

AUDIT REPORT

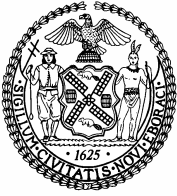


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of Quinn Restaurant Corporation (Water's Edge Restaurant) with Its Lease Agreement and Payment of Rent Due the City

FL08-088A

November 6, 2008



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of the Quinn Restaurant Corporation (Quinn) with its lease agreement with the Department of Citywide Administrative Services.

Quinn's agreement with the City permits Quinn to construct, operate, and maintain a restaurant (Water's Edge) on the Nott Avenue Pier at the foot of 44th Drive and the East River in Queens. We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials from Quinn and the Department of Citywide Administrative Services, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

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

Very truly yours,

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

William C. Thompson, Jr.

WCT/fh

Report: FL08-088A
Filed: November 6, 2008

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

**Audit Report on the
Compliance of Quinn Restaurant Corporation
(Water's Edge Restaurant) with Its Lease Agreement and
Payment of Rent Due the City**

FL08-088A

AUDIT REPORT IN BRIEF

The Department of Citywide Administrative Services (DCAS) has a lease agreement with the Quinn Restaurant Corporation (Quinn) to construct, operate, and maintain a restaurant on the Nott Avenue Pier at the foot of 44th Drive and the East River in Queens. Quinn subsequently constructed a restaurant, Water's Edge, at the site. The agreement also requires that Quinn post a \$25,000 security deposit with the Comptroller's Office; maintain certain types and amounts of insurance coverage; submit quarterly statements of gross receipts to DCAS; and pay all required taxes and utility charges related to the leased premises. According to the license agreement, gross receipts consist of all revenue, excluding collected sales taxes and gratuities paid directly or indirectly to employees in addition to their regular salaries.

This audit determined whether the Quinn accurately reported its total gross receipts; properly calculated the rent due the City and paid the rent on a timely basis; and complied with certain non-revenue-related requirements of the lease agreement.

Audit Findings and Conclusions

Quinn was unable to demonstrate that it had accurately reported its total gross receipts to DCAS and paid the appropriate rent due the City since it did not issue pre-numbered banquet contracts; lacked banquet invoices; and lacked or had canceled guest checks. As a result, we were unable to reach a determination about the accuracy of Quinn's reported gross receipts and payment of appropriate rent to the City. Therefore, because of these internal control weaknesses over the restaurant and banquet operations, we found that Quinn was not in compliance with major provisions of its lease with the City.

Based on the documentation that was provided, however, we concluded that Quinn improperly deducted \$507,249 in service charges from its gross receipts as “gratuities” to its employees and did not include \$604,620 in gross receipts from the sales of its florist, photographer, and musicians in the gross receipts it reported to DCAS. At a minimum, Quinn therefore owes the City \$86,034—\$69,309 in rent and \$16,725 in late charges. Furthermore, Quinn did not remit rent payments to DCAS on time; owes \$77,453 in water and sewer charges and \$43,506 to ConEdison; failed to remit the full amount of its required security deposit; and failed to maintain the pier (public access area) to such an extent that it is hazardous and closed to the public. Given the past gross delinquency of this concessionaire in paying its fees and complying with the terms of the lease agreement, it may be in the best interest of the City to terminate the lease agreement and award it a more responsible entity.

Audit Recommendations

We make 16 recommendations, eight to Quinn and eight to DCAS, concerning the operation of Water’s Edge and the oversight of this lease by DCAS. Compliance with these recommendations will ensure that DCAS collects from Quinn all rent that is due; controls over the operations of Water’s Edge are adequate to ensure that all gross receipts collected by Quinn are reported to DCAS; Quinn deducts from gross receipts only those items specified in the lease agreement; Quinn complies with other major provisions of its lease agreement related to paying its utilities, maintaining the required security deposit and maintaining the public access area in good condition.

INTRODUCTION

Background

On June 12, 1981, the Quinn Restaurant Corporation entered into a 25-year lease agreement with the City, with an option for an additional 10 years, to construct, operate, and maintain a restaurant on the Nott Avenue Pier at the foot of 44th Drive and the East River in Queens. Quinn subsequently constructed a restaurant, Water's Edge, at the site. The Department of Citywide Services currently oversees the lease on behalf of the City. For the period covered by this audit, October 1, 2006, through September 30, 2007, the lease agreement requires Quinn to pay the City the greater of either a minimum annual fee of \$100,000 or six percent of the gross receipts.

According to the license agreement, gross receipts consist of all revenue, excluding collected sales taxes and gratuities paid directly or indirectly to employees in addition to their regular salaries. The agreement also requires that Quinn post a \$25,000 security deposit with the Comptroller's Office; maintain certain types and amounts of insurance coverage; submit quarterly statements of gross receipts to DCAS; and pay all required taxes and utility charges related to the leased premises.

For the period under audit, Quinn reported a total of \$7,053,614 in gross receipts. Consequently, Quinn owed DCAS \$423,217 in rent for Fiscal Year 2007.

Objectives

Our audit objectives were to determine whether the Quinn:

- Accurately reported its total gross receipts, properly calculated the rent due the City, and paid the rent on a timely basis; and
- Complied with certain non-revenue-related requirements of the lease agreement.

Scope and Methodology

The audit covered the Fiscal Year 2007 operating period—October 1, 2006, through September 30, 2007. To achieve our audit objectives, we reviewed the lease agreement and amendments and examined their requirements. We reviewed DCAS correspondence, gross receipts reports, and other relevant documents related to the lease agreement. We reviewed the Account History Report for Quinn prepared by the DCAS Division of Real Estate Services to determine whether rent was received within the timeframe stipulated in the lease agreement and its amendments.

To obtain an understanding of control procedures used by Quinn for recording gross receipts of the restaurant and banquet operations, the auditors interviewed management officials.

To determine whether those controls were functioning as prescribed by the officials, we conducted a walk-through and unannounced observations of restaurant and banquet operations.

Quinn reported to DCAS gross receipts of \$5,210,094 from banquet sales and \$1,843,521 from sales at the restaurant and the bar. To assess the controls over restaurant, bar, and banquet sales, we conducted unannounced observations by dining at the restaurant on four occasions: lunch on September 5, 2007, and September 26, 2007, and dinner on August 23, 2007, and September 8, 2007. We also conducted five unannounced observations between August 26, 2007, and September 23, 2007, and another eight unannounced visits during the month of December 2007.

To determine the accuracy of gross receipts Quinn reported to DCAS for the audit period, we compared total gross receipts recorded in the general ledger to the quarterly gross receipts statements submitted by Quinn to DCAS.

Quinn uses MICROS for point-of-sale transactions at the restaurant and the bar and for banquet deposits and gift card sales. To determine whether Quinn accurately reported to DCAS its gross receipts from restaurant and bar sales, we traced all daily receipts from the restaurant and bar sales for July 1, 2007, through September 30, 2007, to the weekly and monthly statements compiled in MICROS, amounts recorded in Quinn's general ledger, and the quarterly gross receipts statements Quinn submitted to DCAS.

To determine whether the Quinn accurately reported to DCAS its gross receipts from banquet sales, we requested all banquet contracts and invoices from October 1, 2006, through December 31, 2006. All banquet contracts and invoices provided by Quinn were reviewed, and their charges were compared to the amounts recorded on Quinn's general ledger. The general ledger listed 128 banquets as being held or booked between October 1, 2006, and December 31, 2006. We then traced the individual contract and invoice amounts to the general ledger. In addition, we obtained the banquet event calendar from October through December 2006, and compared the information to determine whether all banquets recorded on the banquet event calendar were recorded on Quinn's general ledger and the quarterly gross receipt statements.

To determine whether Quinn maintained the public access area (the pier) in good condition, we conducted a physical observation and reviewed all documentation relating to the pier on file with DCAS. The documentation included a report from an architectural and planning firm hired to assess the physical condition of the pier. To determine whether the deductions from gross receipts for gratuities paid to employees were correct under the terms of the lease agreement, we traced the deducted amounts from the quarterly gross receipts statements Quinn provided to DCAS to the amounts recorded on the general ledger and to the amounts listed on the banquet contracts. To determine whether those amounts paid to Quinn's employees through its payroll were actually gratuities, not wages or commissions, we reviewed the payroll records for our sample period—October 1, 2006, through December 31, 2006.

To determine whether Quinn remitted the required security deposit, we examined documents on file with the Comptroller's Office. We reviewed Quinn's records to determine whether it maintained insurance, paid its utility bills, and has the certificates of occupancy and

incorporation on file as required in the agreement. To determine whether Quinn paid its water and sewer charges and did so in a timely manner, we reviewed the Accounts Receivable Transaction History Report for Water's Edge maintained by the Department of Environmental Protection.

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. The 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 Quinn and DCAS officials during and at the conclusion of this audit. A preliminary draft report was sent to Quinn and DCAS officials on May 7, 2008, and was discussed at an exit conference held on May 29, 2008. On July 24, 2008, we submitted this draft report to Quinn and DCAS officials with a request for comments. We received written responses from Quinn and DCAS on August 5, 2008, and August 8, 2008, respectively.

In her response, Quinn's President stated:

"We are attaching herewith our response to each of the recommendations and feel confident that we can work together to resolve the two major areas of contention. Those being, the maintenance and rebuilding of the pier and the assertion that all vendor activity conducted on our premises is subject to rent."

In its response, DCAS officials generally agreed with the report's recommendations and described the actions DCAS has taken or will take to address the report's recommendations.

The specific comments raised by Quinn and DCAS and our rebuttals are contained in the relevant sections of this report.

The full texts of the responses received from Quinn and DCAS are included as addenda to this report.

FINDINGS

Quinn was unable to demonstrate that it had accurately reported its total gross receipts to DCAS and paid the appropriate rent due the City since it did not issue pre-numbered banquet contracts; lacked banquet invoices; and lacked or had canceled guest checks. As a result, we were unable to reach a determination about the accuracy of Quinn's reported gross receipts and payment of appropriate rent to the City. Therefore, because of these internal control weaknesses over the restaurant and banquet operations, we found that Quinn was not in compliance with major provisions of its lease with the City.

Based on the documentation that was provided, however, we concluded that Quinn improperly deducted \$507,249 in service charges from its gross receipts as "gratuities" to its employees and did not include \$604,620 in gross receipts from the sales of its florist, photographer, and musicians in the gross receipts it reported to DCAS. At a minimum, Quinn therefore owes the City \$86,034—\$69,309 in rent and \$16,725 in late charges. Furthermore, Quinn did not remit rent payments to DCAS on time; owes \$77,453 in water and sewer charges and \$43,506 to ConEdison; failed to remit the full amount of its required security deposit; and failed to maintain the pier (public access area) to such an extent that it is hazardous and closed to the public.

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

Internal Control Weaknesses over Banquet and Restaurant Operations

Lack of Controls over Banquet Contracts

Quinn does not issue pre-numbered contracts to patrons who schedule banquets at its facility. In fact, in many instances banquet contracts were not on file. As a result, we cannot be assured that all revenue from banquet activity was recorded on Quinn's books and reported to DCAS, and that appropriate rent was paid to the City. Quinn's lease agreement requires:

"Lessee, during the term of this Lease and any renewal thereof, shall maintain adequate systems of internal control and shall keep on the Demised Premises complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by the Lessee and the gross receipts therefrom."

During our sample period, October 1, 2006, to December 31, 2006, Quinn reported that 128 banquets were held that generated revenue totaling \$1,289,990. Of the 128 banquets Quinn reported, there were no contracts on file for 25 of these events, which generated revenues totaling \$111,815.

Issuing pre-numbered contracts provides a basic internal control mechanism to ensure that all banquet revenue is accurately reported in Quinn's books and records and consequently, reported on the quarterly gross receipts statements it submits to DCAS. Maintaining a complete

log of all banquet contracts in sequential order (including voided and unused contract numbers) provides assurance of the proper accounting of all banquet contracts. Without pre-numbered banquet contracts, there is no evidence that all banquet revenue was recorded on Quinn books and records and reported to DCAS, and that appropriate rent was paid to the City.

Lack of Accounting for Banquet Invoices

Quinn's records did not account for 701 invoices for the sample period October 1, 2006, to December 31, 2006. Quinn issues pre-numbered invoices to patrons making their final payment for banquets at the facility. According to Quinn's records, invoice numbers for the three-month sample period began with #10795 and ended with #11654. Thus, it would appear that 860 invoices were issued for banquet engagements during the sample period. However, Quinn's records had only 127 invoices for 128 banquets on file. Of the remaining 733 invoices:

- 701 invoices (numbers 10852 to 11552) were missing;
- 15 invoices were located in Water's Edge's "bill book";
- Seven invoices were for unreported events, totaling \$16,507. As a result, Quinn owes \$1,329 in additional rent and penalties.
- Seven invoices were for parties in January;
- One invoice was reportedly canceled;
- One invoice was paid through MICROS; and
- One banquet has two invoices instead of one.

In addition, we could not reconcile the dollar amount recorded on 44 of the 127 invoices with the amounts actually paid and the amounts Quinn reported on the quarterly gross receipts statement it provided to DCAS. Specifically, for 28 of the 44 invoices reviewed, Quinn received a total of \$26,781 more than it reported on its quarterly gross receipt statement. As a result, Quinn owes \$2,150 in additional rent, including interest and penalties, to the City. For the remaining 16 invoices, because of lack of documentation such as banquet contracts, we were unable to trace and verify \$114,555 in gross receipts Quinn reported to DCAS. According to Quinn's controller, Quinn does not utilize invoice numbers for internal control purposes.

Maintaining a complete accounting of all banquet invoices in sequential order (including voided and unused invoice numbers) provides assurance of the proper accounting of all banquet invoices. Because of Quinn's lack of proper accounting of banquet invoices, a weakness in basic internal controls, there is no evidence that all banquet revenue was recorded on Quinn books and records and reported to DCAS or that appropriate rent was paid to the City.

**Other Internal Control Weaknesses
Over Banquet Revenue**

Since Quinn does not issue pre-numbered contracts and cannot demonstrate that it has controls over its banquet invoices, we could not ascertain whether Quinn reported all banquet revenue; however, we were able to perform testing of the banquet records provided for October 1, 2006, to December 31, 2006. Based on our review of documentation provided by Quinn (i.e., banquet event calendar, quarterly gross receipts statements, and folders with supporting documentation of actual events), we identified several types of irregularities shown in Table I, below.

Table I

Banquet Event Record Irregularities

Types of Irregularity	Number of Irregularities
Actual events not recorded on quarterly gross receipts statements	7
Events recorded on quarterly gross receipts statement without any supporting documentation of actual event.	1
Events on banquet calendar but not on quarterly gross receipts statements	13
Events on quarterly gross receipts statement but not on banquet calendar	6
Actual events not recorded on banquet calendar	7
Events recorded on banquet calendar without any supporting documentation of the actual event	9
TOTAL	43

In addition, our review identified other internal control weaknesses within Quinn’s banquet operation. Quinn does not record all banquet revenue in the point-of-sales system; lacks a daily payment log that records individual payments made by patrons; and lacks any written agreements for the commissions received from its florist, musicians, and photographer. Without the proper internal controls in place, Quinn has violated its lease agreement and, as a result, DCAS cannot be assured that all revenue from Quinn’s banquet operation is being accurately reported.

Lack of Accounting of Restaurant Guest Checks

For our sample period, July 1, 2007, to September 30, 2007, Quinn reported \$517,375 in revenue from the restaurant and the bar. However, Quinn records did not account for five guest check numbers for that period. In addition, 576 (approximately 13.67 percent) guest check numbers were voided or canceled over the same period. Consequently, Quinn cannot demonstrate and we cannot be assured that all gross receipts from restaurant and bar operations

were recorded on Quinn's books and reported to DCAS, and that appropriate fees were paid to the City.

Quinn uses the MICROS point-of-sale system that assigns sequentially-numbered guest checks (from #1 to #4,999) to patrons who order food and beverages at the restaurant and who make payments for scheduled banquets. According to Quinn's records, the restaurant guest check numbers for the sample period July 1, 2007, to September 30, 2007, began with #4316 and ended with #2902—the sequence automatically reset to #1 after guest check #4,999 was issued. Thus, it would appear that 3,586 restaurant guest checks were used during the sample period. However, according to Quinn's books, records, and gross receipt statement, only 3,107 guest checks were reported to DCAS. The remaining 479 guest checks were either missing (5) or canceled (474).

Quinn uses a different series of guest check numbers—from #1 to #4,999—issued to patrons who order beverages at the bar. According to Quinn's records, the bar guest check numbers for the sample period began with #2,602 and ended with #3,230. Thus, it would appear that 629 bar guest checks were used during the sampled period. However, according to Quinn's books, records, and gross receipt report, only 527 guest checks were reported to DCAS. The remaining 102 guest checks were canceled.

According to Quinn's owner, all of the voided or canceled guest checks were complementary meals for patrons who booked parties at Water's Edge.

Since Quinn cannot account for missing guest checks numbers and has a large number of canceled guest checks, Quinn cannot demonstrate and we cannot be assured that all restaurant and bar revenue was recorded on Quinn's books and records and reported to DCAS, and that appropriate rent was paid to the City.

Quinn Did Not Report All Sales and Took Improper Deductions from Gross Receipts

Quinn improperly deducted \$507,249 from its gross receipts it reported to DCAS, and it did not report \$604,620 in gross receipts from the sales of its florist, photographer, and musicians. Therefore, it underpaid the City \$82,555 in rent and related interest and penalties over the audit period. These issues are discussed in further detail below.

Improper Deductions from Gross Receipts Relating to Banquets

During the audit period, Quinn reported gross receipts of \$7,053,972 and paid the City \$423,238 in rent. However, Quinn owes the City \$37,652 in additional rent and related interest

and penalties because Quinn improperly deducted \$507,249 from its gross receipts, violating provisions of its lease agreement and New York State Labor Law.

Upon our review of its banquet invoices, we found that Quinn uniformly adds a 20 percent service charge to its invoices, which it deducts from gross receipts reported to DCAS as “gratuities.” A February 13, 1997 Stipulation of Settlement between Quinn and the City permits gratuities to be deducted from gross receipts under certain circumstances. The stipulation states:

“For the purposes of calculating any additional Percentage Rent due under Section 5.01(2) of the Lease for the post-Audit Period, the parties agree that the dollar amount of banquet gratuities received by Quinn shall be included in Quinn’s gross receipts, as defined in Article 5, Section 5.02 of the Lease, and shall be included in the calculations of the Percentage Rent due, except that the dollar amount of banquet gratuities received that have been paid, as banquet gratuities, and not as wages or commissions, to particular employees working at the respective banquet or independent contractors, hired by Quinn specifically for the respective banquet, within twenty-one (21) days thereof, shall be excludable from gross receipts, provided *Quinn provides proof of such payments, reasonably satisfactory to the City agency administering the Lease and/or the Comptroller.*” (Emphasis added.)

However, for our sample period—October 1, 2006, through December 31, 2006—Quinn distributed only 49 percent of service charges/gratuities to its wait staff who actually worked during the respective banquets. For small parties, Quinn distributed only 74 percent of service charges/gratuities to its wait staff who actually worked during the respective small parties.

The remaining 51 percent from banquet service charges/gratuities and 26 percent from small parties service/gratuities were retained by Quinn or distributed to other staff, including its owners, banquet manager, restaurant manager, executive chefs, banquet chef, maitre’d, controller, executive secretary, and laundry and maintenance staff, in violation of its lease agreement. Several of the above-mentioned employees received the same “gratuity” *every pay period*. During the audit period, the maitre’d received \$1,538 in “gratuities” in his paycheck every two weeks; the office manager received \$1,154 in “gratuities” in her paycheck every two weeks; and the controller and executive secretary each received \$769 in “gratuities” in their paychecks every two weeks.

Obviously the payments to these employees are not based on their work at the respective banquets, but are instead used to subsidize the employees’ fixed biweekly salaries and Quinn’s operations; therefore, using the percentages of service charges/gratuities withheld by Quinn during the audit period—51 percent for banquet and 26 percent for small parties—we estimate that \$507,249 of the \$1,029,648 in service charges/gratuities collected during this period should not have been deducted from gross receipts reported to DCAS.

Moreover, Quinn is in violation of the New York State Department of Labor Division of Labor Standards, Labor Law Section 196-d. According to an opinion dated March 26, 1999, the New York State Department of Labor opined,

“If the employer’s agents lead the patron who purchases a banquet or other special function to believe that the contract price includes a fixed percentage as a gratuity, then that percentage of the contract price must be paid in its entirety to the waiter, busboys and ‘similar employees’ who work at that function, even if the contract makes no reference to such a gratuity.”

Further, a New York State Court of Appeals decision dated February 14, 2008, states;

“We hold that the statutory language of Labor Law §196-d can include mandatory charges when it is shown that employers represented or allow its customers to believe that the charges were in fact gratuities for its employees. An employer can not be allowed to retain these monies.”

Obviously, Quinn is representing these service charges as gratuities; according to New York State law, all service charges should have been distributed to its wait staff who worked at each function.

Quinn Did Not Report to DCAS \$604,620 from the Sales of Its Exclusive Florist, Photographer, and Musicians

Quinn did not report \$604,620 in gross receipts from the sales of its florist, photographer, and musicians during the audit period. As a result, Quinn owes \$44,903 in additional rent and late charges. According to Quinn’s lease agreement: “Gross Receipts shall also include all sales made by any other party or parties using the Lessee’s premises.”

Our review of commission statements and supporting documentation revealed that patrons made purchases through Quinn’s florist, photographer, and musicians during the audit period. Quinn then received commissions totaling \$99,557 from these vendors. Since the premises were used to make these sales, the sales should have been included in the gross receipts statements Quinn provided to DCAS and the appropriate rent paid to the City.

Our review of Quinn’s commission statements noted that the florist made deliveries to Quinn on behalf of banquet patrons on days when no banquets were scheduled to be held. We noted four such deliveries for a total of \$2,625 on the days in question. These deliveries were made on days when there were no sales from banquets reflected on the quarterly gross receipts statements Quinn provided to DCAS. In addition, the musician received \$2,250, for performing at Water’s Edge on one day when Quinn’s records indicated that no banquets were scheduled to be held. This further indicates that banquet events were held without Quinn recording the revenue on its gross receipts reports.

Quinn Is Not in Compliance with Other Major Provisions of Its Lease Agreement

Quinn Is Not Maintaining the Public Access Area

Quinn is not maintaining the public access area (the pier) as required by its lease agreement. Consequently, the pier is in a state of disrepair, is potentially hazardous, and has not been safe for public use since October 2005. According to the lease agreement:

“Lessor and Lessee agree that, as a condition of this Lease, a certain portion of the Demised Premises, but in no event less than 5,900 square feet shall be used exclusively for an area open to reasonable access and use by the general public for the entire term of the Lease provided, however, that said public access area shall not be used for commercial purposes. Said area shall be constructed and maintained during the entire term of the Lease by Lessee, at its sole cost and expense.”

Inspections conducted in October 2005 by a registered architect, waterfront engineer, and a dockbuilder foreman from Edward M. Weinstein, Architectural and Planning, P.C., revealed that there was severe deterioration of many pilings and that the concrete pier deck was in poor condition. As a result, the report recommended that the pier be repaired. DCAS directed Weinstein to close the pier to public access.

In letter dated November 18, 2005, DCAS notified Quinn that the pier was in a state of disrepair, potentially hazardous, and not safe for public use. In addition, DCAS demanded that Quinn prepare the required permit application and submit plans for repair of the pier to DCAS by December 23, 2005.

Since Quinn did not submit the required documentation, DCAS sent a Notice of Default to Quinn dated February 8, 2006, because Quinn “failed to deliver either permit applications or plans” for repair to DCAS. The Notice of Default also states that if Quinn

“fails within thirty (30) days of receipt of this notice to submit to Lessor for review and approval, all necessary permit applications and plans for its repair of the pier, Lessor intends to perform the necessary repairs as agent of Lessee, and pursuant to Section 27.02 of the Lease, the sum so paid by Lessor, with all interest, costs and damages, shall be deemed to be additional rent and shall be due from the Lessee to Lessor on the first day of the month following the incurring of such expenses.”

Finally, in two letters to Quinn dated November 29, 2006, and June 14, 2007, DCAS reiterated that the repairs to the pier were Quinn’s responsibility and that DCAS would formulate a plan to repair the pier at Quinn’s expense.

To date, the pier remains closed to public.

Quinn Does Not Remit Rent on Time

Quinn has a history of not adhering to the lease agreement concerning paying rent when it is due. Quinn has been cited for not remitting rent on time as long ago as our previous audit report on Quinn's lease agreement that was issued in October 1993.¹ Even when Quinn did make rental payments, several checks were returned for insufficient funds. Consequently, the City wasted money and resources to collect rent that was past due. During the audit period, DCAS issued two Three-Day Rent Demand Notices to Quinn (September 13, 2006, and November 21, 2007) and filed two Notices of Petition for Non-Payment with the Civil Court in Queens (October 6, 2006, and December 6, 2007) to collect past due rent, percentage rent, late charges, and bounced-check fees. As a result, DCAS now requires rent payments to be in the form of a certified check, bank check, or postal money order because numerous checks received from Quinn were returned unpaid by reason of insufficient funds. In fact, as of December 1, 2007, Quinn owed the City \$224,083 in back rent and late charges.

According to the latest amendment to the lease, dated May 3, 2000, Quinn is required to pay annual minimum rent in equal monthly installments (\$8,333 per month, \$100,000 per year) due on or before the first day of each month. In addition, Quinn is required to pay its estimated percentage rent in equal monthly installments of 11.11 percent, due on or before the first day of each month from April to December. This amendment to the lease was made to resolve all monetary disputes outstanding at that time, which totaled \$340,932. The disputes concerned past due base rent of \$58,295, past due percentage rent of \$181,352, and late fees and miscellaneous charges of \$101,285. It should be noted that the City settled this dispute for \$290,290, \$50,642 less than it was owed by Quinn.

Quinn Owes \$77,453 in Water and Sewer Charges

Quinn has a history of not remitting timely payments for water and sewer charges. As a result, Quinn owes \$77,453 as of September 28, 2007. Even more troubling is that the amount Quinn owes in water and sewer charges has increased by approximately 31 percent over the audit period, from \$58,994 on September 27, 2006, to \$77,453. According to the lease agreement:

“Lessee shall pay for the sewer charges and for any water, gas, heat, coolant and electricity consumed and used. . . . Water charges and sewer rent due and payable under Section 10.01 to the City shall be deemed to be additional rent and shall be payable and collectible as rent.”

Quinn Owes \$43,506 to ConEdison

Quinn owes ConEdison \$43,506 for electricity and gas charges as of January 8, 2008. In addition, Quinn received three Final Turnoff Notices for Non-Payment from ConEdison for

¹ *Audit Report on Rent Due from Quinn Restaurant Corporation d.b.a. The Water's Edge Restaurant and Compliance with its Lease Agreement October 1, 1986 to March 31, 1992* (Audit Number 3C91-01) issued October 18, 1993.

November 2007 through January 2008. As stated above, Quinn is responsible for paying for all gas and electricity consumed on the leased premises.

Quinn's Security Deposit Is Underfunded by \$1,450

Quinn security deposit is underfunded by \$1,450. According to the Bureau of Accountancy of the Comptroller's Office, Quinn has \$23,550 on account to cover its security deposit. However, Quinn is required by its lease agreement to maintain a \$25,000 security deposit.

RECOMMENDATIONS

Quinn officials should:

1. Pay the City the additional \$69,309 in rent and \$16,725 in late charges assessed in this audit report.

Quinn Response: “Demand for payment of \$100,716.00 in rent and \$24,214 in late charges assessed. Please schedule and itemize these charges to enable us to reconcile the components of the total amount requested.”

Auditor Comment: The Schedule of Itemized Charges is attached to this final report. (See Appendix I.)

2. Exclude from gross receipts reported to DCAS only the amounts for gratuities as defined in the terms of the lease agreement, its amendments, and the Stipulation of Settlement agreement.

Quinn Response: “It is evident from your report that gratuities totaling \$1,029,648 have been categorized as an improper deduction from rent. Based upon the payroll information submitted for your audit review, it is documented that this conclusion is incorrect on your part.

“In summary, a combined total of \$845,442 was paid as tips to the staff and is reported on the annual W-3 and W-2’s and the quarterly 941 reports. We thereby request that this adjustment to gross receipts be allowed and that a reduction in the demand for payment of rent be made to reflect this actual payout. Therefore, we calculate that we owe rent on \$184,206 which would be \$11,052.”

Auditor Comment: Contrary to Quinn’s response, the payroll information that we received confirmed that Quinn is in violation of its lease agreement and the New York State Department of Labor Division of Labor Standards, Labor Law Section 196-d.

As previously stated, our detailed testing revealed that 51 percent from banquet service charges/gratuities and 26 percent from small parties service/gratuities were retained by Quinn or distributed to other staff, including its owners, banquet manager, restaurant manager, executive chefs, banquet chef, maitre’d, controller, executive secretary, and laundry and maintenance staff, in violation of its lease agreement and New York State Law.

Consequently, we estimate that \$507,249 of the \$1,029,648 in service charges/gratuities collected during this period should not have been deducted from gross receipts reported to DCAS. As a result, Quinn owes the City \$37,652 in additional rent and penalties.

3. Remit all future rent to the City when due, as prescribed in the lease agreement.

Quinn Response: “Payment of future rent will be timely as prescribed in the lease agreement and we are current with our rent at this time.”

4. Establish and implement adequate internal controls over the financial operations of the restaurant, the bar, and banquets. These controls should include accounting for all banquet contracts, banquet invoices, and guest checks at the restaurant and the bar.

Quinn Response: “We have already begun the implementation of new internal controls over the financial operation of the restaurant, bar and banquet operation. We have purchased new software for a point-of-sale system and installed new software to automate billing with sequentially numbered invoices. A daily audit is done to account for every check generated and the ‘comp’ checks are being carefully monitored at restaurant level.”

5. Report to DCAS the gross receipts for all transactions that transpired at the leased premises, including those for the florist, photographer, and musicians who provided services to Quinn banquet patrons and for which Quinn received a commission.

Quinn Response: “Regarding the claim that all transactions, specifically those conducted by the florists, photographers and musicians, is subject to rent is an area where we must refer to the lease page 8 which states: ‘Gross receipts shall include all sales made by any other party or parties using the Lessees premises.’ The vendors referred to above, do not maintain sales offices at our premises, nor do they meet with clients at our premises, nor use our facilities to sell their product.

“The lease further states in Section 5.02 that ‘gross receipts shall include all sums received by the Lessee.’ This, in fact, translates to the commission that we are receive and for which commission, we agree to pay rent. Anything other than this conclusion would be grossly unjust.”

Auditor Comment: We disagree with Quinn’s contention that the sales made by the florist, photographers, and musicians did not use the lessee’s premises. Quinn referred its patrons to its “Exclusive Florist,” “Suggested Photographers,” and “Suggested Musical Entertainment” on Water’s Edge engagement contracts negotiated at the lessee’s premises. Quinn also advised its patrons that these vendors were “Recommended and Approved” on its estimate sheets during negotiaions. In addition, these vendors paid Quinn commissions for these referrals. Obviously, the vendors used the lessee’s premises to promote, advertise, and generate sales of their goods and services. Without these referrals, these vendors would not have made these sales. Therefore, we maintain that the gross receipts from these transactions must be reported to DCAS and the appropriate percentage rent be paid to the City. It should be noted that Quinn did not report the commissions it received from its vendors to DCAS, nor did Quinn pay the required percentage rent.

6. Repair the pier and public access area to a state of good condition.

Quinn Response: “The repair of the pier and public access area to a state of good condition is the most serious and costly demand made. Considering the damage done to our business since the structure was demolished by the City of New York in December of 2005, it seems obvious that to rebuild (not repair) the pier would be the most prudent decision. We are willing to sit down and negotiate a plan with any City Agency to initiate this huge financial undertaking and work out the logistics of accomplishing this task. At our end, we will avidly seek out all New York City personnel who are willing to work towards this end.”

Auditor Comment: Contrary to Quinn’s response, there is no need to negotiate a plan with the City concerning the repair of the pier. The lease agreement clearly states that the leasee—Quinn—is responsible for the construction and maintenance of the pier “at its sole cost and expense.” Therefore, Quinn should immediately prepare the required permit application, submit plans for repair of the pier to DCAS, and conduct the repairs to the pier.

7. Immediately, pay all outstanding utility and water and sewer charges related to the leased premises.

Quinn Response: “The arrears of water and sewer charges have all paid up and future bills will be paid timely. At this time, Con Edison is also paid up through July bills and it our intention to keep all payments for utilities current in the go forward.”

8. Remit to the Comptroller’s Office \$1,450 to fully fund the value of the security deposit, as required in the lease agreement.

Quinn Response: “We agree to pay the Comptroller’s office \$1,450 to fully fund the \$25,000 security deposit.”

DCAS should:

9. Issue a Notice to Cure requiring the payment of the additional \$69,309 rent and \$16,725 in late charges due from Quinn management assessed in this audit report.

DCAS Response: “Agree. DCAS will issue a Notice to Cure to collect the rent and late charges assessed in this audit report.”

10. Ensure that Quinn management takes only those deductions from gross receipts that are allowable under the terms of the lease agreement, its amendments, and the Stipulation of Settlement agreement.

DCAS Response: “Agree. DCAS will review all quarterly statements submitted by Quinn on a line-by-line basis to confirm that all income is properly recognized and that any deductions taken are allowable under the lease. When necessary, DCAS will request supporting documentation.”

11. Issue a Notice to Cure mandating that Quinn management establish and implement an adequate system of internal controls over the financial operations of the restaurant, the bar, and banquets.

DCAS Response: “Agree. DCAS will issue a Notice to Cure which will require that Quinn management submit to DCAS a proposal to provide detailed financial requirements to comply with the audit recommendations on an ongoing basis.”

12. Issue a Notice to Cure for the cost to repair the pier and public access area to a state of good condition.

DCAS Response: “DCAS served upon tenant a Notice of Default dated February 8, 2006 with respect to tenant’s failure to keep and maintain the pier in good repair and condition. By letter to tenant’s attorney dated March 9, 2006, DCAS’ then General Counsel stated that DCAS would not avail itself of its possible remedy of termination of the lease pursuant to the Notice of Default but, rather, if tenant failed to take the necessary steps to repair the pier, the City would perform the repairs as agent of tenant at tenant’s expense. As the tenant has failed to undertake such repairs, DCAS has been coordinating with the Parks Department, which has designated a contractor to evaluate the remaining elements of the pier and prepare construction documents for its reconstruction. We fully intend to hold the tenant to its obligation to pay for these repairs, however.”

Auditor Comment: We are pleased that DCAS is moving to repair the pier and intends to hold Quinn to its responsibility to pay for the repairs. However, the pier has been closed for almost three years and the Notice of Default was issued more than two and half years ago. During that time, DCAS has not made efforts to expedite repairs to the pier and to charge the cost to Quinn. DCAS should accelerate its repair schedule and reopen the pier to the public as soon as possible.

13. Collect all past rent due, including interest, penalties, and bank charges for bounced checks.

DCAS Response: “DCAS has already collected all past due rents, as described above. DCAS, acting through the Division of Real Estate Services, commenced a non-payment

proceeding against the tenant, assigned index no. 020845/07, filed in the Civil Court of the County of Queens, seeking rent arrears due and owing the City of New York. By a Stipulation and Order of Settlement, dated May 9, 2008, the petition was amended to include a demand for all rent arrears through May 2008. The tenant consented to a money judgment in the amount of One Hundred Thirty-Seven Thousand Nine Hundred Ninety-Six Dollars and 50/100 Cents (\$137,996.50), such amount represented base rent, estimated percentage rent, late charges and bounced check charges. There was no waiver of any monies owed by the tenant and, since then, the tenant has satisfied in full the amount of the money judgment.”

14. Issue a Notice to Cure instructing Quinn management to pay all outstanding utility and water and sewer charges related to the leased premises.

DCAS Response: “As of the date of this letter, Quinn is current in all payments to DEP for water and sewer. DCAS will monitor payment status and take appropriate action in the event Quinn accumulates arrears on payments to DEP.”

15. Issue a Notice to Cure instructing Quinn management to remit to the Comptroller’s Office \$1,450 to fully fund the value of the security deposit.

DCAS Response: “Agree. DCAS will issue a Notice to Cure to require that the security deposit be fully funded.”

16. Enforce its outstanding Notice of Default against Quinn and terminate the lease agreement if Quinn does not abide by the findings and the recommendations contained in this audit report.

DCAS Response: “DCAS will issue a Notice of Default and will proceed to terminate the lease if Quinn does not comply with the audit findings and recommendations, and comply timely with the requirements of the Notice to Cure.”

Auditor Comment: We note that DCAS’s actions are appropriate and long overdue. Given the past gross delinquency of this concessionaire in paying its fees and in complying with the terms of the agreement, it may be in the best interest of the City to terminate the agreement and award it to a more responsible entity.

Schedule of Itemized Charges

Description	Period Reviewed	Rent Owed to DCAS	Interests and Penalties	Rent plus Interest and Penalties
Improper Deduction of Gratuity	October 1, 2006 through September 30, 2007	\$30,435	\$7,217	\$37,652
Sales of Florist, Musicians, and Photographer	October 1, 2006 through September 30, 2007	\$36,277	\$8,626	\$44,903
Underreported Invoices	October 1, 2006 through December 30, 2006	\$1,607	\$543	\$2,150
Banquets not Reported	October 1, 2006 through December 30, 2006	\$990	\$339	\$1,329
Total		\$69,309	\$16,725	\$86,034



August 2, 2008

Mr. John Graham
The City of New York
Office of the Comptroller
Executive Offices
1, Centre St.
New York NY 10007-2341

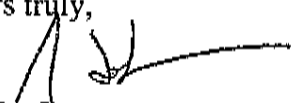
Re: Audit Report on the Compliance of
Quinn Restaurant Corporation (Water's Edge Restaurant)
With it's Lease Agreement and Payment of Rent Due the City
FL08-088A

Dear Sirs:

We are in receipt of the above-captioned draft report and have read and reviewed it carefully. We are attaching herewith our response to each of the recommendations and feel confident that we can work together to resolve the two major areas of contention. Those being, the maintenance and rebuilding of the pier and the assertion that all vendor activity conducted on our premises is subject to rent.

We thank you for the opportunity to attach our comments and look forward to bringing the audit to a conclusion as quickly as possible.

Yours truly,



Marika Somerstein, President
Quinn Restaurant Corporation

cc: Martha Hirst, Commissioner Department of Citywide Administrative Services
Christopher J. Lane, Director of Internal Audit
William C. Thompson Jr. Office of New York City Comptroller

1. Demand for payment of \$100,716.00 in rent and \$24,214 in late charges assessed. Please schedule and itemize these charges to enable us to reconcile the components of the total amount requested.
2. It is evident from your report that gratuities totaling \$1,029,648 have been categorized as an improper deduction from rent. Based upon the payroll information submitted for your audit review, it is documented that this conclusion is incorrect on your part.

In summary, a combined total of \$845,442 was paid as tips to the staff and is reported on the annual W-3 and W-2's and the quarterly 941 reports. We thereby request that this adjustment to gross receipts be allowed and that a reduction in the demand for payment of rent be made to reflect this actual payout. Therefore, we calculate that we owe rent on \$184,206 which would be \$11,052.

3. Payment of future rent will be timely as prescribed in the lease agreement and we are current with our rent at this time.
4. We have already begun the implementation of new internal controls over the financial operation of the restaurant, bar and banquet operation. We have purchased new software for a point-of-sale system and installed new software to automate billing with sequentially numbered invoices. A daily audit is done to account for every check generated and the "comp" checks are being carefully monitored at restaurant level.
5. Regarding the claim that all transactions, specifically those conducted by the florists, photographers and musicians, is subject to rent is an area where we must refer to the lease page 8 which states: "Gross receipts shall include all sales made by any other party or parties using the Lessees premises". The vendors referred to above, do not maintain sales offices at our premises, nor do they meet with clients at our premises, nor use our facilities to sell their product.
The lease further states in Section 5.02 that "gross receipts shall include all sums received by the Lessee". This, in fact, translates to the commission that we are receive and for which commission, we agree to pay rent. Anything other than this conclusion would be grossly unjust.
6. The repair of the pier and public access area to a state of good condition is the most serious and costly demand made. Considering the damage done to our business since the structure was demolished by the City of New York in December of 2005, it seems obvious that to rebuild (not repair) the pier would be the most prudent decision. We are willing to sit down and negotiate a plan with any City Agency to initiate this huge financial undertaking and work out

the logistics of accomplishing this task. At our end, we will avidly seek out all New York City personnel who are willing to work towards this end.

7. The arrears of water and sewer charges have all paid up and future bills will be paid timely. At this time, Con Edison is also paid up through July bills and it our intention to keep all payments for utilities current in the go forward.
8. We agree to pay the Comptroller's office \$1,450 to fully fund the \$25,000 security deposit.

We trust that the resolution to make timely payments coupled with the desire to comply with the recommendations relating to internal controls, will help to improve our overall evaluation as a tenant and enable us to restore our credibility with your office. Our desire is to be a good tenant for many more years and continue as a New York City landmark.



DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER

One Centre Street, 17th Floor
New York, NY 10007
(212) 669-7111 • Fax: (212) 669-8992
Email: mhirst@dcas.nyc.gov

Martha K. Hirst
Commissioner

Citywide Personnel
Services

August 7, 2008

Facilities
Management &
Construction

John Graham
Deputy Comptroller
Office of the City Comptroller
Audits, Accountancy & Contracts
1 Centre Street, Room 530
New York, NY 10007

Municipal Supply
Services

RE: Draft Audit Report on the Compliance
of Quinn Restaurant Corporation
(Water's Edge Restaurant) with its Lease
Agreement and Payment of Rent Due
the City (FL08-088A)

Real Estate Services

Citywide Equal
Employment
Opportunity

Dear Mr. Graham:

We have reviewed the draft audit report dated July 24, 2008, and accepted the conclusions put forward by the Auditors. The following are our comments regarding audit recommendations #9 – #16 which require follow-up by DCAS:

Citywide
Occupational Safety
& Health

Recommendation 9 - Issue a Notice to Cure requiring the payment of the additional \$100,716 rent and \$24,214 in late charges due from Quinn management assessed in this audit report.

Agree. DCAS will issue a Notice to Cure to collect the rent and late charges assessed in this audit report.

Transportation
Services

Recommendation 10 - Ensure that Quinn management takes only those deductions from gross receipts that are allowable under the terms of the lease agreement, its amendments, and the Stipulation of Settlement agreement.

The City Record

Agree. DCAS will review all quarterly statements submitted by Quinn on a line-by-line basis to confirm that all income is properly recognized and that any deductions taken are allowable under the lease. When necessary, DCAS will request supporting documentation.

CityStore

- 2 -

Recommendation 11 - Issue a Notice to Cure mandating that Quinn Management establish and implement an adequate system of internal controls over the financial operations of the restaurant, the bar, and banquets.

Agree. DCAS will issue a Notice to Cure which will require that Quinn management submit to DCAS a proposal to provide detailed financial requirements to comply with the audit recommendations on an ongoing basis.

Recommendation 12 - Issue a Notice to Cure for the cost to repair the pier and public access area to a state of good condition.

DCAS served upon tenant a Notice of Default dated February 8, 2006 with respect to tenant's failure to keep and maintain the pier in good repair and condition. By letter to tenant's attorney dated March 9, 2006, DCAS' then General Counsel stated that DCAS would not avail itself of its possible remedy of termination of the lease pursuant to the Notice of Default but, rather, if tenant failed to take the necessary steps to repair the pier, the City would perform the repairs as agent of tenant at tenant's expense. As the tenant has failed to undertake such repairs, DCAS has been coordinating with the Parks Department, which has designated a contractor to evaluate the remaining elements of the pier and prepare construction documents for its reconstruction. We fully intend to hold the tenant to its obligation to pay for these repairs, however.

Recommendation 13 - Collect all past due rents, including interest, penalties, and bank charges for bounced checks.

DCAS has already collected all past due rents, as described above. DCAS, acting through the Division of Real Estate Services, commenced a non-payment proceeding against the tenant, assigned index no. 020845/07, filed in the Civil Court of the County of Queens, seeking rent arrears due and owing the City of New York. By a Stipulation and Order of Settlement, dated May 9, 2008, the petition was amended to include a demand for all rent arrears through May 2008. The tenant consented to a money judgment in the amount of One Hundred Thirty-Seven Thousand Nine Hundred Ninety-Six Dollars and 50/100 Cents (\$137,996.50), such amount represented base rent, estimated percentage rent, late charges and bounced check charges. There was no waiver of any monies owed by the tenant and, since then, the tenant has satisfied in full the amount of the money judgment.

Recommendation 14 - Issue a Notice to Cure instructing Quinn management to pay all outstanding utility and water and sewer charges related to the leased premises.

As of the date of this letter, Quinn is current in all payments to DEP for water and sewer. DCAS will monitor payment status and take appropriate action in the event Quinn accumulates arrears on payments to DEP.

Recommendation 15 - Issue a Notice to Cure instructing Quinn management to remit to the Comptroller's Office \$1,450 to fully fund the value of the security deposit.

Agree. DCAS will issue a Notice to Cure to require that the security deposit be fully funded.

- 3 -

Recommendation 16 - Enforce its outstanding Notice of Default against Quinn and terminate the lease agreement if Quinn does not abide by the findings and the recommendations contained in this audit report.

DCAS will issue a Notice of Default and will proceed to terminate the lease if Quinn does not comply with the audit findings and recommendations, and comply timely with the requirements of the Notice to Cure.

We would like to thank the auditors for their efforts on this audit.

Sincerely,



Martha K. Hirst

C: Ilene Lees
Lori Fierstein
Donald Brosen
Barry Gendelman
Richard Friedman