

# AUDIT REPORT



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

## **Follow-up Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office**

*MD04-062F*

**June 24, 2004**



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

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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 performed a follow-up audit of the financial and operating practices of the Bronx County Public Administrator's Office (Bronx PA). We determined whether the Bronx PA implemented the recommendations made in an earlier audit, *Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office*, issued June 23, 1999 (Audit No. MD99-098A).

The results of our audit, which are presented in this report, have been discussed with Bronx PA officials, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that estates are administered according to applicable guidelines and in the best interest of the decedents and their beneficiaries.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

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

William C. Thompson, Jr.  
WCT/fh

**Report:** MD04-062F  
**Filed:** June 24, 2004

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

**Follow-up Audit Report on the  
Financial and Operating Practices of the  
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**AUDIT REPORT IN BRIEF**

This is a follow-up audit to determine whether the Bronx County Public Administrator's Office (Bronx PA) implemented the recommendations made in an earlier audit, *Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office*, issued June 23, 1999 (Audit No. MD99-098A). The earlier audit determined the extent to which the Bronx PA complied with the provisions of Article 11 of the Surrogate's Court Procedure Act (the Act), the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators* (Administrative Board Guidelines), and other applicable City and State laws and regulations. This audit discusses the details of the recommendations of the previous audit report and the status of each recommendation.

**Audit Findings and Conclusions**

The previous audit made 37 recommendations to the Bronx PA. Of the 37 recommendations, 20 were implemented, one was partially implemented, 13 were not implemented, and three are no longer applicable.

This follow-up audit found that the Bronx PA has improved its procedures regarding the handling of its estates. However, the PA still needs to improve its inventory procedures and correctly report to the Internal Revenue Service all payments made to independent contractors.

**Audit Recommendations**

The Bronx PA should implement the recommendations of the previous audit that are still applicable but were not fully addressed. Upon implementation of these recommendations, the PA will have corrected the conditions cited in the previous report and in this follow-up report. The recommendations are somewhat revised in accordance with the findings of this follow-up report. The recommendations are that the PA should:

- Ensure that all decedents' assets are recorded in its computerized inventory system.

- Ensure that the inventory system is updated to reflect the disposition of assets.
- Conduct an annual physical inventory of decedents' properties.
- Ensure that all supporting documentation for disbursements is properly maintained and filed in corresponding estate folders to facilitate review and approval for prompt payment.
- Stamp paid invoices as cancelled to prevent duplicate payment.
- Develop and adhere to written procedures for identifying, tracking, and reporting 1099-reportable payments.
- Review its practice of issuing 1099 forms for the Bronx PA general counsel's support staff, since the PA is not directly responsible for their compensation.
- Review the 1099-reportable payments cited in our previous audit and this follow-up audit, and accordingly amend the informational returns.
- Properly secure blank checks.
- Turn over to the City \$3,851 in unclaimed funds owed it.
- Select an independent auditing firm in accordance with Comptroller's Directive #5.
- Contract for an annual audit of its operations in accordance with the Surrogate's Court Procedure Act.
- Obtain a budgeting decision from OMB as to whether the audit should be paid for out of additional City funding or suspense funds and formally request funding from the City's OMB to pay for the annual audit.
- Comply with the State law requiring it to report all estates that fall within the State guidelines.

### **Discussion of Audit Results**

The matters covered in this report were discussed with Bronx PA officials during and at the conclusion of this audit. A preliminary draft report was sent to Bronx PA officials on May 3, 2004, and was discussed at an exit conference held on May 18, 2004. On May 20, 2004, we submitted a draft report to Bronx PA officials with a request for comments. On June 10, 2004, we received a written response from Bronx PA officials.

In their response, Bronx PA officials stated that they have taken steps to implement or partially implement 11 recommendations, disagreed with one recommendation, and did not address two recommendations.

The full text of the Bronx PA response is included as an addendum to this report.

## INTRODUCTION

### Background

The Offices of the Public Administrators for the counties within New York City are governed by Article 11 of the New York State Surrogate's Court Procedures Act (the Act). Under the Act, the head of each Office—the Public Administrator—“is appointed by and may be removed by the judge or judges of the court . . . and shall continue in office until removed.” Each Public Administrator is responsible for administering the estates of individuals who die intestate (without a will) or when no other appropriate individual is willing or qualified to administer the estate.

The Bronx County Public Administrator's Office handles the estates of such decedents in the Bronx: it arranges funerals, collects and manages the decedent's assets, pays estate creditors, collects estate debts, sells the personal property of the decedent, prepares and files estate tax returns, searches for possible heirs, locates and distributes assets to heirs, and submits an accounting of estate assets to the Surrogate Court.

In September 1993 the Administrative Board for the Offices of the Public Administrators of the State of New York was created to oversee the PA offices. Section 1128 of the Act mandates that the Board consist of 13 members comprising Surrogate's Court judges and other members selected by the New York State Comptroller and Attorney General and the President of the New York Bar Association. In November 1995, pursuant to the authority granted it by §1128, the Board enacted the Report and Guidelines of the Administrative Board for the Offices of the Public Administrators (Administrative Board Guidelines). These guidelines include rules for: record keeping; cash, property, and other asset management; maintenance of “suspense” accounts; payment of fees; and the initial inspection of a decedent's premises.

The City of New York is the primary source of funds for the Bronx PA. To fund office expenses not covered by the City budget appropriation, the Administrative Board Guidelines authorize the PAs to charge each estate an administrative fee of up to one percent and to maintain a “suspense” (imprest) account. These fees are deposited in a separate bank account and are used to supplement the PA budget. The Administrative Board Guidelines stipulate that suspense account funds be used to pay expenses “necessary for the proper functioning of the office's operations and for the administration of estates.” The funds can also be used as a loan to estates to pay expenses prior to the conversion of estate assets to cash.

According to the City's 2003 Executive Budget, the Bronx PA budget was \$334,138 for Personal Services and \$13,499 for Other Than Personal Services. As of the end of Fiscal Year 2003, the Bronx PA had seven City employees, including the Public Administrator and Deputy Public Administrator. The PA also employed five non-City employees who were paid from its suspense account. As of September 4, 2003, the Bronx PA administered 1,034 open estates valued at \$44.5 million.

## **Objectives**

This is a follow-up audit to determine whether the Bronx PA's Office implemented the 37 recommendations made in an earlier audit, *Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office*, issued on June 23, 1999 (Audit No. MD99-098A). The earlier audit determined the extent to which the Bronx PA's Office complied with the provisions of Article 11 of the Act, Administrative Board Guidelines and other applicable City and State laws and regulations.

## **Scope and Methodology**

The scope period of this audit was Fiscal Year 2003.

In this follow-up report, we classified the current status of the recommendations made in the previous audit report as follows:

**IMPLEMENTED:** The agency agreed with the recommendation by adopting the recommendation and by instituting corrective action.

**PARTIALLY IMPLEMENTED:** The agency instituted some corrective action.

**NOT IMPLEMENTED:** The agency either disagreed with the recommendation or there was no evidence of implementation.

**NO LONGER APPLICABLE:** The agency took other actions, or regulations were revised that rendered the recommendation moot.

To understand the policies, procedures, and regulations with which the Bronx PA must comply, we reviewed Article 11 of the Act, the Administrative Board Guidelines, and other applicable City and State regulations. We interviewed the Bronx PA staff to gain an understanding of the office's procedures regarding the handling of its estates and its suspense account. We also met with Bronx PA officials to discuss the implementation status of each of the prior audit's recommendations.

To assess the Bronx PA's accounting procedures relating to the handling of the estate accounts for compliance with the Administrative Board Guidelines, we randomly selected a sample of 25 estates from the 86 estates closed during Fiscal Year 2003. We determined whether each estate valued at more than \$500 was accounted for separately, as required by the guidelines. We also reviewed the account ledger and supporting documentation for each transaction for each sampled estate.

To assess controls over decedents' properties, we reviewed the Bronx PA's system for collecting, recording, and securing properties removed from the decedents' residences. We determined whether the PA prepared inventory lists of decedents' properties and whether the properties were securely stored. If the properties were sold, we checked whether the proceeds were correctly recorded in the estate accounts. In addition, we determined whether the PA

maintained records regarding investigators' reports, appraisals of decedents' assets and sale prices of decedents' properties.

We determined whether the Bronx PA filed the required tax returns for decedents' estates and accurately reported to the Internal Revenue Service (IRS) payments made to independent contractors. We also determined whether all estate account balances were adequately protected by the Federal Deposit Insurance Corporation (FDIC) insurance.

We reviewed the payments made from the suspense account for the randomly selected month of March 2003 to determine whether the payments were for allowable expenses, the amounts paid were correct, the payments were properly authorized, and the payments had adequate supporting documentation. In addition, we determined whether the checks were issued in proper sequence and all voided checks were accounted for.

We determined whether independent audits of the Bronx PA were performed annually and whether the PA filed the required annual report to the State Comptroller.

The results of the above tests, while not projectable for the entire year, provided us a reasonable basis to determine whether the PA had implemented the recommendations made in the previous audit.

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 Bronx PA officials during and at the conclusion of this audit. A preliminary draft report was sent to Bronx PA officials on May 3, 2004, and was discussed at an exit conference held on May 18, 2004. On May 20, 2004, we submitted a draft report to Bronx PA officials with a request for comments. On June 10, 2004, we received a written response from Bronx PA officials.

In their response, Bronx PA officials stated that they have taken steps to implement or partially implement 11 recommendations, disagreed with one recommendation, and did not address two recommendations.

The full text of the Bronx PA response is included as an addendum to this report.

## RESULTS OF FOLLOW-UP AUDIT

**Previous Finding:** The Bronx PA did not maintain accurate and complete inventory records of decedents' property. For 14 of 100 sampled estates, either the inventory list was not complete or the list was not updated to reflect disposition of property.

***Previous Recommendation #1:*** "The PA should ensure that all decedents' assets are recorded in its computerized inventory system."

***Previous Recommendation #2:*** "The PA should ensure that the inventory system is updated to reflect the disposition of assets."

***Previous Recommendation #3:*** "The PA should revise its procedures to ensure that it conducts an annual physical inventory of decedents' properties."

***Previous Recommendation #4:*** "The PA should conduct a physical inventory immediately to reconcile the differences we found when we conducted our physical inventory"

***Previous Recommendation #5:*** "The PA should adequately label 'non-valuable' merchandise."

***Previous Recommendation #6:*** "The PA should ensure that items that are sold are marked as sold in the inventory system and not deleted."

***Previous Bronx PA Response:*** Although the PA did not specifically respond to the recommendations regarding inventory control, it stated that "in response to some of the problems you pointed out in connection with the inventory control, we have hired an individual, effective September of 1999, to be responsible for the coordination of all the inventory matters. This individual . . . will certainly assure that there will be no further problems in this area. In addition, we are conducting a universal inventory of all property which we have in this office."

### **Current Status of Recommendation #1:** NOT IMPLEMENTED

One of our sampled closed estates still had inventory maintained at the PA office. However, the property was not listed on the PA's computerized inventory listing of Real and Personal Property, and there was no indication on the estate ledger sheet that any of the estate's personal property was sold. By omitting the property from the inventory listing, the PA may not be aware of its existence, and the decedent's estate may not receive funds that it is entitled to.

In addition, another decedent from our sampled estates owned two apartment buildings, neither of which was listed on the inventory listing of Real and Personal Property.

**Current Status of Recommendation #2: NOT IMPLEMENTED**

The PA did not update the computer system to show the disposition of items that have been sold. For one of our sampled estates, the PA sold the decedent's jewelry; however, the disposition still reads "pending" and is listed as being stored in the safe.

Other closed estates in our sample list savings accounts, stocks and bonds, and life insurance policies that have been collected. However, the current status on the inventory listings still reads "pending" for each of these assets.

**Current Status of Recommendation #3: NOT IMPLEMENTED**

The Bronx PA has no procedures for conducting annual physical inventories of decedents' properties. The Deputy Public Administrator stated that an ongoing physical inventory of decedents' properties is performed throughout the year, as inventory is collected and sold.

**Current Status of Recommendation #4: NOT IMPLEMENTED**

We received no evidence from the PA showing that this reconciliation was performed.

**Current Status of Recommendation #5: NO LONGER APPLICABLE**

The PA classifies the decedents' properties as valuable or non-valuable. The valuable property is stored in the PA's safe, and the non-valuable property, such as costume jewelry, is stored in the backroom. Although not detailed, the PA maintains two lists of estates with properties, one for the estates with property in the safe and the other for the estates with property in the backroom. Since the properties are adequately separated, it is no longer necessary for the PA to mark the properties in the backroom as "non-valuable."

**Current Status of Recommendation #6: IMPLEMENTED**

We found no instances in which sold items that were listed on the computerized inventory listing were deleted.

\* \* \* \* \*

**Previous Finding:** The Bronx PA did not track estate account balances to ensure that it had enough funds available for investments, and it did not accurately record the maturity dates of investments in treasury bills (T-bills). For seven of 100 sampled estates, the PA purchased T-bills even though the individual estate account balances were insufficient to cover the costs.

Since the PA did not verify T-bill maturity dates and estate account balances before investing the funds, the seven sampled estates earned approximately \$1,500 in interest that they were not entitled to.

***Previous Recommendation #7:*** “The PA should verify the estate account balances before making any investment decisions.”

***Previous Bronx PA Response:*** “In response to suggestions from your office, we have streamlined our procedure for treasury bill investments to avoid any problems occurring in the future.

“Your report had indicated that for one estate, the bookkeeper had made an error, in that he basically purchased treasury bills for an estate in excess of the available proceeds. I believe that the procedures I have instituted will avoid this happening again.”

**Current Status:** IMPLEMENTED

The PA purchased treasury bills for seven of our sampled estates. In all seven cases, there were adequate funds in the estate for the purchase of the treasury bills.

\* \* \* \* \*

**Previous Finding:** For 26 of the sampled estates, there was no supporting documentation for \$59,596 of disbursements charged to estates’ accounts. For example, one estate had 20 disbursements amounting to \$23,129 that had no supporting documentation. Some of these charges were \$8,114 for a bank wire transfer, \$3,100 for day camp, \$700 for law books, and \$200 for a miscellaneous claim.

Without the supporting documentation, it is difficult to determine the accuracy of recorded disbursements from estate accounts.

***Previous Recommendation #8:*** “The PA should keep the supporting documentation for all disbursements recorded in the estate accounts.”

***Previous PA Response:*** “All bills require a submission of proof of claim with supporting documentation. . . . It is standard operating procedure for this office not to pay any bills without documentation.”

**Current Status:** IMPLEMENTED

Initially we found that disbursements from eight of our sampled closed estates were missing supporting documentation amounting to \$29,470.

The Deputy Public Administrator contacted the vendors to obtain copies of the missing invoices and provided them to us. He stated that the staff sometimes does not file invoices in the correct estate folders. We noted this problem since we found invoices belonging to other estates that were improperly filed in our sampled estate folders. We also noted that the Bronx PA does not mark invoices as cancelled when payments are made.

\* \* \* \* \*

**Previous Finding:** For three sampled estates, outstanding bills amounting to \$5,053 were not paid by the PA before the estates were closed and their funds distributed. Further, the audit found eight open accounts in its sample that had outstanding bills totaling \$251,609 that required payment before the closing of these estates.

***Previous Recommendation #9:*** “The PA should ensure that all outstanding estate bills are paid before an estate is closed.”

***Previous Recommendation #10:*** “The PA should always keep copies of the proof of claim forms sent to creditors.”

***Previous Bronx PA Response:*** “The procedure in this office for the payment of claims are that anytime a claim is sent in, a proof of claim is mailed to the creditor advising them that unless they file a proof of claim form, their claim will not be considered. In addition, we also have the ability at the time of the final account, to give notice to rejected creditors, that is those who file proof of claims which we believe are not valid, possible and contingent creditors. We utilize this procedure in the event there is a substantial claim. We do not use the procedure for telephone bills, Con Edison bills, credit card bills, department store charges.”

**Current Status of Recommendation #9:** IMPLEMENTED

All bills related to our sampled estates were properly and promptly paid prior to the closing of the estates.

**Current Status of Recommendation #10:** IMPLEMENTED

The Bronx PA maintained copies of all proof of claim forms it sent to creditors for the sampled estates.

\* \* \* \* \*

**Previous Finding:** Some of the estates’ assets were not collected.

- The Bronx PA did not actively search on the Internet for funds due decedents. By searching the Web site of the New York State Office of Unclaimed Funds ([www.osc.state.ny.us](http://www.osc.state.ny.us)), the Bronx PA could have located funds that belonged to 24 (24%) sampled estates.
- A review of the Bronx PA's files revealed 12 instances in which the PA did not collect all of the decedents' assets. For example, the PA did not collect two checks from Chemical Bank totaling \$262 for an estate. In another example, a life insurance policy for \$1,500 for a decedent was not collected.

***Previous Recommendation #11:*** “The PA should ensure that all estate assets are collected.”

***Previous Bronx PA Response:*** “Your report indicates that you found two (2) estates where we had not collected a check for \$262 and a life insurance policy for \$1,500. We are extremely proud that in those instances where you found a problem, that it was of an immaterial amount. I have spoken with all members of my staff and asked them to make . . . efforts to avoid any collection problems in the future.”

**Current Status:** IMPLEMENTED

We verified that the Bronx PA collected all the estate assets for our sampled estates.

***Previous Recommendation #12:*** “The PA should resolve its computer problems, so that it can search the Internet site of the NYS Office of Unclaimed Funds ([www.osc.state.ny.us](http://www.osc.state.ny.us)) to determine whether any of its estates are listed.”

***Previous Recommendation #13:*** “Until its computer problems are resolved, the PA should contact the NYS Office of Unclaimed Funds directly to determine whether any of its estates have unclaimed funds.”

***Previous Bronx PA Response:*** “The PA did not discuss its computer problems in its response. It stated ‘. . . where there are next of kin, we routinely check with the State Comptroller and we write to them to inquire whether there are any assets. However, based on your suggestion, we will now expand the inquiry from estates with relatives to all estates in this office where we have been appointed administrator of the estate.’”

**Current Status of Recommendation #12:** IMPLEMENTED

The Bronx PA stated that although it is currently able to access the Internet, it does not rely solely on the information found on the State Comptroller's Web site, since the postings are not always accurate and updated. The PA also has a contact person at the State Comptroller's Office. Any correspondence between the Bronx PA and the State is kept in the file.

Our search of information on the State Comptroller's Web site found it to be the same as the documentation in the estate files maintained by the Bronx PA.

**Current Status of Recommendation #13: IMPLEMENTED**

The Bronx PA has a contact person at the State Comptroller's Office, and any correspondence between the Bronx PA and the State is kept in the estate file.

\* \* \* \* \*

**Previous Finding:** The PA underreported \$160,417 in payments made for non-employee services that were reportable to the IRS on Form 1096, *Annual Summary and Transmittal of U.S. Information Returns* and related Form 1099-MISCs during calendar year 1998. This might have allowed individuals (i.e., consultants, attorneys, and other vendors) to underreport their income to the government and avoid paying taxes on the excluded amounts. The PA might also have been subject to a maximum penalty of \$100,000.

The \$160,417 in discrepancies consisted of:

- A \$126,237 difference in what was shown as paid to the Bronx PA general counsel for himself and his staff and the total amount shown on the 1099 forms for the general counsel and his support staff.

The Bronx PA should not be responsible for issuing separate 1099 forms to the counsel's staff. A 1099-MISC form should have been issued to the general counsel for total compensation.

- Fees of \$6,165 in payments to home health care service providers and witnesses for which 1099 forms were not prepared.
- A total of \$21,665 in consulting and vendor fees that were excluded on the 1099 tax forms for 12 individuals.
- A total of \$6,350 for seven individuals (four City employees and three non-City employees) for performing certain weekend services for decedents' real estate property auctions. The non-City employees did not have this income reported on their 1099 forms; the City employees did not have this income reported on their W-2 forms.

***Previous Recommendation #14:*** "The PA should develop written procedures for identifying, tracking, and reporting 1099 reportable payments."

***Previous Bronx PA Response:*** “In order to avoid this problem from continuing, I have instructed our accountant to be responsible for issuing the 1099’s.”

**Current Status:** NOT IMPLEMENTED

The Bronx PA did not develop written procedures for identifying, tracking, and reporting 1099 reportable payments. Consequently, for Calendar Year 2002, the Bronx PA did not issue 1099-MISC forms amounting to \$961,696 as detailed below:

- A \$276,039 difference in what was shown, based on Bronx PA records, as paid to the Bronx PA general counsel for himself and his staff and the total amount shown on the 1099 forms for the general counsel and his support staff.
- A \$1,337 difference in what was shown as paid to two guardians ad-litem and the total amounts shown on the their 1099 forms.
- Fees of \$684,320 in payments to 27 private attorneys, two investigators, a corporation that provided legal services, and 10 other independent contractors for which 1099 forms were not prepared.

These errors could enable the payees to underreport their income to the government and thereby avoid paying taxes on the excluded amounts and subject the Bronx PA to penalties.

***Previous Recommendation #15:*** “The PA should review its practice of issuing 1099 forms for the general counsel’s support staff, since the PA is not directly responsible for payment of their salaries.”

***Previous Bronx PA Response:*** “My counsel has agreed to be responsible for the 1099s so as to avoid any errors by the bookkeeping department.”

**Current Status:** NOT IMPLEMENTED

For Calendar Year 2002, the Bronx PA continued to issue 1099s to the general counsel’s staff, although the Bronx PA was not directly responsible for their compensation. The general counsel, instead of the Bronx PA, should be responsible for identifying, tracking, and reporting to the IRS all 1096 and 1099 reportable payments to his support staff.

***Previous Recommendation # 16:*** “The PA should review the 1099 reportable payments cited in this report.”

***Previous Bronx PA Response:*** “It has been the procedure of this office to permit the bookkeeper, who has many other duties to do the 1099’s based upon records from the computer. It appears that he has made some mistakes.”

**Current Status:** NOT IMPLEMENTED

We found no evidence that the Bronx PA reviewed the previously-cited 1099 MISCs or amended its form 1096 and related 1099-MISCs for Calendar Year 1998 so as to properly report the payments to the IRS.

***Previous Recommendation #17:*** “The PA should implement a coding system or other mechanism to identify 1099 reportable payments so that at the end of the year the office can summarize the amounts and forward the information to the individuals receiving payment and the IRS.”

***Previous Bronx PA Response:*** The Bronx PA did not address this recommendation in its response.

**Current Status:** PARTIALLY IMPLEMENTED

The Bronx PA used transaction codes to classify expenses and facilitate the identification of payments made for non-employee services that are reportable to the IRS as 1099-MISCs and prepared a spreadsheet to track payments made to the general counsel, his staff, and other vendors.

However, despite these procedures, as stated previously, the Bronx PA did not identify all 1099 reportable payments.

\* \* \* \* \*

**Previous Finding:** There were inconsistencies in the accounting fees charged by the Bronx PA’s outside accountant for tax returns prepared for 10 (10%) of 100 sampled estates. Certain tax returns were not prepared based upon agreed-upon fees, and higher fees charged were not supported by invoices that detailed the work done.

As fiduciary of the estates, it is the Bronx PA’s responsibility to ensure that the fees charged to the estates are reasonable and justified. Therefore, the PA should require its accountant to document the charges to the estates.

***Previous Recommendation # 18:*** “The PA should include a standard fee for all types of tax returns in its agreement with its outside accountant.”

***Previous Bronx PA Response:*** A letter from the accountant was attached to the PA response. The accountant stated, “All fees charged by our firm have been agreed to in advance, by the Bronx Public Administrator. The contract states the minimum and

verbiage to the effect, that ‘any requested fee increase is agreed to in advance by the Public Administrator and her attorney.’ The higher amounts were agreed, in advance, therefore, the invoice did not detail the work done. From now on, our invoices, when in excess of the minimum fee structure, will reflect the details of the work done.”

**Current Status:** NO LONGER APPLICABLE

Although the Bronx PA does not include a standard fee for all types of tax returns in its agreement with its outside accountant the invoices for the services provided to the estates are documented, justified, and appeared to be reasonable.

***Previous Recommendation # 19:*** “The PA should ensure that its accountant fully documents his charges.”

***Previous Bronx PA Response:*** The PA’s outside accountant responded to the recommendation, stating, “The Audit should have disclosed that our firm fully documented our charges for preparation of all Forms 706 and for those Fiduciary Income Tax Returns where the fees exceeded \$750. In utilizing the engagement letter all charges will be documented.”

**Current Status:** IMPLEMENTED

The accountant invoices for services provided to the estates were documented, justified, and appeared to be reasonable.

***Previous Recommendation # 20:*** “The PA should re-evaluate the accountant’s charges for the ten estates we cited.”

***Previous Bronx PA Response:*** The Bronx PA did not address this recommendation in its response. The Bronx PA’s outside accountant stated in his response, “We require the names of the estates for us to comply with this request.”

**Current Status:** IMPLEMENTED

The Bronx PA has stated that it has re-evaluated the accountant’s charges for the ten estates cited in the previous audit. However, the Bronx PA maintains its position that all fees charged by the accountant were justified, based on the work done on the tax returns.

\* \* \* \* \*

**Previous Finding:** As of August 28, 1998, the Bronx PA had 12 estate accounts with balances of more than \$100,000, the maximum amount covered by

Federal Deposit Insurance Corporation (FDIC) insurance. These accounts, which in the aggregate exceeded the FDIC maximum by as much as \$1 million, remained over the FDIC maximum from three to 56 weeks. Five of these 12 accounts were still over the FDIC maximum as of February 9, 1999.

***Previous Recommendation #21:*** “The PA should purchase Treasury bills, which are insured by the Federal government, with the funds not covered by FDIC insurance.”

***Previous Recommendation #22:*** “The PA should monitor all account balances to ensure that they are secured.”

***Previous Recommendation #23:*** “The PA should contact the FDIC to get a clearer understanding of record keeping requirements for ensuring adequate FDIC coverage for estate accounts. Such correspondence should be in writing.”

***Previous Bronx PA Response:*** The Bronx PA did not specifically address the recommendations regarding the steps it should take to ensure that estate balances are fully secured. In its response to the audit report, it stated:

“It is obvious that if we have monies in three banks all earmarked for estate checking, that should one of the banks suffer financial loss, in determining whether a particular estate has money in their bank, there would have to be proration among all the banks. The bottom line being, that as long as we keep less than \$300,000 in any given estate checking account, we are fully insured.

“It should be pointed out, at the time we make final distribution of an estate, there will be balances in the estate checking account in excess of \$300,000 in those estates that have substantial assets. There is no way to avoid this occurring, but it is for a short period of time.”

**Current Status of Recommendations #21 and #22:** IMPLEMENTED

The Bronx PA purchased T-bills for the seven of our sampled closed estates with account balances exceeding \$100,000. The Bronx PA ensured that the account balances were secured by keeping the funds in T-bills until the court decree was signed. As the PA stated in its previous response, the only time the funds in the estate accounts were not invested in T-bills was immediately prior to final distribution.

**Current Status of Recommendation #23:** NO LONGER APPLICABLE

The Bronx PA provided us a written security agreement between the Public Administrator and JPMorgan Chase, dated October 16, 2003. The agreement indicates that estate bank accounts are collateralized by approved government securities, with a maximum amount of \$25 million in anticipated monthly uninsured deposits. In addition, the Bronx PA continues to purchase treasury bills for estates with account balances exceeding \$100,000.

\* \* \* \* \*

**Previous Finding:** There were weaknesses with the Bronx PA's procedures for handling unused checks and disbursements. Specifically:

- Unused checks were not properly secured. The Bronx PA kept its inventory of unused checks in an unlocked room to which everyone had access. In addition, there was a box of blank checks near the printer in the outer office.
- Checks were signed without a review of the supporting documentation related to the charge. Therefore, it was uncertain whether the amount of the payment was accurate and valid.
- Voided checks were not retained and accounted for.

***Previous Recommendation #24:*** "The PA should properly secure blank checks."

***Previous Bronx PA Response:*** "Due to limited space in this office, we must keep the unused checks in the storage room along with certain other property that is stored for safe keeping therein. These checks are kept in a locked room each night. However, there is no way that we have room to store them in an areas where access would be denied to all members of the staff."

**Current Status:** NOT IMPLEMENTED

The Bronx PA continues to keep unused checks in the storage room. Although the room is locked each night, Bronx PA employees other than the Public Administrator, Deputy Public Administrator, and in-house accountant continue to have access to the checks during normal business hours when the storage room is not locked.

***Previous Recommendation #25:*** "The PA should ensure that supporting documentation is reviewed before a check is signed."

***Previous Bronx PA Response:*** "I review the checks and any checks in excess of \$100 or checks which are not routine checks, I personally inquire of the bookkeeper for substantiation of the checks."

**Current Status:** IMPLEMENTED

The Public Administrator and the Deputy Public Administrator receive the supporting documentation along with the checks to be signed. Although they do not initial the supporting

documentation to show authorization, Bronx PA officials stated that they review it to ensure that payment is reasonable and justified. For payments to individuals, the Public Administrator issues the accountant a brief hand-written note to show authorization of payment.

***Previous Recommendation #26:*** “The PA should retain and account for all voided checks.”

***Previous Bronx PA Response:*** “I have instructed the bookkeeper to keep copies of all voided checks for submission in the event of a subsequent audit.”

**Current Status:** IMPLEMENTED

Our review of payments made from the suspense account found two voided checks. Both voided checks were attached to the check register, and both checks were stamped “void.”

\* \* \* \* \*

**Previous Finding:** For four of the 16 sampled decedents’ residences that were required to be searched, the Bronx PA did not comply with the procedures for searches according to the Administrative Board Guidelines to ensure that decedents’ property is accounted for and secured. For instance, for one estate, an investigator’s report was not completed. In another, only one investigator signed the report.

***Previous Recommendation #27:*** “The PA should ensure it complies with Administrative Board Guidelines procedures for searching decedents’ residences.”

***Previous Bronx PA Response:*** “You indicated that in some instances the investigators failed to sign their report. I have discussed this with the investigators and they assured me that they will make every effort to avoid this situation from occurring again.”

**Current Status:** IMPLEMENTED

A residence investigation was applicable and conducted for four of our sampled estates. In each case the Bronx PA investigators completed a form detailing the inventory of the residence. Those present at the investigation are listed on each form, and each investigator signature appears on the form.

\* \* \* \* \*

**Previous Finding:** Contrary to the Administrative Board Guidelines, the Bronx PA used unclaimed funds of \$3,851 deposited in its police property accounts and miscellaneous checking account for paying legal fees, funding its suspense account, and replenishing its petty cash account. The Administrative Board Guidelines state,

“If it appears that any estate funds or interest accrued thereon cannot be traced to a particular estate, the PA shall treat these funds as abandoned property and deposit them with the Finance Administrator of the City of New York. In no event shall the PA use monies in the Miscellaneous Receipts Account to fund the operations of the PA’s office.”

***Previous Recommendation #28:*** “The PA should transfer all the unclaimed funds and all the funds not traceable to a particular estate to the Finance Administrator, as required by the guidelines.”

***Previous Recommendation #29:*** “The PA should turn over to the City the \$3,851 identified by the audit, in unclaimed funds owed it.”

***Previous Bronx PA Response:*** “This office has agreed not to charge miscellaneous receipts with imprest or legal fees in connection with supervision of the accounts. I have instructed the bookkeeper to refund from suspense and legal monies referred to in your Report and to turnover any miscellaneous monies in the checking account to the City as unclaimed property.”

**Current Status of Recommendation #28: IMPLEMENTED**

Our review of the nursing home accounts, police property accounts, and miscellaneous checking accounts found that all unclaimed funds and all funds that were in the name of “unknowns” were transferred to the Finance Administrator.

**Current Status of Recommendation #29: NOT IMPLEMENTED**

We requested but did not receive from the Bronx PA evidence that \$3,851 in unclaimed funds identified by the previous audit was turned over to the City.

\* \* \* \* \*

**Previous Finding:** A review of suspense account disbursements for June 1998 disclosed that 10 of the 41 disbursements, amounting to \$2,543, lacked proper supporting documentation.

***Previous Recommendation #30:*** “The PA should ensure that all suspense account disbursements are adequately supported.”

***Previous Bronx PA Response:*** “The instructions to my staff are that no payment is to be made from the suspense account without documentation.”

**Current Status: IMPLEMENTED**

Our review of the Bronx PA's March 2003 suspense account disbursements found that there were invoices in the file to support all disbursements. The Bronx PA also maintained timesheets to support payments made to the non-City employees from the suspense account.

\* \* \* \* \*

**Previous Finding:** During Fiscal Year 1998 the Bronx PA did not transfer \$26,722 from its nursing home accounts opened during Fiscal Year 1997 to the New York City Department of Social Services (DSS), as required.

***Previous Recommendation #31:*** “The PA should transfer the unclaimed nursing home funds, after paying the funeral expenses, to the Department of Social Services at the end of the fiscal year.”

***Previous Recommendation #32:*** “The PA should transfer the \$26,722 identified by this audit as being owed to the Department of Social Services.”

***Previous Bronx PA Response:*** “Unknown to me the bookkeeper rolled over the unidentified names in the nursing homes for the years 1997 to 1998. Upon being advised of this, I instructed the bookkeeper and he did in fact sent to the Department of Social Service \$26,722 for unknown nursing home patients. The problem was apparently that the Department of Social Service refused to accept any money unless we could identify the name of the Medicaid recipient. However, a member of my staff obtained an agreement from the Department of Social Service to accept the monies without identification of the recipients.”

**Current Status of Recommendations #31 and #32:** IMPLEMENTED

Our review of the nursing home accounts found that after paying the funeral expenses and taking the appropriate administrative and legal fees, the Bronx PA transferred the remaining nursing home funds to the DSS. In addition, the PA provided us the May 1999 nursing home ledger sheet indicating that \$26,722 identified by the previous audit was transferred to DSS.

\* \* \* \* \*

**Previous Finding:** The Bronx PA did not have an independent audit of its records performed by an independent certified public accountant, as required by §1109 of the Act.

***Previous Recommendation #33:*** “The PA should contract for an annual audit of its operations in accordance with the Surrogate's Court Procedure Act.”

***Previous Recommendation #34:*** “The PA should select the independent auditing firm in accordance with Comptroller's Directive #5.”

***Previous Recommendation #35:*** “The PA should formally request funding from the City’s OMB [Office of Management and Budget] to pay for the above-mentioned annual audit, and obtain a budgeting decision from OMB as to whether the audit should be paid for out of additional City funding, or suspense funds.”

***Previous Bronx PA Response:*** “As you are aware, the Legislature provides in the Surrogate’s Court Procedure Act that the City of New York is to pay for an independent audit. The City of New York has refused to provide for funding of an audit.”

**Current Status of Recommendations #33, #34, and #35:** NOT IMPLEMENTED

The Bronx PA stated that it is still does not receive sufficient funds from the City of New York to pay for an audit that includes all of the auditing requirements contained in the Act.

\* \* \* \* \*

**Previous Finding:** In its January 1999 annual report to the State Comptroller, the Bronx PA omitted four estates with a cumulative estimated value of \$278,683. These estates met the State’s criteria for reportable estates but were not included in the report. For three of the four cases, the Bronx PA initially opened small accounts for the estates, implying that it believed that the value of the estates would be less than \$20,000. However, once the Bronx PA realized that the value of these estates exceeded the \$20,000 limit, it should have requested a Letter of Administration and reported these estates to the State Comptroller.

***Previous Recommendation #36:*** “The PA should comply with the State Law requiring it to report all estates that fall within the State guidelines.”

***Previous Bronx PA Response:*** “Each year this office files with the State Comptroller pursuant to their Rules and Regulations, a report of all estates which have not been accounted for at the close of the physical year. The purpose of this is so that the State Comptroller will have an inventory of the estates in the offices of the Public Administrators, so that if they so choose, they may institute a compulsory accounting proceeding to move the estates forward.”

**Current Status:** NOT IMPLEMENTED

The Bronx PA did not include 16 estates with account balances totaling \$3 million in its January 2004 annual report to the State Comptroller. The Bronx PA also omitted six estates with negative balances that should also have been reported based on reporting guidelines. According to the State Finance Law, Chapter 11-Municipal Affairs, §72.1:

“Whenever the estate of a decedent is being administered by a public administrator . . . and such estate has not been distributed nor a final accounting

filed with petition for settlement with the appropriate Surrogate's Court, the Public Administrator shall annually in the month of January file a Report of Open Estates with the office of the State Comptroller, covering every open estate in respect to which permanent letters of administration were issued to such public administrator on or before the preceding December 31<sup>st</sup>."

\* \* \* \* \*

**Previous Finding:** The Bronx PA did not report the correct estimated values of estates in its January 1998 and 1999 annual reports to the State Comptroller. In its January 1998 report to the State Comptroller, the Bronx PA undervalued eight estates by a total of \$1,016,133. In its January 1999 report it undervalued four estates by a total of \$739,394 and omitted four estates with a cumulative estimated value of \$278,683.

***Previous Recommendation #37:*** "The PA should ensure that it includes all of an estate's property in its report to the State."

***Previous Bronx PA Response:*** "This report contains only estimated values. When we file our judicial accounting, the correct values are filed with the Court, as is required by law."

**Current Status**            IMPLEMENTED

The Bronx PA has changed the reporting format of its annual report to the State Comptroller to include the value of all the estates' properties. The January 2004 report now shows all the information required by the State Comptroller, including the gross estate which is broken down by disbursements, cash on hand, and the value of real and personal property.

## RECOMMENDATIONS

The Bronx PA should implement the recommendations of the previous audit that are still applicable but were not fully addressed. Upon implementation of these recommendations, the Bronx PA will have corrected the conditions cited in the previous report and in this follow-up report. The recommendations are repeated below, somewhat revised in accordance with the findings of this report.

The Bronx PA should:

1. Ensure that all decedents' assets are recorded in its computerized inventory system.
2. Ensure that the inventory system is updated to reflect the disposition of assets.

**Bronx PA Response to Recommendations # 1 and 2:** “It is the procedure of this office that all assets in an estate be recorded in our computer. In addition, when an asset is sold or liquidated, it is to be removed from the computer. . . . There are other additional safeguards so that an asset is not overlooked or uncollected. Each file is individually reviewed before closing so that a manual determination may be made as to any uncollected assets.”

3. Conduct an annual physical inventory of decedents’ properties.

**Bronx PA Response:** “The physical inventory will be done in early July.”

4. Ensure that all supporting documentation for disbursements is properly maintained and filed in corresponding estate folders to facilitate review and approval for prompt payment.

**Bronx PA Response:** Bronx PA officials did not address this recommendation in their response.

5. Stamp paid invoices as cancelled to prevent duplicate payment.

**Bronx PA Response:** Bronx PA officials did not address this recommendation in their response.

6. Develop and adhere to written procedures for identifying, tracking, and reporting 1099-reportable payments.

**Bronx PA Response:** “We will in fact prepare written procedures.”

7. Review its practice of issuing 1099 forms for the Bronx PA general counsel’s support staff, since the PA is not directly responsible for their compensation.

**Bronx PA Response:** “[It] will be resolved by the issuance of the 1099’s by [the PA general counsel] instead of the office of the Bronx Public Administrator.”

8. Review the 1099-reportable payments cited in our previous audit and this follow-up audit, and accordingly amend the informational returns.

**Bronx PA Response:** “The Public Administrator will review her 1099’s and as part of the written procedures above-mentioned will identify all 1099 tracking codes.”

9. Properly secure blank checks.

**Bronx PA Response:** “The blank checks are secured in a locked storage room. The only access for the storage room is during the day and then the room is in the back of the office where the public is unable to enter. The Public Administrator is not concerned with the physical security of the checks in this locked area.”

**Auditor Comment:** As stated earlier, the blank checks should be safeguarded to prevent misuse by employees other than the Public Administrator, Deputy Public Administrator, and in-house accountant.

10. Turn over to the City \$3,851 in unclaimed funds owed it.

**Bronx PA Response:** “We will continue to check the miscellaneous checking records from prior years. We will advise the Comptroller of our findings in the supplemental report, and if in fact there is some adjustment, of course the office will comply with same.”

11. Select an independent auditing firm in accordance with Comptroller’s Directive #5.

12. Contract for an annual audit of its operations in accordance with the Surrogate’s Court Procedure Act.

13. Obtain a budgeting decision from OMB as to whether the audit should be paid for out of additional City funding or suspense funds and formally request funding from the City’s OMB to pay for the annual audit.

**Bronx PA Response to Recommendations #11, #12 and #13:** “We have been advised that the Queens Public Administrator has in fact found a firm who is willing to conduct an audit of a modified nature for the money that has been budgeted. We will contact the accounting firm to determine whether they are willing to do an audit for the Bronx Public Administrator along the same guidelines as those as required by the Guidelines Board, and of course, we are continuously advocating that more money be allocated by the City for the annual audit.”

14. Comply with the State law requiring it to report all estates that fall within the State guidelines.

**Bronx PA Response:** “Due to an inadvertence, one column of our tracking board was not typed into the annual report. This was a mere oversight and a supplemental report will be provided for any of those estates for which an accounting has not already been filed.”



BRONX COUNTY

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ESTATE OF:

FILE NO.:

June 9, 2004

BRONX COUNTY PUBLIC ADMINISTRATOR'S RESPONSE

After carefully reviewing the draft Report from the office of the Comptroller of the City of New York, we, the attorney for the Bronx County Public Administrator and the Bronx Public Administrator are jointly responding as follows:

The objective of your report was to determine whether certain recommendations that were made in previous audits were in fact implemented by the office of the Bronx Public Administrator. It has always been our position that if a recommendation is in fact valid, we strive to implement same. However, if a recommendation is impracticable, we so state giving our reasons.

We are pleased that most of your recommendations were in fact implemented.

In responding to the six (6) areas which you found were not implemented, they are as follows:

### 1. INVENTORY RECORDS:

Items 1 through 4 were found not to have been implemented, specifically that some assets were not recorded nor up-dated in the computer.

It is the procedure of this office that all assets in an estate be recorded in our computer. In addition, when an asset is sold or liquidated, it is to be removed from the computer. The office has more than 1,200 estates per year requiring thousands of entries of assets. Occasionally, an item may be omitted or may not be removed from the computer. However, there are other additional safeguards so that an asset is not overlooked or uncollected. Each file is individually reviewed before closing so that a manual determination may be made as to any uncollected assets.

It should be pointed out at this time, that this office is understaffed and it would be uneconomical to employ additional personnel to do computer entries. The office's purpose is to collect the assets as expeditiously as possible, to pay the bills and to see to it that the assets are distributed to the rightful heirs.

Items 3 and 4 concern the annual physical inventory of jewelry and other property on hand in the office of the Public Administrator. Once a year a physical inventory is done and at the recommendation of the Comptroller the physical inventory will be done in early July.

### 2. 1099'S:

Items 14 through 17 deal with the 1099's issued by the office of the Public Administrator.

Item 14 recommends that written procedures be established for tracking 1099's. We will in fact prepare written procedures.

Item 15 deals with the 1099's for the legal staff, which will be resolved by the issuance of the 1099's by MICHAEL M. LIPPMAN instead of the office of the Bronx Public Administrator. The Public Administrator will review her 1099's and as part of the written procedures abovementioned will identify all 1099 tracking codes.

### 3. SECURE BLANK CHECKS:

As the Comptroller's Auditors realized, this office has limited physical space. The blank checks are secured in a locked storage room. The only access for the storage room is during the day and then the room is in back of the office where the public is unable to enter. The Public Administrator is not concerned with the physical security of the checks in this locked area.

The Comptroller has recommended that the Public Administrator return \$3,851.00. We have reviewed our records and fail to find how this figure was arrived at in the prior audit. However, we will continue to check the miscellaneous checking records from prior years. We will advise the Comptroller of our findings in the supplemental report and, if in fact there is some adjustment, of course the office will comply with same.

### 4. THE ANNUAL AUDIT

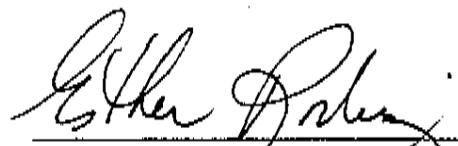
Items 33 through 35 deal with an annual audit, as provided for by statute.

As the report indicates, there is insufficient money allocated to conduct an audit along the guidelines as required by statute. However, we have been advised that the Queens Public Administrator has in fact found a firm who is willing to conduct an annual audit of a modified nature for the money that has been budgeted. We will contact accounting firm to determine whether they are willing to do an audit for the Bronx Public Administrator along the same guidelines as those as required by the Guidelines Board, and of course, we are continuously advocating that more money be allocated by the City for the annual audit.

## 5. COMPTROLLER'S REPORT

The Comptroller of the State of New York requires an annual report of estates that are open without filing a final accounting. This office filed that report as is indicated by this audit. However, due to an inadvertence, one column of our tracking board was not typed into the annual report. This was a mere oversight and a supplemental report will be provided for any of those estates for which an accounting has not already been filed.

In conclusion we wish to thank the Auditors for the City Comptroller who participated in the audit. They conducted themselves in a highly professional manner and this office is proud that the audit reveals that this office does in fact conduct itself in an efficient professional manner, in that the issues raised in the audit are of a very insignificant nature in comparison to the totality of the number of estates, the amount of money under the supervision of the office and the efficiency of our complying with the goal of expeditiously administering estates so that the beneficiaries will have their money as fast as possible.

  
ESTHER RODRIGUEZ  
PUBLIC ADMINISTRATOR OF  
BRONX COUNTY