

For 2006, CPT reported to Parks a total of \$761,708 in gross receipts and paid Parks \$76,345 in fees—\$76,171 in license fees and \$174 in late fees. For 2007, CPT reported to Parks a total of \$838,056 in gross receipts and paid Parks \$84,600 in fees— \$83,806 in license fees and \$794 in late fees.

Additionally, the license agreement requires CPT to spend a minimum of \$120,000 on capital improvements to the facility. These include improvements to the courts, grounds, and clubhouse. CPT is also required to pay to Parks a “Design Review Fee” of \$1,200, which is one percent of the value of the capital improvements.

CPT is required to carry: Workers Compensation insurance, a \$1-million employer liability and general liability insurance policy that names the City as an additional insured, a \$1-million property insurance, and a separate fire insurance policy for replacement value. It must also maintain a \$17,708 security deposit with the City and pay all necessary taxes and utility charges for operation of the licensed premises.

Objectives

The objectives of this audit were to determine whether CPT:

- accurately reported its total gross receipts, properly calculated the license fees due the City, and paid its license fees on time, and
- complied with other major terms of its license agreement (i.e., carried the proper types and amounts of insurance, maintained the proper security deposit, and paid for its utilities).

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

This audit covered the period January 1, 2006, through December 31, 2007, which covered the 2006 and 2007 tennis seasons under operation by CPT. To achieve our audit objectives, we reviewed the license agreement between Parks and CPT and correspondence between Parks and CPT, including gross receipt reports, insurance certificates, and other relevant documents on file with Parks. We also reviewed and analyzed the Parks Revenue Journal to determine whether the amounts reported were actually paid to the City and whether they were paid within the timeframe required in the agreement.

On October 17 and October 30, 2007, we conducted unannounced observations of the facility and concession stand to observe transactions at the operation. We observed the collecting and recording of cash to determine whether all sales were recorded in the computerized Point of Sale (POS) system. We also purchased items at CPT, including court time and tennis lessons, to determine whether these sales were accurately and completely recorded and reported to Parks.

To gain an understanding of CPT's daily operating procedures for recording and reporting revenue, we interviewed CPT's owner and other personnel. We tested computerized cash register transactions from May 28 to June 3, 2007, to verify the reliability of the cash drawer settlement sheet and to determine whether the internal controls over gross receipts were adequate and operating as represented by management.

To determine whether CPT accurately reported its gross receipts to Parks, we analyzed CPT's monthly gross receipt statements. We prepared an annual schedule of monthly gross receipts for the audit period January 1, 2006, through December 31, 2007. We obtained CPT's supporting documents for gross receipts and compared them to the revenue CPT reported to Parks. To determine whether the monthly transactions processed through CPT's computerized POS system were adequate and operating as represented by management, we traced revenues reported by CPT to Parks to CPT books and records, including general ledger, daily cash reports, and bank statements. In addition, we traced receipts recorded on its general ledger, to the income statements, and federal tax returns for consistency.

Finally, we determined whether CPT complied with other major requirements of its license agreement, such as carrying the proper types and amounts of insurance naming the City as an additional insured, maintaining the proper security deposit, paying its taxes and utility charges, and making the capital improvements required by Parks.

Discussion of Audit Results

The matters covered in this report were discussed with CPT and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to CPT and Parks officials and was discussed at an exit conference held on December 11, 2008. On January 9, 2009, we submitted a draft report to CPT and Parks officials with a request for comments.

In their comments, CPT and Parks described the steps they have taken or will take to implement the report's recommendations. The full texts of the comments are included as addenda to this report.

FINDINGS AND RECOMMENDATIONS

Central Park Tennis Center had significant internal control weaknesses over the financial operations of the tennis center. As a result of these weaknesses, we could not ascertain whether all of the revenue received by CPT was in fact recorded and was accurately and completely reported to Parks. Nor could we determine whether CPT paid Parks all fees due. However, CPT made capital improvements approved by Parks and maintained the required security deposit.

Based on the documentation provided, we were able to determine that CPT owes additional license fees and late charges totaling \$110,347 for the audit period. In that regard, we found CPT incorrectly deducted wages paid to tennis instructors and did not report all the revenue received, based on our comparison of the amounts recorded on CPT bank statements and the amounts reported on the gross receipts statements submitted to Parks. In addition, CPT did not pay utility charges associated with the operation of the licensed premises, underreported \$24,116 in taxable sales and as a consequence underpaid its sales tax by \$2,065, and did not maintain the insurance coverage required in the license agreement. CPT did not comply with and fulfill the provisions in its agreement, and Parks failed to adequately monitor CPT's performance and enforce the terms and conditions of its agreement.

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

CPT Lacks Internal Controls over Its Operations

CPT does not have adequate internal controls over its financial operations of the tennis center to ensure that all gross receipts are properly recorded and reported to the City. The license agreement requires CPT to maintain appropriate and sound internal controls. However, the deficiencies are so severe that we could not confirm that CPT reported to the City all operating revenue derived from operation of the licensed premises and paid all the required license fees due. Specific examples follow:

- All revenue due for services rendered might not be recorded. On one occasion, two auditors under the guise of patrons reserved a tennis lesson with a credit card and were given a one-hour lesson. The cost of the lesson and tennis racket rental was \$72. At the end of the lesson the instructor accepted \$70 in cash as payment. The auditors received no receipt of payment for the lesson and racket rental. Our review of receipts issued by CPT found that \$62 was recorded as payment for the lesson and racket rental, not the \$70 paid to the instructor.
- The total amounts reported as collected on the Cash Drawer Settlement receipt, when the cash register is closed out, could not be matched to the amounts recorded on the individual receipts that were issued to customers for the same period.
- CPT does not maintain documentation of loan amounts transferred in or out of the CPT bank account. When loans were received, the deposit slips did not indicate the amounts of the loans. The deposits of the loans were commingled with the daily

receipts of the tennis center. There is no documentation substantiating if or when these loans were repaid.

- CPT does not maintain documentation when expenses for other facilities administered by CPT, but not part of the license agreement, are paid from CPT's bank account or when CPT expenses are paid for by other facilities. Again, there is no documentation of whether these expenses were charged to the correct facility or when they were charged.
- CPT does not make daily bank deposits. Daily bank deposits would facilitate tracing amounts recorded on CPT's books and records to the amounts deposited in its bank account.
- No trail could be established to determine the source of income deposited in the bank account.
- Deductions made by CPT from gross receipts categorized as "Bruce Haddad - Knickerbocker" and "credit card costs" in the general ledger contained no explanations or justifications for deducting these amounts from gross receipts.

CPT Underreported Gross Receipts

CPT underreported its gross receipts by \$778,194 and as a result owes the City \$110,347 in additional license fees and late charges, as discussed in the following sections.

\$638,288 in Non-Allowable Deductions from Gross Receipts

CPT improperly deducted \$638,288 in professional fees from gross receipts reported to Parks. While the license agreement allows deductions from gross receipts of "professional fees" paid to tennis instructors, the tennis instructors must be independent contractors. The license agreement states: "Gross Receipts shall include only Licensee's net income received by Licensee in connection with services provided by tennis instructor functioning as independent contractors of Licensee." We found that the tennis instructors were, in fact, employees of CPT and not independent contractors.

In the 2006 and 2007 seasons, all of the tennis instructors received a W-2 tax statement that indicated they were employees of CPT, and CPT paid the employment taxes on behalf of its employees. An independent contractor is paid on an untaxed basis and is therefore required to file and pay the appropriate taxes. Had these tennis instructors been considered independent contractors by CPT, the Internal Revenue Service (IRS) would require that they be issued a Form 1099-MISC tax statement instead of a W-2. Therefore, CPT inappropriately deducted \$638,288 in professional fees from the gross receipts statements submitted to Parks. The deduction totaled \$276,618 for the 2006 season and \$361,670 for the 2007 season. Consequently, CPT owes the City \$63,829 in additional fees—\$27,662 for 2006 and \$36,167 for 2007.

Per-Play Tickets Underreported by \$2,125

Parks issues tickets for single play to CPT with the intention that CPT will sell these tickets to the public for play on courts not used for lessons. The public pays \$7 for each ticket, from which CPT is required to reimburse Parks \$6 and is allowed to retain the \$1 balance as an administration fee. The monthly value of the administration fee is to be included in the amount of gross receipts in the month that the tickets were sold. The franchise fee of 10 percent is then applied against the administration fee collected. At the end of the season, unsold tickets are returned to Parks and reconciled to determine the number sold. For 2006, CPT reimbursed Parks for 21,359 tickets and in 2007 reimbursed Parks for 25,417 tickets.

CPT representatives informed us that CPT distributes complimentary per-play tickets to various customers. However, the license agreement has no provision allowing CPT to distribute complimentary tickets. According to CPT, for the 2006 and 2007 tennis seasons it distributed 916 tickets and 1,209 complimentary tickets, respectively. CPT paid Parks the \$6 on all tickets it gave away. However, CPT did not include in its gross receipts reported to Parks the value of the \$1 per ticket administration fee for the complimentary tickets, which totaled \$916 in 2006 and \$1,209 in 2007. The \$2,125 administrative fee should have been included in its gross receipts reported to Parks and subject to fees due the City. As a result, CPT owes additional fees of \$213 (\$2,125 x 10%) plus late fees.

\$55,500 in Undocumented Loans Not Included in Gross Receipts

CPT did not include \$55,500 in gross receipts reported to Parks, claiming this amount represented loans from partners and outside individuals (\$42,500 for 2006 and \$13,000 for 2007). CPT contends that these loans were used to finance deficits that occurred during the operation of the tennis center. CPT did not provide any documentation (i.e., loan agreements, canceled checks, or proof these funds were wire transferred) that the \$55,500 in proceeds were from loans. Moreover, the general ledger had no record or entry of account of the \$55,500 in loan proceeds received or loans payable. Since CPT cannot substantiate the execution of the loans and has no entries in its books and records for the loans, the \$55,500 should be included in gross receipts. Therefore, CPT owes the City additional license fees of \$5,550 plus late fees.

Undocumented Deductions of \$20,000 from Gross Receipts

Our review of CPT's bank statement and general ledger revealed that five deductions were made from revenue in 2007, totaling \$20,000. These deductions were categorized under the name Bruce Haddad-Knickerbocker. CPT's representatives did not provide an explanation of Bruce Haddad-Knickerbocker's relationship with CPT or any reason the \$20,000 in revenue should not be included in gross receipts. Therefore, the \$20,000 must be included in gross receipts for the purposes of the license agreement. Therefore, CPT owes the City additional license fees of \$2,000 plus late fees.

\$4,340 in Credit Card Deductions

Our review of CPT's general ledger for 2007 revealed two deductions totaling \$4,340 for credit card costs. The license agreement states, "'Gross Receipts' shall include without limitation all funds received by Licensee, without deduction or set-off of any kind" with the exception of federal, state, or local taxes. Therefore, this deduction should be included in gross receipts. As a result of these improper deductions, CPT owes the City additional license fees of \$434 plus late fees.

Undocumented \$62,534 Net Difference between Gross Receipts Statements and Bank Statements

We examined the total of cash and credit card deposits in the bank account and compared them to the amounts reported on the gross receipt statements submitted to Parks. After making adjustments for the omissions from gross receipts cited above, we found that the amounts recorded in CPT's bank statements were \$62,534 higher than the amounts CPT reported on the gross receipt statements submitted to Parks. For the two-year period we examined, the difference was \$51,234 in 2006 and \$11,300 in 2007. CPT was not able to provide any documentation to explain the difference of \$62,534 between that reported on its bank statements and the amount on the gross receipts statements filed with Parks. Therefore, the \$62,534 must be included in gross receipts for the purposes of the license agreement. Consequently, CPT owes the City additional license fees of \$6,253 plus late fees.

\$4,593 in Net Overreported Gross Receipts

Our comparison of CPT's monthly gross receipt reports to its detailed statements supporting revenue schedules revealed that CPT overreported gross receipts by \$5,565 in 2007 and underreported gross receipts by \$972 in 2006 for a net overreporting total of \$4,593. The overreporting resulted from errors made by CPT while computing its monthly revenue statements.

Late Fees of \$32,528 Applied to Audit Assessment

Based on the additional fees owed by CPT for underreporting its gross revenue by \$778,194, we calculated that CPT owes the City \$77,819 in additional license fees plus \$32,528 in late charges. In total CPT owes the City \$110,347. (See Appendix for details.)

Section 4.3 of the License Agreement states, "Late charges shall be assessed on any payment that is overdue for more than 10 days. . . . a late charge of 2% per month on the sums so overdue (computed on a thirty day month) from the date they were due and payable shall become immediately due and payable to Parks."

Non-Payment of Utility Charges

Representatives of CPT informed us that they did not pay any utilities for the tennis center during the term of its license. Additionally, representatives of Parks confirmed that CPT did not pay for any utilities at the tennis facility. According to the license agreement,

Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operation of this license and pay all utility costs. Utilities as described in this Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, water and sewer charges.

Because the Parks facility housing the tennis center has only one electric meter and one water meter for the entire facility, we could not determine how much electricity and water use was applicable to the operation of the tennis center managed by CPT.

Insurance Policy Not Enforced

The terms of CPT's license agreement states, "Licensee shall at its own cost and expense, procure and maintain such insurance for the Term of this License." The insurance coverage should be in amounts not less for the following: comprehensive, general liability insurance for each occurrence of \$1,000,000, property insurance for each occurrence of \$1,000,000, and fire insurance for the replacement value of the building and fixed equipment.

Our review of CPT's insurance policies on file with Parks found that CPT did not maintain the required insurance. The policy did not specify that there was any fire insurance and specified that there was only \$157,500 for property damage, not the required \$1,000,000. When we questioned Parks representatives about this matter, they stated in an e-mail that "CPT did not have fire insurance for the building." However, the coverage was for contents damaged by fire. As stated by a Parks representative, "It appears that they did not meet their obligation for property insurance. We are actively working with the insurance provider and CPT to address both of these issues on the current insurance certificate."

Underpayment of \$2,065 in Sales Tax

CPT underreported \$24,116 in taxable sales on its 2007 New York State and Local Quarterly Sales and Use Tax Return. We compared the amount of taxable sales recorded on CPT's revenue summary report to its 2007 New York State and Local Quarterly Sales and Use Tax Return and found that CPT failed to report \$24,116 in taxable sales. As a result of underreporting taxable sales, CPT underpaid its New York sales tax by \$2,065 for 2007.

RECOMMENDATIONS

We recommend that CPT should:

1. Pay the City \$110,347 in additional license fees and late charges for underreporting gross receipts.

CPT Response: “We are happy to confirm that we have resolved all open financial issues with the Parks Department...In 2005, the State of New York Department of Labor (‘DOL’) conducted an audit of . . . an affiliate of CPTC. DOL determined that the tennis instructors . . . should be characterized as employees. . . . [and] we immediately changed the characterization of tennis instructors . . . from independent contractors to employees. . . . We have agreed to pay \$22,390 in this matter.

“Relating to loans, we agree to pay the amount stated in the draft Audit. Also, relating to the Knickerbocker issue . . . we agree to pay the amount stated in the draft Audit. Gross receipts will not be reduced by credit card fees and CPTC agrees to pay to the City the sum of \$434.”

2. Implement a system of internal controls and keep complete and accurate records as well as books of account and data, including daily sales and receipt records that show in detail the total business transacted by CPT and the gross receipts derived therefrom.

CPT’s Response: “We have already implemented an updated system of internal controls as well as a more complete and accurate record of daily transactions and receipts. In addition, to assist us in this activity, we have already installed one POS scanner and another scanner is being installed which will be used to input every sale.”

3. Issue receipts for all payments received.

CPT Response: “We are issuing receipts for all payments received.”

4. Maintain records to track funds transferred in or out of its bank account, clearly identifying the purpose.

CPT Response: “We already keep more accurate detailed records to track funds that are transferred in or out of our bank account.”

5. Maintain records that identify loans being made to CPT and loans that CPT makes to other facilities.

CPT Response: “All loans made to or from CPT will be more clearly identified.”

6. Maintain records clearly identifying the expenses that CPT pays on behalf of other tennis facilities and the expenses that are paid on behalf of the CPT.

CPT Response: “In the future, CPT will not make any direct payments for the benefit of any other tennis facility. Also, there will be no payments made by other tennis facilities on behalf of CPT.”

7. Arrange for the installation of separate electric and water meters for the licensed premises.

CPT Response: CPT did not address this recommendation.

8. Make arrangements with Parks to pay for past water and electricity use.

CPT Response: CPT did not address this recommendation.

Parks Response: “The NTC [Notice to Cure] requires CPT to reimburse Parks for past use of water and electricity in connection with the operation of this concession.” (The Notice to Cure indicates that CPT is required to pay \$1,701 for past utility use for April 2007 through November 2008.)

Auditor Comment: We acknowledge the directive that CPT reimburse Parks for utility use. However, the Notice-to-Cure is limited to the period of concession operations covering April 2007 to November 2008, and does not cover the period of concession operations covering April 2006 through November 2006, which is part of the scope period of this audit. Moreover, since CPT has failed to pay for utility use since 2002, Parks should seek to determine and recover utility costs for that period as well.

9. Obtain the proper insurance coverage as required by the license agreement.

CPT Response: “The required insurance coverage has been obtained and is in full force and effect.”

Parks Response: “CPT will be required to maintain the proper insurance, as applicable, under any pending or future concession agreement with Parks. Parks will monitor CPT’s compliance with all necessary insurance requirements throughout the term of any pending or future concession agreement.”

10. Pay \$2,081 in back sales tax to New York.

CPT Response: “We agree to amend the NYS Sales Tax Return for the quarter ended August 31, 2007 to reflect the additional sales tax liability of \$2,081.”

Parks Response: “The NTC requires that CPT quickly resolve the amount owed in back taxes and provide copies of related correspondence from the New York taxing authorities to verify the resolution.”

We recommend that Parks should:

11. Issue a Notice to Cure to CPT requiring that it pay \$110,347 in additional license fees and late charges for underreporting gross receipts.

Parks Response: “Parks has sent a Notice to Cure (NTC) to CPT requesting that a portion of the fees and charges identified in Recommendation 1, totaling \$13,990 plus \$6,895 in late charges, be paid immediately.

“The remainder of the amount included in the recommendation, \$89,461 (\$63,829 in underreported gross receipts and \$25,632 in late charges), is related to CPT’s deduction of fees from reported gross receipts for tennis instructors.

“The Report notes that during the term of the Agreement, shortly before the period covered by the audit, the tennis instructors began filing W-2 forms (as employees) and stopped filing W-9 forms (as independent contractors). As a result, the Comptroller deemed this deduction to be inappropriate.

“The language in the Agreement referring to tennis instructors ‘functioning as independent contractors’ reflected the City’s understanding (in 2002) that the common practice in tennis facilities was to hire instructors as independent contractors. However, as CPT learned in 2005, as a result of a New York State Department of Labor audit, the relationship with the instructors did not meet the State’s standard for treatment as independent contractors. That said, the relative portion of the fee income that was going to the instructors remained unchanged. Thus, had Parks known in 2002 of this change, it would likely have either altered the language defining gross receipts to eliminate the distinction between contractors and employees, with respect to the treatment of instructor fees, or it would have accepted a lower license fee proposal from CPT, to reflect the treatment of the entire instructor fee as gross receipts income.

“For the reasons above, Parks has determined that it would not be appropriate under the circumstances for the City to insist on full payment of license fees relating to the status of the instructors as employees. However, CPT must bear some responsibility for the audit finding because it failed to notify Parks in 2005 that the DOL audit had prompted a change in classification of the tennis instructors, and failed to confirm that Parks would not seek to treat the instructor fees differently. In light of this failure to disclose on CPT’s part, Parks has determined to seek repayment, in installments, of \$22,390 (i.e., 25% of the amount of the audit finding amount for underreported gross receipts and late charges).”

Auditor Comment: We disagree. During the scope period of the audit, tennis instructors were retained by CPT as employees— not as independent contractors. Consequently, the license agreement clearly precludes CPT from deducting from gross receipts, any income derived from the instructors.

If, however, CPT believed that the terms of the license agreement relating to gross receipts were predicated on its ability to exclude income from independent instructors, then CPT should have sought to amend the agreement with the Parks Department in 2005, after the instructors were re-classified as employees.

This is not the first time that a Comptroller’s audit disclosed that a concessionaire improperly excluded from gross receipts, income derived from tennis instructors who were employees. But when we disclosed that situation in our audit (No. FM06-125A) of York Avenue Tennis, the Parks Department agreed with our recommendation to recoup all additional license fees associated with under-reported gross receipts— not just 25 percent of the fees. Accordingly, we restate our position that the Parks Department recoup the entire \$89,461 amount of the license fees and late charges pertaining to tennis instructor gross receipts.

12. Require CPT to comply with the terms and conditions of the license agreement.

Parks Response: “Parks will continue to closely monitor and require its concessionaires to comply with the terms and conditions of such agreements.”

13. Arrange for the installation of separate electric and water meters for the licensed premises.

Parks Response: “CPT will be required to install separate electric and water meters at the commencement of any pending or future concession agreement with Parks. Parks will enforce CPT’s compliance with this requirement as well as ensure proper payment by CPT of all water and electricity used in the in operation of any pending or future concession agreement.”

14. More closely monitor CPT in the future.

Parks Response: “Parks will continue to closely monitor and require its concessionaires to comply with the terms and conditions of such agreements.”

Schedule of Additional License Fees Due and Late Charges

Description	2006	2007	Total
Non allowable deduction	\$27,662.00	\$36,167.00	\$63,829.00
Underreported single play and reservation tickets	92.00	121.00	213.00
Net (over)/under reported income	97.00	(557.00)	(460.00)
Undocumented loans	4,250.00	1,300.00	5,550.00
Undocumented deduction	0.00	2,000.00	2,000.00
Credit card deduction	0.00	434.00	434.00
Unexplained net difference between BS and GRS	5,123.00	1,130.00	6,253.00
Subtotal	\$37,224.00	\$40,595.00	\$77,819.00
Late fee charges	22,648.00	9,880.00	32,528.00
Total	\$59,872.00	\$50,475.00	\$110,347.00

NY TENNIS AT CENTRAL PARK LLC
9000 BAY PARKWAY
BROOKLYN, NEW YORK 11214

January 29, 2009

VIA EMAIL

Mr. John Graham
Deputy Comptroller
The City of New York Office of the Comptroller
1 Centre Street
New York, NY 10007

Re: Draft Audit Report on Central Park Tennis
January 1, 2006 to December 31, 2007, FP08-096A, Dated January 9, 2009
License Agreement Number M10-TP

Dear Mr. Graham:

We sincerely appreciate the opportunity to fully respond to the claims set forth in the Draft Audit Report dated January 9, 2009. While we have thought long and hard about pursuing our legal rights to dispute the main issue, regarding independent contractors, raised in the Audit, we are happy to confirm that we have resolved all open financial issues with the Parks Department and we are now able to put this behind us. We believe this is a strong indication of our commitment to Parks and the public we serve. In this vein, and with due respect, we respectfully submit this letter in response to the claims made in the Audit.

General

We strongly dispute the statement that Central Park Tennis Center lacks internal controls over its operations. As you will see below, and in response to your recommendations, we either have strong, valid disputes to the audit or we have agreed to implement (or have already implemented) controls to make sure that there are no longer any misunderstandings.

Non-Allowable Deductions from Gross Receipts

The License Agreement provides that "gross receipts shall include only Licensee's net income received by Licensee in connection with services provided by tennis instructors functioning as independent contractors of Licensee." From the date CPTC executed the License Agreement in 2002, and until 2005, all of CPTC's tennis instructors worked seasonally, for a limited number of days and hours, and operated financially independently

Mr. John Graham
January 29, 2009
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from all operations of the club. They were therefore naturally characterized as independent contractors. Tennis instructors in other clubs owned or managed by affiliates of CPTC were similarly characterized as independent contractors. In fact, the practice of characterizing tennis instructors and golf instructors as independent contractors had been the standard throughout the industries.

In 2005, the State of New York Department of Labor ("DOL") conducted an audit of Mullaly Park, a tennis club operated by Mullaly Park Tennis Group Inc. ("MPTG"), an affiliate of CPTC. In that audit, shockingly to us, the DOL determined that the tennis instructors who worked at that club should be characterized as employees. MPTG retained the services of a labor and employment attorney, at a great cost, to represent us in our discussions with the DOL. We were informed that the DOL would be checking all of our affiliate clubs to make sure the tennis instructors were being paid as employees. In order to comply with the law as it was now being defined by another governmental agency, we immediately changed the characterization of tennis instructors in all of our facilities, including Central Park Tennis Center, from independent contractors to employees. Other than changing reporting from 1099 forms to W-2 forms, we continued treating the tennis instructors as independent contractors and nothing changed with regard to their functioning as tennis instructors providing lessons to customers. We also continued to report gross receipts net of tennis instructors' fees.

As stated above, it is absolutely clear we complied with the full intent of the agreement before and after 2005. Simply, words changed, not duties. Please note the duties of the tennis instructors did not change, their hours did not change, their hourly fees did not change, the lesson rates did not change, the basis on which our payments were made to Parks did not change. We did not benefit in any way from changing the tennis instructors to employees. In fact, we were the only party required to incur greater expense by paying payroll taxes and unemployment insurance, which we immediately undertook.

Again, on the strong advice by our accountants and attorneys, in order to be in compliance with the law, we were forced to make the change. While CPTC respectfully disputes the amount that is claimed, and although all parties acknowledge there was no malice or inappropriate intent with respect to the deduction of the tennis professional fees, we have nonetheless agreed to pay a total of \$22,390 in this matter. This, of course, is in addition to the additional monies we incurred in complying with the law.

Per-Play Tickets

At times, to make accommodations to customers who were upset due to circumstances beyond our control and to always do the utmost to please our customers, complementary play tickets were given to customers as a good faith gesture. Since no income was received for those per-play tickets, no income had been reported. We are in agreement with the findings on this issue.

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Undocumented Loans & Deductions from Gross Receipts

Relating to the loans, we agree to pay the amount stated in the draft Audit. Also, relating to the Knickerbocker issue, in order to quickly resolve these outstanding issues, we agree to pay the amount stated in the draft Audit.

Credit Card Deductions

Gross receipts will not be reduced by credit card fees and CPTC agrees to pay to the City the sum of \$434.

* * *

Below are our comments regarding the recommendations made in the draft Audit:

2. We have already implemented an updated system of internal controls as well as a more complete and accurate record of daily transactions and receipts. In addition, to assist us in this activity, we have already installed one POS scanner and another scanner is being installed which will be used to input every sale.
3. We are issuing receipts for all payments received.
4. We already keep more accurate detailed records to track funds that are transferred in or out of our bank account.
5. All loans made to or from CPT will be more clearly identified.
6. In the future, CPT will not make any direct payments for the benefit of any other tennis facility. Also, there will be no payments made by other tennis facilities on behalf of CPT.
9. The required insurance coverage has been obtained and is in full force and effect.
10. We agree to amend the NYS Sales Tax Return for the quarter ended August 31, 2007 to reflect the additional sales tax liability of \$2,081.00.

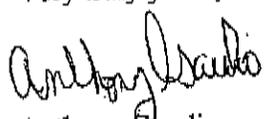
* * *

Again, we thank you and Parks for the ability to explain our legitimate concerns as outlined in the draft Audit. Now that this matter is behind us, we look forward, in our new contract term, to continuing our ongoing and long-standing excellent relationship with Parks and New York City. Please be assured we always put our customers – New York City citizens and tourists – first and foremost in our minds and actions, as exemplified in the many, many letters sent by tennis players, on their own to Parks. They continually

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speak to the benefits and outstanding conditions at Central Park Tennis Center that we have implemented and will continue in the future.

Very truly yours,


Anthony Gaudio


Michael DelPrete

ORIGINAL COPY BY FIRST CLASS MAIL

cc: Comm. Adrian Benepe
Comm. Elizabeth W. Smith
Mr. Robert Garafola
Mr. David Cerron
Mr. Jeffrey Kay, Mayor's Office of Operations
Mr. Larry Welgrin



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10065

Elizabeth W. Smith
Assistant Commissioner
Revenue and Marketing

(212) 360-1366
betsy.smith@parks.nyc.gov

January 26, 2009

Mr. John Graham
Deputy Comptroller
The City of New York Office of the Comptroller
1 Centre Street
New York, NY 10007

**Re: Draft Audit Report on Central Park Tennis
January 1, 2006 to December 31, 2007, FP08-096A, Dated January 9, 2009
License Agreement Number M10-TP**

Dear Mr. Graham:

This letter represents the response by the New York City Department of Parks & Recreation (Parks) to the recommendations contained in the Draft Audit Report issued by the Office of the New York City Comptroller (Report) on January 9, 2009 regarding Parks' License Agreement with Central Park Tennis (CPT). The report determined that CPT made all required capital improvements and maintained the required security deposit during the term of the License Agreement (Agreement). However, the Report also found that CPT had significant internal control weaknesses which prevented the auditors from determining whether all of the revenue generated by CPT was accurately reported to Parks.

Recommendation 1 of the Report urged that Parks require CPT to pay the City \$110,347 in additional license fees and late charges. Parks has sent a Notice to Cure (NTC) to CPT requesting that a portion of the fees and charges identified in Recommendation 1, totaling \$13,990 plus \$6,895 in late charges, be paid immediately.

The remainder of the amount included in the recommendation, \$89,461 (\$63,829 in underreported gross receipts and \$25,632 in late charges), is related to CPT's deduction of fees from reported gross receipts for tennis instructors. Specifically, the Report states that CPT underreported its gross receipts by improperly treating the tennis instructors as independent contractors rather than employees. As the Report cites, the Agreement permits CPT to include in gross receipts only the net income received "...in connection with services provided by tennis instructor(s) functioning as independent contractors." While this language provides support for the audit finding because the change in status occurred during the term of this Agreement, Parks believes that the inclusion of the full amount of these fees in gross receipts would be inconsistent with the clear intent of both Parks and CPT at the time the initial Request for Proposals was issued and the Agreement was negotiated and executed. At that time, Parks did not intend to require CPT to include tennis instructor fees in its reported gross receipts, as they were seen instead as revenues that were passed through to those instructors.



The Report notes that during the term of the Agreement, shortly before the period covered by the audit, the tennis instructors began filing W-2 forms (as employees) and stopped filing W-9 forms (as independent contractors). As a result, the Comptroller deemed this deduction to be inappropriate.

The language in the Agreement referring to tennis instructors "functioning as independent contractors" reflected the City's understanding (in 2002) that the common practice in tennis facilities was to hire instructors as independent contractors. However, as CPT learned in 2005, as a result of a New York State Department of Labor (DOL) audit, the relationship with the instructors did not meet the State's standard for treatment as independent contractors. Consequently, CPT's business model had to change, in that the former practice did not comport with DOL expectations. That said, the relative portion of the fee income that was going to the instructors remained unchanged. Thus, had Parks known in 2002 of this change, it would likely have either altered the language defining gross receipts to eliminate the distinction between independent contractors and employees, with respect to the treatment of instructor fees, or it would have accepted a lower license fee proposal from CPT, to reflect the treatment of the entire instructor fee as gross receipts income.

For the reasons above, Parks has determined that it would not be appropriate under the circumstances for the City to insist on full payment of license fees relating to the status of the instructors as employees. However, CPT must bear some responsibility for the audit finding because it failed to notify Parks in 2005 that the DOL audit had prompted a change in classification of the tennis instructors, and failed to confirm that Parks would not seek to treat the instructor fees differently. In light of this failure to disclose on CPT's part, Parks has determined to seek repayment, in installments, of \$22,390 (i.e., 25% of the amount of the audit finding amount for underreported gross receipts and late charges). The Law Department has advised Parks that it is not required to seek full payment, and has worked with Parks to clarify the parties' intent in the proposed agreement for a new concession at this facility that is currently pending. CPT is the proposed concessionaire for this new agreement, which would run for fifteen years.

Parks will also require CPT to implement fully the following audit recommendations, as applicable, in connection with the award of a new Concession Agreement:

Recommendation 2 – Implement a system of internal controls and keep complete and accurate records as well as books of account and data, including daily sales and receipts records that show in detail the total business transacted by CPT and the gross receipts derived therefrom.

Recommendation 3 – Issue receipts for all payments received.

Recommendation 4 – Maintain records to track funds transferred in or out of its bank account, clearly identifying the purpose.

Recommendation 5 – Maintain records that identify loans being made to CPT and loans that CPT makes to other facilities.

Recommendation 6 -- Maintain records clearly identifying the expenses that CPT pays on behalf of other tennis facilities and the expenses that are paid on behalf of other tennis facilities and the expenses that are paid on behalf of CPT.

Recommendation 7 -- Arrange for the installation of separate electric and water meters for the licensed premises.

CPT will be required to install separate electric and water meters at the commencement of any pending or future concession agreement with Parks. Parks will enforce CPT's compliance with this requirement as well as ensure proper payment by CPT of all water and electricity used in the in operation of any pending or future concession agreement.

Recommendation 8 -- Make arrangements with Parks to pay for past water and electricity use.

The NTC requires CPT to reimburse Parks for past use of water and electricity in connection with the operation of this concession.

Recommendation 9 -- Obtain the proper insurance coverage as required by the license agreement.

CPT will be required to maintain the proper insurance, as applicable, under any pending or future concession agreement with Parks. Parks will monitor CPT's compliance with all necessary insurance requirements throughout the term of any pending or future concession agreement.

Recommendation 10 -- Pay \$2,081 in back sales tax to New York State.

The NTC requires that CPT quickly resolve the amount owed in back taxes and provide copies of related correspondence from the New York taxing authorities to verify the resolution.

Parks will continue to closely monitor and require its concessionaires to comply with the terms and conditions of such agreements. We wish to thank the Comptroller's audit staff for their efforts in performing this review.

Sincerely,



Elizabeth W. Smith

cc: Comm. Adrian Benepe
Robert Garafola
David Stark
Walter Roberts
Jeffrey Kay, Mayor's Office of Operations
George Davis III



City of New York
Parks & Recreation

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Commissioner

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January 26, 2009

Central Park Tennis Center
Anthony Gaudio
196-00 Union Turnpike
Fresh Meadows, NY 11366

Re: NOTICE TO CURE

**Comptroller's Draft Audit Report on Central Park Tennis Center
January 1, 2006 to December 31st, 2007 FP08-096A, Dated January 9, 2009
License Agreement Number M10-TP**

Dear Mr. Gaudio:

This letter addresses the findings and recommendations contained in the New York City Comptroller's (Comptroller) draft audit report (Report) on Central Park Tennis' (CPT) License Agreement (Agreement) with New York City Department of Parks & Recreation (Parks). The Report found that CPT made required capital improvements approved by Parks and maintained its required security deposit during the term of the License Agreement. However, the Report also indicated that CPT had significant internal control weaknesses and, as a result, the auditors could not determine whether all of the revenue received by CPT was in fact accurately reported to Parks. Specifically, the Report recommended that CPT:

- I. Pay the City \$110,347 in additional license fees and late charges for underreporting gross receipts.**

The amount due in Recommendation 1 is calculated in the table below.

Description of Charge	Amount Due
a. Non-Allowable Deduction	\$63,829
b. Underreported Single Play and reservation Tickets	213
c. Net(over) / Underreported Income	(460)
d. Undocumented Loans	5,550
e. Undocumented Deduction	2,000
f. Credit Card Deduction	434
g. Unexplained Net Difference Between BS and GRS	6,253
h. Subtotal	77,819
i. Late Fee Charges	32,528
j. Total:	\$110,347



As we have discussed, concerning the amount due for non-allowable deductions totaling \$89,461 (\$63,829 in underreported gross receipts shown in line a and \$25,632 in late charges shown in line i). Parks requests that CPT pay \$22,390 (i.e., 25% of the amount of the audit finding for underreported gross receipts and late charges). Additionally, CPT should remit payment to Parks for the amounts due in lines b – g, totaling \$20,886 (\$13,990 plus \$6,896 in late Charges shown in line i).

8. Make arrangements with Parks to pay for past water and electricity use.

The Report found that CPT did not pay utilities for the tennis center during the term of the Agreement. Section 7.1 of the Agreement states the following:

Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operation of the license and pay all utility costs. Utilities as described in the Agreement, may include, but shall not be limited to, electricity (emphasis added), gas, heat, coolant, telephone, water (emphasis added) and sewer charges.

With respect to electric charges, since Parks and CPT jointly use the facility and the facility only has one electric meter, Parks and CPT will divide in half the cost of all electricity bills covering CPT's operating months, April through November, during the audit period.

To determine an appropriate charge for electricity, Parks has reviewed the facility's utility bills for most of the last two operating years. From April 2007 through August 2008 (not including the non operating period), Con Ed billed the facility an average of \$180.31 per month. Accordingly, the facility was billed for a total of approximately \$2,885 for operating years 2007 and 2008. CPT is responsible for 50%, or \$1,443, of this bill.

With respect to water charges, Parks has determined (in coordination with the City's Department of Environmental Protection) that CPT owes a total of \$258 for its seasonal usage of water involved in operating the snack bar. Parks anticipates your prompt remittance for the total amount due under Recommendation 8, \$1,701 (\$1,443 and \$258).

10. Pay \$2,081 in back sales tax to New York.

The report identified that CPT underreported \$24,116 in taxable sales on its 2007 New York State and Local quarterly Sales and Use Tax Return. As a result, the Report state that CPT owes an additional \$2,065 in underpaid sales tax. Please contact the appropriate New York taxing authorities to resolve this matter and inform Parks in writing of the outcome. CPT should include copies of related correspondence from the New York taxing authorities verifying the resolution along with its written response to Parks.

In total CPT owes the City:

Description of Charge	Amount Due
a. Amount Requested by Parks Per Recommendation 1	\$43,276
b. Past Utility Use Requested by Parks Per Recommendation 8	1,701
c. Total:	\$44,977

As discussed, Parks requests payment of \$33,782 immediately. Additionally, Parks requests that CPT submit a proposed schedule for repayment of the outstanding balance, \$11,195, in the next ten (10) days.

Please note: this NTC does waive other steps that Parks may take to require CPT to comply with recommendations 2 -7 and 9 as listed in the Report.

Finally, we wish to thank CPT for its cooperation during the audit review and anticipate its remittance of the requested amount and compliance regarding implementation of the other recommendations discussed above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth W. Smith', with a long horizontal line extending to the right.

Elizabeth W. Smith