



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

---

**WILLIAM C. THOMPSON, JR.**  
*Comptroller*

**Audit Report on the Compliance of  
East Broadway Mall, Inc., with Its Lease Agreement  
And Its Payment of Fees Owed the City  
September 1, 1999, through August 31, 2001**

**FL02-097A**

*June 7, 2002*

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

**Audit Report on the Compliance of  
East Broadway Mall, Inc., with Its Lease  
Agreement  
And Its Payment of Fees Owed the City  
September 1, 1999, through August 31, 2001**

**FL02-097A**

---

**EXECUTIVE SUMMARY**

On March 1, 1985, the New York City Department of General Services, now renamed the Department of Citywide Administrative Services (DCAS), entered into a 50-year lease agreement with the East Broadway Mall, Inc. (EBM), to develop and operate a retail shopping mall at 88 East Broadway in Manhattan. The lease requires that EBM pay an escalating annual base rent ranging from \$50,000 in the first year increasing to \$895,795 in the final year of the lease, as well as pay “percentage rent” ranging from 3 percent to 9 percent of gross operating revenue. EBM is also required to make additional rent payments to the City in lieu of real property taxes. In addition, EBM is required to carry certain insurance coverage, including personnel liability insurance, naming the City as an additional insured; remit a \$72,000 security deposit to the City; and pay all required taxes and utility charges related to the facility.

This audit determined whether EBM maintained adequate internal controls over the recording and reporting of gross receipts; calculated and properly paid its rent on time; complied with other major requirements of its lease agreement (e.g., carried the required liability insurance, remitted the appropriate security deposit, and paid its utility charges). For the fiscal years ending August 31, 2000, and August 31, 2001, EBM reported \$2,390,175 and \$2,408,789, respectively, in gross operating revenue, and paid rent to the City totaling \$820,297 and \$992,339.

EBM had adequate internal controls over the recording and reporting of revenue, and it generally complied with the terms of its agreement with regard to paying its base rent, carrying the appropriate insurance coverage, and remitting the required \$72,000 security deposit to the City. However, EBM did not accurately report its gross operating revenue and common area maintenance charges to the City, and did not pay all percentage rent due the City. Consequently, EBM owes the City **\$120,965 in additional percentage rent and related interest**. In addition, we determined that there was a problem with the water bills for EBM. Specifically, the City’s Department of Transportation was mistakenly billed for the water and sewer charges for the mall. After we mentioned this to Department of Environmental Protection (DEP) officials, they had the name on the account changed and billed EBM for **\$100,718 in unpaid**

**water and sewer charges** for the period December 1, 1999, to December 31, 2001.

Among the report's recommendations are that EBM pay DCAS \$120,965 in additional rent and interest due, and pay DEP \$100,718 in outstanding water and sewer charges. The report also recommends that DCAS ensure that EBM complies with the report's recommendations.

## **Discussion of Audit Results**

The matters covered in this report were discussed with EBM and DCAS officials during and at the conclusion of this audit. A preliminary draft report was sent to EBM and DCAS officials and was discussed at an exit conference on March 26, 2002. On March 27, 2002, we sent a draft report to EBM and DCAS officials with a request for comments. On April 11, 2002, we received a response from DCAS officials stating that they generally agreed with the audit's findings and recommendations. On April 15, 2002, we received a response from EBM officials stating that Mui & Co., their Certified Public Accountant, is their representative for this audit. On April 16, 2002, we received a response from Miu & Co. that did not address any of the audit's findings and recommendations. Consequently, we contacted officials from EBM and Miu & Co. to discuss their responses. Officials of both entities stated that they generally agreed with the audit's findings and recommendations and will make arrangements to pay the amount due. On April 23, 2002, we received a letter from Miu & Co. officials stating that they agreed with the percentage rent calculation outlined in the report.

On April 12, 2002, we also received a letter from Gartner, Bloom & Greiper, P.C., Attorneys at Law, also in response to the audit. That letter did not address the report's findings and recommendations; rather, it criticized the Comptroller's Office for expanding audit testing beyond the initial two-year scope period, and for covering certain aspects of the lease that the firm contended were beyond the authority of the Comptroller's Office. Officials from both EBM and Miu & Co. instructed us to disregard the law firm's letter since, for the purpose of this audit, the firm was not EBM's representative. However, because of the serious accusations made against the Comptroller's Office and because EBM and Miu & Co. refused to instruct us in writing to disregard the law firm's response, we decided to formally address the issues raised in that response. (See pages seven through nine in the body of this report for a discussion of the Gartner, Bloom & Greiper response.)

The full texts of the responses received from DCAS, EBM, Miu & Co., and Gartner, Bloom & Greiper, P.C., Attorneys at Law, are included as addenda to this report.

## *Table of Contents*

INTRODUCTION	1
Background	1
Objectives	2
Scope and Methodology	2
Discussion of Audit Results	3
FINDINGS AND RECOMMENDATIONS	4
Use of Unaudited Financial Data Results In Unpaid Rent and Interest Totaling \$38,546	5
Unpaid Percentage Rent Charges for Fiscal Year 2001	5
Contract Compliance Issues	5
EBM Owes \$100,718 in Water and Sewer Charges	6
Recommendations	6
ADDENDUM I – DCAS' Response	
ADDENDUM II- Letter from CPA's	
ADDENDUM III- CPA's Response	
ADDENDUM IV- Attorney's Response	

*Office of the Comptroller  
Bureau of Financial Audit*

**Audit Report on the Compliance of  
East Broadway Mall, Inc., with Its Lease Agreement  
and its Payment of Fees Owed the City  
September 1, 1999, through August 31, 2001**

**FL02-097A**

---

**INTRODUCTION**

**Background**

On March 1, 1985, the New York City Department of General Services, now renamed the Department of Citywide Administrative Services (DCAS), entered into a 50-year lease agreement with the East Broadway Mall, Inc. (EBM), to develop and operate a retail shopping mall at 88 East Broadway in Manhattan. The lease requires that EBM pay an escalating annual base rent. In the first year of the lease, base rent was \$50,000; it will increase to \$895,795 in the final year of the lease. EBM has also been required to pay “percentage rent” rent based on a percentage of “gross operating revenue,” less revenue received from tenants for common area maintenance charges.<sup>1</sup> The annual percentage rent ranges from 3 percent of gross operating revenue (less revenue for common area maintenance charges) that is more than \$500,000, to 9 percent of gross operating revenue (less revenue for common area maintenance charges) that is more than \$1,500,000. EBM is also required to make additional rent payments to the City in lieu of real property taxes.

In addition, EBM is required to: carry certain insurance coverage, including personnel liability insurance, naming the City as an additional insured; remit a \$72,000 security deposit to the City; and pay all required taxes and utility charges related to the facility

For the fiscal years ending August 31, 2000, and August 31, 2001, EBM reported \$2,390,175 and \$2,408,789, respectively, in gross operating revenue, and paid rent to the City totaling \$820,297 and \$992,339.

---

<sup>1</sup> The lease defines “gross operating revenue” as the sum total of all gross revenue, income, receipts, or other value received from the use, occupancy, or operation of the premises.

## **Objectives**

Our audit objectives were to determine whether EBM:

- Maintained adequate internal controls over the recording and reporting of gross receipts;
- Properly calculated the total rent due the City, and paid the amounts on time; and,
- Complied with other major requirements of its lease agreement (e.g., carried the required liability insurance, remitted the appropriate security deposit, and paid its utility charges).

## **Scope and Methodology**

This audit covered the period September 1, 1999, through August 31, 2001. To achieve our audit objectives, we reviewed EBM's lease agreement, analyzed the reported gross receipts for any significant fluctuations, and reviewed EBM's rent payments to determine whether they were calculated accurately based on the revenue amounts reported to the City. We interviewed EBM's Managing Agent and other key personnel and observed the rent collection process to obtain an understanding of the operations and flow of documents from the receipt of payments to their deposit in the bank.

We performed tests of EBM's financial records for the audit period to determine whether the internal controls over gross receipts were sound and operating as represented by management. Specifically, we compared the amounts reported on the statements submitted to DCAS during the audit period to the corresponding amounts recorded on EBM's Rent Roll, EBM's expense ledger, audited financial statements, income tax returns, and other supporting documentation.

We traced reported gross receipts to EBM's Rent Roll for the audit period. In addition, for November 1999 and June 2000, we traced the amounts reported to the City to the amounts recorded on individual receipts issued to tenants and to the amounts on the bank statements.

We examined all lease agreements between EBM and its tenants to determine whether appropriate rent amounts were charged. We conducted two unannounced visits, on January 3, 2002, and January 15, 2002, to observe EBM's rent collection process and to confirm whether the appropriate rents were collected and recorded on EBM's books and records. We also visited the mall and to verify whether all tenants on the premises were accounted for on the Rent Roll.

We traced the common area maintenance charges reported to the City to the amounts recorded on EBM's books and records for the audit period. In addition, we reviewed supporting documentation (i.e., invoices, canceled checks) for \$319,844 (66%) of the \$484,164 in common area maintenance charges reported for the period of September 1, 1999, through August 31, 2000.

We examined documents on file with the Comptroller's Office showing that the appropriate security deposit had been filed, and that EBM carried the liability insurance and Workers' Compensation insurance required by the lease. We also reviewed EBM's utility bills to determine whether they were paid on time. Finally, we verified whether two restaurants located in the mall had the required Department of Health certificates.

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 City Comptroller's audit responsibilities, 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 EBM and DCAS officials during and at the conclusion of this audit. A preliminary draft report was sent to EBM and DCAS officials and was discussed at an exit conference on March 26, 2002. On March 27, 2002 we sent a draft report to EBM and DCAS officials with a request for comments. On April 11, 2002, we received a response from DCAS officials stating that they generally agreed with the audit's findings and recommendations. On April 15, 2002, we received a response from EBM officials stating that Mui & Co., their Certified Public Accountant, is their representative for this audit. On April 16, 2002, we received a response from Miu & Co. that did not address any of the audit's findings and recommendations. Consequently, we contacted officials from EBM and Miu & Co. to discuss their responses. Officials of both entities stated that they generally agreed with the audit's findings and recommendations and will make arrangements to pay the amount due. On April 23, 2002, we received a letter from Miu & Co. officials stating that they agreed with the percentage rent calculation outlined in the report.

On April 12, 2002, we also received a letter from Gartner, Bloom & Greiper, P.C., Attorneys at Law, also in response to the audit. That letter did not address the report's findings and recommendations; rather, it criticized the Comptroller's Office for expanding audit testing beyond the initial two-year scope period, and for covering certain aspects of the lease that the firm contended were beyond the authority of the Comptroller's Office. Officials from both EBM and Miu & Co. instructed us to disregard the law firm's letter since, for the purpose of this audit, the firm was not EBM's representative. However, because of the serious accusations made against the Comptroller's Office and because EBM and Miu & Co. refused to instruct us in writing to disregard the law firm's response, we decided to formally address the issues raised in that response. (See pages seven through nine for a discussion of the Gartner, Bloom & Greiper's response.)

The full texts of the responses received from DCAS, EBM, Miu & Co., and Gartner, Bloom & Greiper, P.C., Attorneys at Law, are included as addenda to this report.

**OFFICE OF THE COMPTROLLER  
NEW YORK CITY**

**DATE FILED: *June 6, 2002***

## FINDINGS AND RECOMMENDATIONS

EBM had adequate controls over the recording and reporting of revenue. It generally complied with the terms of its agreement with regard to paying its base rent, carrying the appropriate insurance coverage, and remitting the required \$72,000 security deposit to the City. However, EBM did not accurately report its gross operating revenue and common area maintenance charges to the City, and did not pay all percentage rent due the City. Consequently, EBM owes the City \$120,965 in additional percentage rent and related interest, as shown in Table I, following.

**TABLE I**

Schedule of Underreported Revenue, and  
Rent and Interest Due  
September 1, 1999, to August 31, 2001

	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>Total</b>	<b>Amount Due</b>
Unreported Revenue	\$111,013	\$12,168	\$97,964	\$0	\$221,145	
Overreported Common Area Expenses	12,667	35,723	10,331	29,902	88,623	
<b>Total Audit Adjustments</b>	<b>\$123,680</b>	<b>\$47,891</b>	<b>\$108,295</b>	<b>\$29,902</b>	<b>\$309,768</b>	
Rent Due on Audit Adjustments	\$10,874	\$3,405	\$9,746	\$2,691	\$26,716.	
Interest Due on Audit Adjustments*	\$1,985	\$2,976	\$5,290	\$1,579	\$11,830	
<b>Rent and Interest Due From Audit Adjustments (Fiscal Years 1998-2001)</b>						<b>\$38,546</b>
Unpaid December 2001 Rent				\$78,870	\$78,870	
Interest Due on Unpaid Rent				\$3,549	\$3,549	
<b>Rent and Interest Due (Fiscal Year 2001)</b>						<b>\$82,419</b>
<b>Total Rent and Interest Due</b>						<b>\$120,965</b>

\* Interest was calculated, in accordance with Article 9 of the Lease agreement, at 1.5% per month on the unpaid amount overdue.

In addition, EBM has never been billed for its water and sewer use. Consequently, EBM owes the City **\$100,718** in outstanding water and sewer charges.

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

### **Use of Unaudited Financial Data Results in Unpaid Rent and Interest Totaling \$38,546**



EBM owes the City \$38,546 in additional rent and calculated interest for the fiscal years ending August 1998, August 1999, and August 2000. For the three-year period, EBM reported \$6,142,474 in gross operating revenue, \$1,383,511 in common area charges, and paid the City \$159,469 in percentage rent. The amounts reported were based on unaudited financial data. According to DCAS officials, EBM did not submit certified financial statements for the three years, in violation of the lease agreement, which states that:

“Tenant shall furnish to landlord the following: (a) as soon as practical after the end of each fiscal year during the term and, in any event, within ninety (90) days thereafter, financial statements of the Tenant and of the operations of the Premises for the preceding fiscal year, prepared in accordance with generally accepted accounting principles, and accompanied by a report of Tenant’s independent certified public accountant, which report must be based upon an audit conducted in accordance with generally accepted auditing standards.”

On October 29, 2001, after we requested EBM’s certified statements, DCAS issued a Notice of Dissatisfaction to EBM requiring that within 30 days of the notice date, it submit audited financial statements for the three-year period, as well as fiscal year ending August 2001. According to DCAS officials, the audited statements for the four-year period showed that EBM underreported gross operating revenue by \$221,145 and over-reported deductions for common area maintenance charges by \$88,623. Consequently, EBM owes the City \$26,716 in additional rent and \$11,830 in calculated interest.

### **Unpaid Percentage Rent Charges for Fiscal Year 2001**

For fiscal year 2001, EBM reported \$2,408,789 in gross operating revenue and \$532,460 in common area maintenance charges. According to DCAS records, the percentage rent, which was due from EBM on December 1, 2001, was not paid as of March 1, 2002. Consequently, EBM owes the City \$78,870 in percentage rent and \$3,549 in interest charges.

### **Contract Compliance Issues**

We verified that EBM had the required insurance coverage (e.g., liability, fire and workers’ compensation) by reviewing the insurance certificates for the audit period. We confirmed that the proper coverage amounts were maintained and that the City was named as an additional insured, as required. In addition, we verified that EBM remitted the required security deposit of \$72,000 to the City. Finally, we reviewed gas, electric and telephone bills for July 2001, and confirmed that EBM paid these utility bills on time. However, EBM has not paid for its water and sewer use, as discussed below.

### **EBM Owes \$100,718 In Water and Sewer Charges**

In reviewing the City Department of Environmental Protection’s (DEP) Customer Information

System, we determined that there was a problem with the water bills for EBM. Specifically, the City's Department of Transportation was mistakenly billed for the water and sewer charges for the mall. After we mentioned this to DEP officials, they had the name on the account changed and billed EBM for \$100,718 in unpaid water and sewer charges for the period December 1, 1999, to December 31, 2001.

## **Recommendations**

EBM should:

1. Pay DCAS \$120,965 in additional rent and interest due.
2. Submit audited financial statements to DCAS within 90 days after each fiscal year end, in accordance with the lease.
3. Pay DEP \$100,718 in outstanding water and sewer charges.

**EBM Response:** In their responses, EBM and Miu & Co. did not address any of the audit's findings and recommendations. Consequently, we contacted officials from EBM and Miu & Co. to discuss their responses. Officials of both entities stated that they generally agreed with the findings and recommendations and will make arrangements to pay the amount due. Subsequently, we received a letter from Miu & Co. stating that they agreed with the percentage rent calculation outlined in the report.

DCAS should:

4. Ensure that EBM complies with the report's recommendations.

**DCAS Response:** DCAS agreed with the audit's findings and recommendations.

## **Discussion of Law Firm's Response**

As stated earlier, we received a letter from Gartner, Bloom & Greiper, P.C., Attorneys at Law that purportedly responded to the audit. That letter did not address the report's findings and recommendations; rather, it criticized the Comptroller's Office for expanding audit testing beyond the initial two-year scope period, and for covering certain aspects of the lease that the firm contends were beyond the authority of the Comptroller's Office. Officials from EBM and Miu & Co. instructed us to disregard the law firm's letter since, for the purpose of this audit, it was not EBM's representative. However, because of the serious accusations made against the Comptroller's Office and because EBM and Miu & Co. refused to instruct us in writing to disregard the law firm's response, we decided to formally address the issues raised in that response as follows:

**Law Firm Response:** "First, the City, through [auditor's name omitted] of the Audit Department, established the parameters of the audit as a two year" audit. This was established as early as August of 2001, (see letter attached hereto), and is even conceded in the DAR [Draft Audit Report] on page 2. In reliance on this, the Mall produced for the City certified financials and other documents for the period in question. Yet despite the agreed upon time frame, and the Mall's reliance thereon, the DAR purports to make findings and recommendations for 4 years, i.e., fiscal years 1998, 1999, 2000, and 2001. See DAR, Table, p.4. Thus, the Bureau of Audits exceeded the scope of the audit, with the Mall unaware that other documents would have been relevant to the Bureau's objectives."

**Auditor Comment:** With regard to the firm's criticism that audit testing extended beyond the initial two-year scope, we informed EBM at the entrance conference that if any major weaknesses were found, testing would be extended. EBM's failure to submit certified financial statements for 1998, 1999, 2000, and 2001, as required by the lease, was such a weakness. When we received those statements, we noted that EBM had underreported its gross operating revenues and over-reported its deductions for common area maintenance charges for each of the four years. As a result, we included in the audit the fact that EBM owes the City \$120,965 for the entire four-year period.

**Law Firm Response:** "Second, the DAR uses the lease term 'Common Area Expenses,' interchangeably with 'Common Area Charges.' Table 1 on page 4 of the DAR purports to be a 'Schedule of Underreported Revenue, and Rent and Interest Due.' As pointed out above, it contains figures for a 4-year period, contrary to the established parameters of the audit. More importantly, however, it utilizes a figure it calls 'Overreported Common Area Expenses.' Yet, in the text above the Table, it uses a different term – Common Area Charges. The discrepancy is unexplained, and it is unclear to the Mall and to this firm which figure the Bureau actually utilized in its calculations. The Mall can not determine the validity of the percentage rent numbers arrived at by the Bureau without knowing first which of the two categories the Bureau utilized."

**Auditor Comment:** From the firm's response, it is evident that it understood that the terms "common area charges" and "common area expenses" are used synonymously in

the report. In addition, contrary to the firm's assertion, there was no difference in the amount reported under these two terms. Furthermore, percentage rent was calculated on the amounts contained in EBM's audited financial statements; therefore, the "Mall" should have no difficulty in determining the validity of our calculations. Finally, as stated in the CPA's response to the audit, EBM is in agreement with the percentage rent calculation contained in the report.

**Law Firm Response:** "Third, since September 13, 2002 [sic], the Mall has made monthly payments to the City in the approximate amount of \$9,500.00 per month towards its percentage rent obligations. None of these payments is accounted for in the Table, or anywhere else in the DAR. Clearly, those payments affect the amount owed, and should be reflected in the DAR."

**Auditor Comment:** We are at a loss to understand the law firm's third point. Obviously, the attorneys meant to state that the "Mall" has been making monthly \$9,500 payments since September 13, 2001—not 2002, as stated. In addition, EBM's CPA indicates in its April 23, 2002, response to the audit that the "East Broadway Mall would like to make an initial payment of \$27,000 and pay the balance in 10 installments commencing June 1, 2002." Clearly, the CPA would know if EBM had made payments against the amount due.

**Law Firm Response:** "Fourth, the DAR purports to make findings as to the Mall's (a) insurance, (b) security deposit status, (c) utility bills, and (d) licensing status. See [emphasis in original] DAR, p. 6. While the DAR found the Mall to be in compliance on all these items, the underlying ground lease, and the first amendment thereto, do not permit an audit of such matters. (Footnote: Additionally, the parameters of the audit established by the City did not mention these items, or the water and sewer charges about which the DAR purports to make findings.) The ground lease permits an audit of the Mall's books and records for two purposes only – the verification of percentage rent, and the verification of payments in lieu of taxes. The Bureau's unilateral and unauthorized use of the audit process to examine the Mall's other affairs was a violation of the ground lease, a potential violation of generally accepted accounting principles, and a potential violation of the disciplinary rules governing accountants."

**Auditor Comment:** We strongly disagree with the contention that we are precluded from reviewing EBM's compliance with these provisions. As previously stated, the audit was performed in accordance with the City Comptroller's audit responsibilities, as set forth in the New York City Charter. Specifically, the New York City Charter Chapter 5, § 93b, states: "The comptroller shall have power to audit and investigate all matters relating to or affecting the finances of the city, including without limitation the performance of contracts [emphasis added]."

Therefore, part of the Comptroller's responsibilities is to determine whether there is compliance with lease (contract) terms. In this case the Comptroller would be remiss in his duties if he did not review whether EBM: maintained the appropriate insurance; remitted the required security deposit; and paid its utility bills including water and sewer charges.





## Department of Citywide Administrative Services

Municipal Building, 17th Floor  
 One Centre Street  
 New York, N.Y. 10007  
 (212) 669-7111 Fax: (212) 669-8992  
 E-Mail: mhirst@dcas.nyc.gov

Martha K. Hirst  
 Commissioner

April 11, 2002

Roger D. Liwer  
 Assistant Comptroller for Audits  
 Bureau of Audits  
 Office of the Comptroller  
 1 Centre Street - Room 1100  
 New York, N.Y. 10007

RE: Audit Report #FL02-097A  
 East Broadway Mall, Inc.  
 Account #6723  
 Block 282, Lot 44  
 Borough of Manhattan

Dear Mr. Liwer:

We are in receipt of your draft audit report dated March 27, 2002. Please be advised that we are in substantial agreement with the findings of the report. However, our calculation of the total late charges due through February 28, 2002 varies slightly with the numbers in the audit report. Our calculation of total late fees pursuant to Article 9 of the Lease shows that they owe \$1,775.47 less than the total in the audit report.

Please be advised that DCAS has billed the tenant for the unpaid December 2001 rent in the amount of \$78,870; for the rent due on audit adjustment in the amount of \$26,716; and for late charges we have calculated under the Lease.

Should the tenant not provide payment in a timely manner, DCAS will initiate non-payment actions pursuant to our standard practices. In addition, DCAS will require proof of payment from the tenant to DEP of outstanding water and sewer charges in the amount of \$100,718.

Please contact Barry Gendelman, Assistant Commissioner for Property Management and Leasing at (212) 669-4001 should you have any questions regarding our response.

Sincerely,

Martha K. Hirst  
 Commissioner

cc: Lori Fierstein  
 David Greenberg  
 Barry Gendelman  
 Richard Friedman  
 Shelley Goldman  
 Chris Lane

East Broadway Mall, Inc  
88 E. Broadway,  
New York, NY 10002  
(212) 791-5678

---

April 15, 2002

The City of New York,  
Office of the Comptroller  
Bureau of Audits  
1 Centre Street, Room 1100,  
New York, NY 10007-2341

Re: East Broadway Mall, Inc

Dear Mr. Liwer:

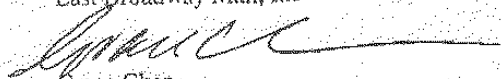
Please be advised that Miu & Co., Certified Public Accountant is our representative who handles the New York City lease audit of East Broadway Mall, Inc.

As the draft audit report has already been issued by you, we expect that the entire matter will be concluded shortly.

Thank you very much.

Yours truly,

East Broadway Mall, Inc



Grace Chan  
President of the  
Executive Committee

**MIU & Co.**

*Certified Public Accountants*

109 LAFAYETTE STREET  
NEW YORK, N.Y. 10013

TEL: (212) 966-9001

FAX: (212) 966-0118

The City of New York  
Office of the Comptroller  
Bureau of Audits  
1 Centre Street, Room 1100  
New York, NY 10007-2341

Attn: Mr. Roger D. Liwer

April 16, 2002

Re: East Broadway Mall, Inc.

Dear Mr. Liwer:

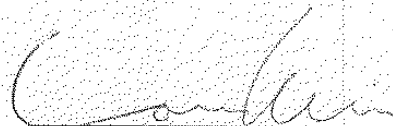
We acknowledge receipt of the draft audit report issued by your office covering the period from September 1, 1999 to August 31, 2001.

Our involvement with the lease audit started in September 2001 and thus we are not aware of a "two year" audit perimeter previously established in August of 2001, as referred to by the mall's attorney Mr. Arthur Xanthos.

In addition, as is the case with the water and sewer charges, the 2-year statute of limitation should also apply to the assessment of % rent.

Once again, I want to congratulate you and your audit team for conducting the audit with the utmost professionalism.

Sincerely,  
Miu & Co.



Louis Miu

cc: East Broadway Mall, Inc.



GARTNER, BLOOM & GREIPER, P.C.

ATTORNEYS AT LAW

ONE DAG HAMMARSKJOLD PLAZA

885 SECOND AVENUE

NEW YORK, NY 10017

(212) 759-5800

FAX: (212) 759-5842

E-MAIL: info@gbglaw.com

NEW JERSEY OFFICE

150 JOHN F. KENNEDY PARKWAY

SUITE 100

SHORT HILLS, NJ 07078

(973) 847-6008

FAX: (973) 847-5928

OF COUNSEL

KEVIN P. DATES\*

SHARON T. ROSENTHAL\*

KENNETH A. BLOOM\*\*

STUART F. GARTNER

ELLEN H. GREIPER\*

ARTHUR P. XANTHOS\*

STEPHEN L. PETRILLO\*

CHRISTINE M. MESSINA\*

MARC SHORTINO\*

STEVEN Y. STEINHART

\*N.Y. AND N.J. BARS

\*\*N.Y., PA. AND D.C. BARS

†N.Y., N.J. AND PA. BARS

April 12, 2002

**BY HAND**

New York City Comptroller's  
Office,

Bureau of Audits

1 Centre Street, Room 1100

New York NY 10007

Attn: Roger D. Liwer, Assistant Comptroller for Audits

Re: East Broadway Mall  
Your Draft Audit Report  
Our file no. 60214

Dear Mr. Liwer:

This office is corporate counsel to the East Broadway Mall, Inc. (the "Mall"). We are in receipt of your "Draft Audit Report", under cover of letter dated March 27, 2002, in the above matter. In response to your specific request, please accept this letter as the Mall's written comments to the Draft Audit Report ("DAR").

In general, the Mall is pleased that the DAR makes specific findings that the Mall has "adequate internal controls", and "generally complied with the terms of its agreement" with the City (DAR, p.ES-1). The DAR, however, contains four important points of error that should be addressed.

First, the City, through one [REDACTED] of the Audit Department, established the parameters of the audit as a "two year" audit. This was established as early as August of 2001 (see letter attached hereto), and is even conceded in the DAR on page 2. In reliance on this, the Mall produced for the City certified financials and other documents for the period in question. Yet despite the agreed upon time frame, and the Mall's reliance thereon, the DAR purports to make findings and recommendations for 4 years, i.e., fiscal years 1998, 1999, 2000, and 2001. See DAR, Table, p. 4. Thus, the Bureau of Audits exceeded the scope of the audit, with the Mall unaware that other documents would have been relevant to the Bureau's objectives.

GARTNER, BLOOM & GREIPER, P.C.

Second, the DAR uses the lease term "Common Area Expenses", interchangeably with "Common Area Charges". Table 1 on page 4 of the DAR purports to be a "Schedule of Underreported Revenue, and Rent and Interest Due". As pointed out above, it contains figures for a 4 year period, contrary to the established parameters of the audit. More importantly, however, it utilizes a figure it calls "Overreported Common Area Expenses". Yet, in the text above the Table, it uses a different term - Common Area Charges. The discrepancy is unexplained, and it is unclear to the Mall and to this firm which figure the Bureau actually utilized in its calculations.<sup>1</sup> The Mall can not determine the validity of the percentage rent numbers arrived at by the Bureau without knowing first which of the two categories the Bureau utilized.

Third, since September 13, 2002, the Mall has made monthly payments to the City in the approximate amount of \$9,500.00 per month towards its percentage rent obligations. None of these payments is accounted for in the Table, or anywhere else in the DAR. Clearly, those payments affect the amount owed, and should be reflected in the DAR.

Fourth, the DAR purports to make findings as to the Mall's (a) insurance, (b) security deposit status, (c) utility bills, and (d) licensing status. See DAR, p. 6. While the DAR found the Mall to be in compliance on all these items, the underlying ground lease, and the first amendment thereto, do not permit an audit of such matters.<sup>2</sup> The ground lease permits an audit of the Mall's books and records for two purposes only - the verification of percentage rent, and the verification of payments in lieu of taxes. The Bureau's unilateral and unauthorized use of the audit process to examine the Mall's other affairs was a violation of the ground lease, a potential violation of generally accepted accounting principles, and a potential violation of the disciplinary rules governing accountants.


The above errors are the primary ones, and the ones we believe should be addressed in the DAR, if possible. Once the numbers are finalized, the Mall would request a payment schedule acceptable to the City permitting the Mall to pay its obligations on a monthly basis over some reasonable time frame.

Very truly yours,

GARTNER, BLOOM & GREIPER, PC

  
BY: ARTHUR P. XANTHOS

apx/abm

cc: Grace Chan  
Kenneth A. Bloom, Esq.  


<sup>1</sup> Curiously, the Preliminary Draft of the DAR on page ES-1 utilized the leasehold term "common area charges", but that sentence for some reason was deleted by the Bureau in the current version of the DAR.

<sup>2</sup> Additionally, the parameters of the audit established by the City did not mention these items, or the water and sewer charges about which the DAR purports to make findings.

GARTNER, BLOOM & GREIPER, P.C.

ATTORNEYS AT LAW

ONE DAG HAMMARSKJOLD PLAZA

885 SECOND AVENUE

NEW YORK, NY 10017

KENNETH A. BLOOM\*\*  
STUART F. GARTNER  
ELLEN H. GREIPER\*

ARTHUR P. XANTHOS\*

STEPHEN L. PETRILLO\*

CHRISTINE M. MESSINA\*

MARC SHORTINO\*

STEVEN Y. STEINHART

\*N.Y. AND N.J. BARS

\*\*N.Y., PA, AND D.C. BARS

†N.Y., N.J. AND PA. BARS

(212) 759-5800

FAX: (212) 759-5842

E-MAIL: info@gbglaw.com

NEW JERSEY OFFICE

150 JOHN F. KENNEDY PARKW.

SUITE 100

SHORT HILLS, NJ 07078

(973) 847-6008

FAX: (973) 847-5928

OF COUNSEL

KEVIN P. OATES†

SHARON T. ROSENTHAL\*

August 29, 2001

VIA FACSIMILE AND REGULAR MAIL

(212-571-1460)

New York City Div. Of

Real Estate Operations, Audit Dept.

Attn: [REDACTED]

1 Centre Street, Room 1300 South

New York NY 10007

Re: East Broadway Mall, Inc.  
Ground Lease Audit  
Our file no. 60214

Dear [REDACTED],

This shall confirm our conversation today that the City of New York as Landlord will conduct a two year audit of East Broadway Mall's books and records pursuant to Article 43 of the relevant lease agreement, as amended.

We have agreed that the City's "entrance conference" at which you introduce the auditors and verbalize the parameters of the audit will occur on Friday, September 7, 2001 at 2 p.m. at your office. Thereafter, the Mall will assemble the relevant books and records and advise you so that the City may commence the audit.

Very truly yours,

GARTNER, BLOOM & GREIPER, PC

S/

BY: ARTHUR P. XANTHOS

Apx/abm

Cc: Kenneth A. Bloom, Esq.

Grace Chan

Philip Lam