



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

---

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

**Audit Report on the Compliance of  
Shellbank Restaurant Corp. with  
Certain Provisions of Its License Agreement  
And on License Fees It Owes the City**

**FM02-076A**

***June 25, 2002***

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

**Audit Report on the Compliance of  
Shellbank Restaurant Corp. with  
Certain Provisions of Its License Agreement  
And on License Fees It Owes the City**

**FM02-076A**

---

**EXECUTIVE SUMMARY**

On December 23, 1994, the City, through the Department of Parks and Recreation (Parks) entered into a 20-year license agreement with Shellbank Restaurant Corp. (Shellbank) to operate and maintain a restaurant (American Park Restaurant), snack bar, and public bathrooms at Battery Park, in the Borough of Manhattan.<sup>1</sup> Shellbank was required to pay the City \$50,000 or six percent of the gross receipts derived from its operation of the restaurant facility and snack bar for its first year of operation. The percentage of gross receipts increased to seven percent in the second year of operation and to eight percent for the third through the twentieth year. A late charge of two percent per month and an interest charge may be assessed on payments not made on or prior to the dates specified in the agreement. Shellbank reported \$11,780,914 in revenue and paid license fees totaling \$864,319 for the period November 1, 1997, through October 25, 2000.

This audit determined whether Shellbank: properly reported its total gross receipts, accurately calculated license fees due the City, and paid these fees on a timely basis; and complied with certain other non-revenue-related terms of the license agreement (i.e., remitted the required security deposit, maintained the proper amount of insurance, paid its taxes and utilities, and completed required capital improvements).

For the period November 1, 1997, to October 25, 2000, Shellbank underreported gross receipts by \$712,349 and owes the City \$83,950 in license fees and late charges. In addition, Shellbank owes the City \$16,142 for water and sewer use. Moreover, Shellbank never paid commercial rent tax, and TAM, its parent company, has not paid this tax on its operation of the Loeb Boathouse restaurant since May 31, 1995. Consequently, TAM owes the City approximately \$489,000 (\$57,000 for Shellbank and \$432,000 for the Loeb Boathouse) for commercial rent tax, interest and penalties. Also, Shellbank underpaid its New York State sales

---

<sup>1</sup> Shellbank is a subsidiary of TAM Restaurants, Inc., a former Parks concessionaire that operated the Loeb Boathouse restaurant in Central Park from February 1985 to September 2000.

taxes, did not pay its staff in accordance with New York State minimum wage law, and did not submit its income and expenses statements to Parks on time. Shellbank also violated Article IV (a)(c) of its license agreement because it did not maintain adequate records to support reported revenue, such as catering contacts, catering event calendars, and documentation of its gross receipts from dance events.

To address these issues, this report contains nine recommendations, including that Shellbank pay the City \$83,950 in additional license fees and late charges owed; report all revenues generated at the facility to Parks, and pay all outstanding water and sewer charges and commercial rent tax due. In addition, the report recommends that Parks ensure that Shellbank complies with the report's recommendations and determine whether Shellbank should be assessed additional license fees for the operating year ending October 31, 2001 (which we did not audit).

## **Discussion of Audit Results**

The matters covered in this report were discussed with Parks and Shellbank officials during and at the conclusion of this audit. A preliminary draft report was sent to Parks and Shellbank officials and was discussed at an exit conference on May 24, 2002. On May 30, 2002, we submitted a draft report to Parks and Shellbank officials with a request for comments. We received written comments from Parks on June 12, 2002, and from Shellbank on June 13, 2002.

In its response, Shellbank took exception to most of the report's findings and did not specifically address the report's recommendations. Shellbank stated that it believes that its records are accurate and that it has paid all license fees due. In addition, Shellbank stated that several of the operational issues raised in the report were already addressed. Shellbank indicated that it has instituted tighter controls over dance night receipts and has installed a new computerized tracking system for all catering events.

Parks officials agreed with the report's findings and recommendations. Parks responded that it issued two Notices to Cure (NTC) requiring that Shellbank pay the audit assessment and implement the report's other recommendations concerning internal control and record-keeping weaknesses, improper deductions, paying outstanding water and sewer charges and commercial rent tax and, paying its serving staff in accordance with the New York State minimum wage law. Parks also stated that a follow-up review would be conducted in two months to ensure compliance with all recommendations.

While we commend the Parks Department for its prompt issuance of two NTC's, we remained concerned because of the tone of Shellbank's response. We fear that unless this concessionaire is closely monitored by Parks, Shellbank might well continue the practices that were uncovered during the audit. We therefore suggest that Parks pay close attention to this concessionaire and conduct an audit of its own at some point in the near future.

The full texts of the written comments from Shellbank and Parks are included as addenda to this report.

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

**Audit Report on the Compliance of  
Shellbank Restaurant Corp. with  
Certain Provisions of Its License Agreement  
And on License Fees It Owes the City**

**FM02-076A**

---

**INTRODUCTION**

**Background**

On December 23, 1994, the City, through the Department of Parks and Recreation (Parks) entered into a 20-year license agreement with Shellbank Restaurant Corp. (Shellbank) to operate and maintain a restaurant (American Park Restaurant), snack bar, and public bathrooms at Battery Park, in the Borough of Manhattan.<sup>2</sup> Shellbank was required to pay the City \$50,000 or six percent of the gross receipts derived from its operation of the restaurant facility and snack bar for its first year of operation. The percentage of gross receipts increased to seven percent in the second year of operation and eight percent for the third through the twentieth year. A late charge of two percent per month and an interest charge may be assessed on payments not made on or prior to the dates specified in the agreement.

In addition, Shellbank is required to:

- submit gross receipts statements to Parks no later than the 30<sup>th</sup> day of each month for the preceding month's operations.
- make \$851,000 in capital improvements to the restaurant and certain other facilities.
- maintain liability insurance, automobile insurance, and property damage insurance policies that name the City of New York as an additional insured party and carry the amount of Worker's Compensation insurance required by statute.

---

<sup>2</sup> Shellbank is a subsidiary of TAM Restaurants, Inc., a former Parks concessionaire that operated the Loeb Boathouse restaurant in Central Park from February 1985 to September 2000.

- deposit \$12,500 as security with the City, pay its federal, state, and City taxes, and pay all utilities associated with the premises (including water and sewer usage charges).

As shown in Table I, Shellbank reported \$11,780,914 in revenue and paid license fees totaling \$864,319 for the period November 1, 1997, through October 25, 2000.

**TABLE I**

Schedule of Gross Receipts, and License Fees Paid  
November 1, 1997, through October 25, 2000

| <b>Period</b>                       | <b>Reported<br/>Gross Receipts</b> | <b>Fees Paid</b>     |
|-------------------------------------|------------------------------------|----------------------|
| November 1, 1997 – October 28, 1998 | \$ 1,950,232                       | \$106,019            |
| October 29, 1998 – October 27, 1999 | 4,487,336 <sup>3</sup>             | 330,832 <sup>2</sup> |
| October 28, 1999 – October 25, 2000 | 5,343,346                          | 427,468              |
| <b>Total</b>                        | <b>\$11,780,914</b>                | <b>\$864,319</b>     |

## Objectives

The audit's objectives were to verify whether Shellbank:

- properly reported its total gross receipts, accurately calculated license fees due the City, and paid these fees on a timely basis; and
- complied with certain other non-revenue-related terms of the license agreement (i.e., maintained the required security deposit and insurance, paid its taxes and utilities, and completed required capital improvements).

## Scope and Methodology

The scope of the audit was November 1, 1997, through October 25, 2000, which included the last full operating year for which Shellbank had submitted a complete set of gross receipt statements to Parks at the time we began this audit. To achieve our audit objectives, we reviewed the license agreement between Parks and Shellbank and noted the requirements of the agreement.

---

<sup>3</sup> In September 2001, Parks received Shellbank's 1999 Income and Expense Statement. Based on Parks's reconciliation, Shellbank underreported gross receipts by \$351,930 for the period October 29, 1998, through October 27, 1999. Consequently, Shellbank was required to pay the City an additional \$28,126 in license fees. Shellbank subsequently entered into a payment plan and agreed to pay this amount by June 25, 2002. The additional fees due are not included in Table I.

We reviewed and analyzed Parks's Concessionaire Ledger for the amounts reported and paid to the City, and verified whether payments were received on time.

We evaluated Shellbank's internal controls over its revenue functions. To gain an understanding of Shellbank's operating procedures for recording and reporting revenue, we interviewed management personnel, conducted a walk-through of its operations, and familiarized ourselves with its record-keeping procedures. We also observed Shellbank's processing of simulated transactions through its computerized point-of-sales system. We documented our understanding of Shellbank's operations through the use of narratives and memoranda, and determined the areas that required further testing.

To determine whether Shellbank accurately reported gross receipts to the City, we analyzed Shellbank's monthly gross receipts statements for the 2000 operating year and traced the amounts reported to its books and records.<sup>4</sup> We then compared those amounts to the revenue reported by Shellbank on its Federal Income Tax Return for the Fiscal Year ending September 27, 2000, and on its New York State Sales Tax returns for the period June 1, 2000, through September 30, 2000.

To test the reliability of the data in Shellbank's computerized point-of-sale system, we conducted limited testing from May 24, 2001, to June 27, 2001. Specifically, we examined Shellbank's daily guest checks from restaurant sales to ensure that all checks were accounted for, that each check was numbered by Shellbank's point-of-sale system, that the checks were generated in consecutive order, and that the checks were recorded on its computerized-sales printouts. Based on our examination, all information on the guest checks was recorded on the daily computerized-sales printouts. Therefore, we concluded that we could rely on Shellbank's daily computerized-sales printouts as a starting point for detailed testing. In addition, we examined Shellbank's snack bar cash register tapes to ensure that each day's revenue was accounted for and matched the amounts recorded in Shellbank's general ledger.

For our detailed test period—June 29, 2000, to September 27, 2000—we compared the amounts recorded on Shellbank's daily computerized-sales printout from its point-of-sale system to the amounts recorded in Shellbank's general ledger. For catering revenue, we compared the contracted amount to the "Catering Event Revenue Forms" and to the amounts recorded in Shellbank's general ledger. We traced the revenue recorded on Shellbank's general ledger to the monthly gross receipts statements submitted to Parks. We did not perform any additional testing for snack bar revenue because snack bar revenue represented only two percent of total reported revenue in operating year 2000.

Finally, we verified whether Shellbank complied with certain non-revenue-related terms and conditions of its agreement (i.e., performed the \$851,000 in capital improvements, maintained the proper security deposit, carried the proper amounts and types of insurance policies, and paid applicable taxes and water and sewer charges).

---

<sup>4</sup> Shellbank's operating year starts on the last Thursday in October and ends on the last Wednesday in October of the following year.

## **Scope Limitation**

To conduct our audit of the license agreement between Shellbank and the City, we requested specific data and detailed documentation to verify whether Shellbank reported all revenue and paid the City the appropriate fees. Shellbank failed to provide the following critical documents:

- Catering Contracts: Shellbank failed to provide 23 of 109 specific catering contracts requested, and the contracts that were provided were not numbered. Therefore, we could not determine whether Shellbank's properly reported banquet revenue.
- Catering Event Calendars: Shellbank did not provide its catering event calendars for the audit period. Therefore, we could not confirm what events were held, canceled, or postponed.
- Dance Night Revenue: With the exception of revenue forms from four dance events held between June 29, 2000, and September 27, 2000, which purported to indicate the beverage sales from dance events, Shellbank did not provide any documentation of its gross receipts from these events. According to a Shellbank official, patrons buy drink-tickets from cashiers and redeem the tickets for drinks at the bar. The cash collected is placed in cash boxes and counted at the end of the night. However, the cash is seldom reconciled to the number of drink-tickets sold. A Shellbank official acknowledged that the controls over dance events were inadequate and stated that they are now using stand-alone cash registers for dance events. However, registers not connected to Shellbank's point-of-sales system would still be inadequate for determining gross receipts.

It should be noted that this lack of records violates Article IV (a)(c) of Shellbank's license agreement, which states:

"Licensee, during the term of this license and any renewal thereof, shall maintain adequate systems of internal control and shall keep 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 Licensee and the Gross Receipts therefrom. Licensee shall maintain each year's records, books of account and data for a minimum of six (6) years."

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included test of 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 Parks and Shellbank officials during and at the conclusion of this audit. A preliminary draft report was sent to Parks and Shellbank officials and was discussed at an exit conference on May 24, 2002. On May 30, 2002, we submitted a draft report to Parks and Shellbank officials with a request for comments. We received written comments from Parks on June 12, 2002, and from Shellbank on June 13, 2002.

In its response, Shellbank took exception to most of the report's findings and did not specifically address the report's recommendations. Shellbank stated that it believes that its records are accurate and that it has paid all license fees due. In addition, Shellbank stated that several of the operational issues raised in the report were already addressed. Shellbank indicated that it has instituted tighter controls over dance night receipts and has installed a new computerized tracking system for all catering events.

Parks officials agreed with the report's findings and recommendations. Parks responded that it issued two Notices to Cure (NTC) requiring that Shellbank pay the audit assessment and implement the report's other recommendations concerning internal control and record-keeping weaknesses, improper deductions, paying outstanding water and sewer charges and commercial rent tax and, paying its serving staff in accordance with the New York State minimum wage law. Parks also stated that a follow-up review would be conducted in two months to ensure compliance with all recommendations.

While we commend the Parks Department for its prompt issuance of two NTC's, we remained concerned because of the tone of Shellbank's response. We fear that unless this concessionaire is closely monitored by Parks, Shellbank might well continue the practices that were uncovered during the audit. We therefore suggest that Parks pay close attention to this concessionaire and conduct an audit of its own at some point in the near future.

The full texts of the written comments from Shellbank and Parks are included as addenda to this report.

**OFFICE OF THE COMPTROLLER  
NEW YORK CITY**

**DATE FILED: June 25, 2002**



## FINDINGS AND RECOMMENDATIONS

For the period November 1, 1997, to October 25, 2000, Shellbank underreported gross receipts by \$712,349 and owes the City \$83,950 in license fees and late charges. Moreover, Shellbank has not paid for its water and sewer use since August 17, 2001. Also, Shellbank never paid commercial rent tax and TAM, its parent company, has not paid this tax on its operation of the Loeb Boathouse restaurant, since May 31, 1995. Further, Shellbank underpaid its New York State sales taxes, did not pay its staff in accordance with New York State minimum wage law, and did not submit its income and expenses statements to Parks on time. These issues are discussed in further detail in the following sections of this report.

### **Shellbank Owes \$83,950 in License Fees and Late Charges**

Shellbank underreported catering revenue by \$383,657 and inappropriately deducted \$328,692 in “barter expenses” from its reported gross receipts. This resulted in Shellbank owing the City \$83,950 in license fees and late charges.

For the period June 29, 2000, to September 27, 2000, Shellbank reported gross receipts from catering totaling \$830,359. Shellbank should have reported \$900,411, a difference of \$70,052. (The \$70,052 is 7.78 percent of the \$900,411 that should have been reported for the period.) The \$70,052 included \$33,444 for items such as equipment rental, chair rental, utensil rental, and wages for coat-check attendants that Shellbank deducted from gross receipts, for food and beverages charges in excess of catering contract amounts, for a deposit for a canceled catering contract, and for overpayments that were not returned to customers. Moreover, Shellbank failed to report \$28,879 received from customers as tips (and not distributed to its serving staff) and \$7,729 in sales commissions that are not excludable from gross receipts. Based on our findings for the three-month period, we applied the underreported percentage (7.78 percent) to Shellbank’s reported catering receipts (\$4,547,671) for the audit period and calculated total underreported catering receipts totaling \$383,657.

Further, Shellbank inappropriately deducted \$328,692 in “barter expenses” from the gross receipts it reported to Parks during 1998, 1999, and 2000. The license agreement does not contain a provision for deducting barter expenses from gross receipts.

Based on the above, Shellbank owes the City \$83,950, which includes \$56,988 (\$712,349 x 8 percent) in fees and \$26,962 in late charges.<sup>5</sup>

**Shellbank Response:** With regard to “Other Catering Revenue Charges” Shellbank stated “we believe that the Comptroller's Office is not using the appropriate standard in its assertion that \$33,444 for items such as equipment rentals, chair rentals, etc. Section 2, Paragraph (h), subsection (ii) clearly states:

---

<sup>5</sup> Late charges per the license agreement are calculated based on two percent per month for license fees that are “overdue for fifteen (15) days beyond the date on which it is due and payable.”

‘. . . further that gross receipts shall be limited to include Licensee’s **actual income realized** [emphasis in original] from fees or commissions from any third party vendors operating at the Licensed Premises, including but not limited to florists, photographers, bands and equipment rental companies the services or merchandise of which are provided to Licensee’s customer of catered events, and rental . . .’

“We believe that the intent of the agreement here is clear, that we are required to pay license fees on the ‘actual income **realized** [emphasis in original] from fees and commissions.’ The use of the word ‘realized’ being the key word in this section of the agreement. Based on the results of the audit conducted and our records, we accurately reported the amount ‘realized’ from any third party vendors. Suggesting that we are responsible to pay license fees on base cost of third party services is at conflict with this provision of the agreement.”

**Auditor Comment:** The section of the contract referred to in the response refers to revenue that Shellbank receives from third-party vendors. The improper deductions cited in the report, however, were not payments received from third party vendors using the premises. Rather, they were payments made by Shellbank to third party vendors. Moreover, although not mentioned in its response, Shellbank omitted certain revenues from its gross receipts. In other words, Shellbank received payments from its customers that should have been reported as gross receipts. Shellbank either did not report the revenue or reduced the reported amount by payments it made. With the exception of federal, state, and city taxes, Shellbank is not allowed to deduct expenses from its gross receipts.

**Shellbank Response:** With regard to “Gratuities” the President stated that “License Agreement Section 2, Paragraph (h), subsection (iii) . . . clearly states:

“‘. . . provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts . . .’

“While it is true that in the snapshot of time examined by the Comptroller’s office there was an excess of gratuity dollars received to gratuity dollars paid, that is a direct result of the seasonal variation in the selling price of the event. Events conducted during the high priced summer season command a greater dollar value than the same event conducted during the lower priced winter months, however the gratuities paid to the servers remain constant. Therefore, as is the normal practice in the industry gratuities generated from events run in excess during the summer and in deficit during the winter, however in the end all gratuities received are paid out and therefore should be excluded from Gross Receipts.”

**Auditor Comment:** Contrary to Shellbank’s response, we assert that the total tips received from customers should be paid out to the staff working at each event. Shellbank’s method penalizes some employees while enriching others. In any case, we included only those tips that were not paid to Shellbank’s staff in our calculation of the audit assessment.

**Shellbank Response:** With regard to “Sales Gratuities” (commissions), the President stated: “Our catering sales managers are salaried employees of the company and currently earn between \$35,000 and \$60,000 a year in salary which is paid to them for the purposes of booking the events that take place at American Park. In addition, like wait staff they are also required to work the events that they book as a service facilitator of the event ensuring that the needs of the client and the timing of the party are executed in accordance with the client’s wishes. Clients are advised at that the time of contract that a gratuity is being included for the sales manager as they will also be working the event. If the contract with the client indicates that it’s a sales gratuity, its paid to the sales managers as a gratuity and Shellbank derives no benefit and no revenues from the sales gratuity, then in accordance with the terms of the License Agreement it should not be included in Gross Revenue and is not subject to license fees.”

**Auditor Comment:** We disagree with Shellbank’s claim that sales commissions are gratuities. The employees who receive the commission earn a regular salary and receive a set percentage of the contract amount, regardless of what services are performed. In addition, the payments to these staff members are listed on their paychecks as commissions rather than as gratuities, as is the case for other staff members who receive gratuity payments.

**Shellbank Response:** “In regard to the Comptroller’s office finding that we inappropriately deducted \$328,692 in ‘barter expenses’ we again refer to the License Agreement which states in Section 2, Paragraph (h), subsection (i):

“‘Gross Receipts’ shall mean, except as otherwise provided in this sub-section 2.1(h), all funds received by Licensee without deduction or set-off of any kind, from the sale of food and beverages. . .’

“As is clear from the Idine and Clever Ideas Agreements already supplied to the audit team, these entities purchased in advance and at a discount the right for each companies members to visit the restaurant operated by Shellbank Restaurant Corp. The fact that these two membership organizations purchased these meals in advance at a discount does not change the fact that Shellbank only ‘received’ 50% of the retail value of the meals purchased by these membership groups. In fact Shellbank did record, report and pay license fees on the funds it ***actually received*** [emphasis in original] from the membership companies in accordance with generally accepted accounting principles. Suggesting that Shellbank is required to pay license fees on revenues it never received is in conflict with the License

Agreement currently in existence between Shellbank Restaurant Corp and DPR [Parks]. Shellbank should not be penalized for using every avenue available to increase the exposure and revenue generated at its restaurant operation because it discounted its 'retail selling price' to encourage the increased viability and visibility."

**Auditor Comment:** TAM's Securities and Exchange Commission filing for the fiscal year that ended September 27, 2000, which covered Shellbank and all other TAM subsidiaries, indicated that the "Company records its obligation to provide food and beverages at the amount of the advances it receives. Upon a guest purchasing food or beverages, the Company records revenue for the amount of food and beverage purchased by the guest, and **the barter discount as a barter expense** [emphasis added]." As previously stated, the only expenses that Shellbank is allowed to deduct from gross receipts are federal, state, and city taxes.

### **Compliance with the License Agreement**

We confirmed that Shellbank maintained the required \$1 million liability insurance coverage and property damage liability insurance coverage for full replacement value of buildings and fixed equipment, and that each policy named the City as an additional insured. Shellbank also maintained the required worker's compensation insurance. Parks issued a Certificate of Completion to Shellbank for the required capital improvements to the facility, and Shellbank deposited the required security with the City.

However, Shellbank has outstanding water and sewer charges, and has never paid Commercial Rent Tax for the restaurant. In addition, Shellbank underpaid its New York State sales taxes, did not pay its staff in accordance with New York State minimum wage law, and did not submit its income and expenses statements to Parks on time.

### **Water and Sewer Use**

As part of its license, Shellbank is required to pay the City for its water and sewer use. According to Department of Environmental Protection records, Shellbank owes the City \$16,142 (including interest) for water and sewer use through May 8, 2002.

**Shellbank Response:** "Shellbank Restaurant Corp was current with all water and sewer bills having paid its last bill in August 2001. As a result of the WTC Attack the facility was closed and used as a police precinct for almost nine weeks following the attack. . . . DEP is currently reviewing its records in an attempt to determine how much of the water and sewer bill should be credited to the restaurant. . . ."

## **Commercial Rent Tax**

The license also requires that Shellbank “comply with all applicable laws, rules, regulations and orders.” In this regard, Shellbank is required to pay commercial rent tax based on the license fees it pays to the City. We calculated that Shellbank owes approximately \$37,000 in commercial rent tax for the period June 1, 1995, through May 31, 2001. In addition, the Department of Finance’s (DOF) Commercial Rent Tax Unit determined that Shellbank owes approximately \$20,000 in related penalties and interest.<sup>6</sup>

TAM Restaurants, Inc. (TAM) owns Shellbank. TAM is a former Parks concessionaire that operated the Loeb Boathouse restaurant in Central Park from February 1985 to September 2000. Because of this relationship, we checked on TAM’s payments of commercial rent tax. The DOF Commercial Rent Tax Unit informed us that TAM last paid commercial rent tax for the period ending May 31, 1995. Based on the license fees that TAM paid the City for the period June 1995 to September 2000, we calculated that it owes approximately \$234,000 in commercial rent tax. DOF calculated that TAM owes, in addition, approximately \$198,000 for penalties and interest.

Since the collection of commercial rent tax falls under the jurisdiction of DOF, not Parks, on February 26, 2002, we notified DOF of our finding and requested that it take appropriate actions to collect the \$489,000 owed from Shellbank and TAM. (See Attachment.)

**Shellbank Response:** “Unfortunately, when current management took over operations of the Company it was not aware that commercial rent tax was required to be paid on license fees paid to Parks. As is evidenced by the Comptroller’s Office report these taxes had never been paid by American Park. We will be in contact with the Department of Finance to resolve any potential unpaid outstanding balances. . . .

“We do however, strongly question the Comptroller’s Office inclusion of a separate License Agreement with a separate corporation within its audit of the license agreement between Shellbank Restaurant Corp and DPR. . . .The inclusion of references to a former affiliate of Shellbank, operated by prior management of TAM Restaurants, Inc. we believe is inappropriately included in the context of this audit.”

**Auditor Comment:** We find it disingenuous of Shellbank to claim that it did not know that it was required to pay commercial rent tax, since an amount for this tax was accrued on Shellbank’s books and records. In addition, Shellbank’s President informed us that the tax was not paid, based on the advice of his accountant.

TAM, as previously stated, owns Shellbank. Consequently, it was important to note in this report that TAM owes the City more than \$400,000 in commercial rent

---

<sup>6</sup> Interest is assessed up to February 14, 2002.

taxes, penalties, and interest. In any case, TAM should ensure that the amounts owed for Shellbank and the Boathouse are paid.

## **Sales Tax**

Shellbank did not pay its “wait staff” the entire amount of the gratuities it charged customers for 53 catered events held during the period June 29, 2000, through September 27, 2000. As a result, according to sales tax rules, the entire amount of gratuities is subject to sales tax. Shellbank did not report any of the \$61,487 in tips on its sales tax returns. In addition, Shellbank failed to include certain catering revenue, and it deducted certain operating expenses from taxable revenue when it reported taxable sales. Furthermore, Shellbank reported the revenue generated from beverage sales at dance events as tax-exempt. Under sales tax regulations, this revenue is not exempt. Since the collection of sales tax falls under the jurisdiction of the New York State Department of Finance and Taxation, we met with officials from the Department to explain our findings on March 1, 2002. We are sending them a copy of this report so that they can calculate the amount of tax due and take appropriate action.

**Shellbank Response:** “The Company admits there were apparently a number of ‘dance events’ that were inappropriately coded to ‘non-taxable’ by the Company’s prior management. However, the Comptroller’s Office is aware that when the new management of the Company took over Shellbank Restaurant Corp. significant changes were made to the way ‘dance events’ were managed and booked. Further, the Comptroller’s Office is aware that all ‘dance parties’ were recorded correctly and sales taxes paid once new management was installed.”

## **Minimum Wages Not Correctly Paid for Overtime Hours**

Shellbank did not pay its serving staff the mandated hourly rate of \$5.87 for overtime worked. Instead, Shellbank paid its staff \$4.95 per hour for each overtime hour worked. Based on the New York State minimum wage law, employers are required to pay their employees at a minimum rate of \$5.15 per hour; however employers can pay food service workers \$3.30 per hour if the employees receive at least \$1.85 per hour in tips. In cases where employees work overtime, the overtime rates are calculated at 1.5 times the minimum wage of \$5.15 per hour, less the \$1.85 tip allowance ( $1.5 \times \$5.15 - \$1.85$ ), resulting in hourly rate of \$5.87. Shellbank should pay its staff in accordance with applicable law.

**Shellbank Response:** “Like many companies we employ the services of PayChex Payroll Computing Services to process all of the Shellbank Restaurant Corp’s payroll. We have provided the findings . . . to them for review as they are responsible for the computation of overtime wage for all employees in compliance with New York State Wage and Hour Law.”

## **Late Submission of Certified Income And Expense Statements**

Shellbank is required to submit its annual income and expense statement to Parks within 30 days after the end of each operating year. Shellbank submitted its statements for 1999 and 2000 in September 2001. The 1999 statement was about 21 months late and the 2000 statement was about 13 months late. Shellbank submitted the income and expenses statements only after Parks sent three Notices to Cure demanding the statements.<sup>7</sup> After Parks compared the gross receipts on the 1999 income and expenses statement to the monthly gross receipts that Shellbank reported, Parks found that Shellbank underreported gross receipts by \$351,930. As a result, Parks assessed additional license fees of \$28,126. Parks did not assess any late charges.

## **Recommendations:**

We recommend that Shellbank:

1. Pay the City \$83,950 in additional license fees and late charges owed.
2. Ensure that all revenues generated at the facility are reported on its monthly Gross Receipts Statements to Parks, including revenue from catering, restaurant, snack bar, and dance events, and pay all required fees due the City.
3. Ensure that all receipts from dance events are processed into its point-of-sales system and are properly recorded in its books and records.
4. Maintain all source documents to support and adequately evidence the gross revenues reported to Parks.
5. Maintain all catering calendars and contracts, in accordance with its agreement.
6. Comply with the non-revenue terms of its license agreement. In this regard Shellbank should:
  - Pay \$16,142 for its outstanding water and sewage use and ensure that all subsequent bills are paid;
  - File quarterly Commercial Rent Tax Returns and pay \$489,000 for taxes due (which includes the \$432,000 owed by TAM Restaurant Inc.);
  - Include all taxable gross receipts in its sales tax returns and pay the appropriate amount to New York State Department of Taxation and Finance;

---

<sup>7</sup> The Notices to Cure were dated April 17, 2001, June 5, 2001, and August 29, 2001.

- Pay its serving staff in accordance with the New York State minimum wage law; and,
- Submit certified income and expenses statement on time to Parks.

**Shellbank Response:** Shellbank did not specifically respond to the report's recommendations, but stated that "we believe that our records are accurate and that we have accurately paid all license fees due DPR. Several of the operation issues that your report raised were already being addressed by the new management of the Company. As your auditors are aware we had entirely overhauled the management and control of dance events prior to the start of the audit and the new systems are tight and provide a thorough and complete audit trail, however it is a physical impossibility to use the POS System during dance events. Further as your auditors are aware we have installed and instituted a new computerized tracking system for all catering events."

**Parks Response:** "DPR agrees with all recommendations contained in the audit report and has issued two (2) Notices to Cure (NTC's) requesting that Shellbank recommendations 1 through 6."

Parks should:

7. Ensure that Shellbank pays the City \$83,950 in additional license fees.

**Parks Response:** Parks issued a Notice to Cure requiring that Shellbank pay the City the \$83,950 in additional license fees.

8. Determine whether Shellbank should be assessed additional license fees for the operating year ending October 31, 2001 (which we did not audit), and if so, increase its reported gross receipts by 7.78 percent (percentage of underreported revenues, cited in this report) or another factor.

**Parks Response:** The Parks Notice to Cure to Shellbank stated: "DPR has calculated and billed an additional \$26,494 covering underreported license fees for 2001."

9. Ensure that Shellbank complies with the remaining recommendations made in this report.

**Parks Response:** All recommendations have been addressed by two Notices to Cure that required Shellbank to implement all recommendations. Further, Parks's Assistant Commissioner for Revenue requested that the "DPR Internal Auditor, conduct a follow-up review in two months to verify that Shellbank has fully complied with all audit recommendations."





**Addendum I - Response from the  
Shellbank Restaurant Corp.**

June 13, 2002

Via Fax & FedEx  
Mr. Roger D. Liwer  
Assistant Comptroller for Audits  
The City of New York  
Office of the Comptroller  
Bureau of Audits  
1 Centre Street, Room 1100  
New York, NY 10007-2341

RE: Audit Report on the Compliance of Shellbank Restaurant Corp. with  
Certain Provisions of Its License Agreement And on License Fees It Owes the City  
FM02-076A

Dear Mr. Liwer:

First and foremost, let me compliment your audit team on their professionalism and courtesy during our audit. As I'm sure you know they shared with us the horror of September 11<sup>th</sup> and the closure of American Park for an extended period of time. Throughout the entire period we found them to be compassionate, helpful and understanding of the enormous financial and emotional stresses that our organization was facing.

I also believe that it is important to note that Shellbank Restaurant Corp. and its parent company underwent a major ownership and managerial change in late 2000 and early 2001. Specifically, during this period the President and Executive Vice President of both companies were removed and new executive and managerial teams were installed by the Board of Directors.

We have reviewed the above referenced draft report and wish to provide comment and context to a number of the issues raised. The following summarizes our views on these issues all of which have been expressed during the audit process, additional correspondence with members of the audit team and as part of an exit interview held with your audit team and Mr. Lieberman from DPR.

**License Fees and Late Charges**

A number of areas were addressed in this section, in order to more clearly state our position we have broken each area identified by your office into a separate category:

**Other Catering Revenue Charges:**

We believe that the Comptroller's office is not using the appropriate standard in its assertion that \$33,444 for items such as equipment rentals, chair rentals, etc. Section 2, Paragraph (h), subsection (ii) clearly states:

Mr. Roger D. Lewer  
June 13, 2002  
Page 2 of 5

**Addendum I - Response from the  
Shellbank Restaurant Corp.**

"...further that gross receipts shall be limited to include Licensee's **actual income realized** from fees or commissions from any third party vendors operating at the Licensed Premises, including but not limited to florists, photographers, bands and equipment rental companies the services or merchandise of which are provided to Licensee's customer of catered events, and rental..."

We believe that the intent of the agreement here is clear, that we are required to pay license fees on the "actual income **realized** from fees and commissions". The use of the word "realized" being the key word in this section of the agreement. Based on the results of the audit conducted and our records, we accurately reported the amount "realized" from any third party vendors. Suggesting that we are responsible to pay license fees on base cost of third party services is at conflict with this provision of the agreement.

**Gratuities:**

In regard to the allegation that Shellbank failed to report \$28,879 in tips received from customers and \$7,729 in "sales commissions", we again refer the Comptroller's office to the License Agreement Section 2, Paragraph (h), subsection (iii) which clearly states:

"...provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts..."

While it is true that in the snapshot of time examined by the Comptroller's office their was an excess of gratuity dollars received to gratuity dollars paid, that is a direct result of the seasonal variation in the selling price of the event. Events conducted during the high priced summer season command a greater dollar value than the same event conduct during the lower priced winter months, however the gratuities paid to the servers remain constant. Therefore, as is the normal practice in the industry gratuities generated from events run in excess during the summer and in deficit during the winter, however in the end all gratuities received are paid out and therefore should be excluded from Gross Receipts.

It is also important to note that in an effort to ensure that Shellbank does not collect more in gratuities than it pays out our contracts only require the maximum payment of a 10.5% gratuity, including the portion of the gratuity identified as "sales gratuity" (not the traditional 20% charged at most facilities). Shellbank contracts already include a 9.5% service charge which is both taxed to the client and reported as Gross Revenue for the facility.

**Sales Gratuities:**

Our catering sales managers are salaried employees of the company and currently earn between \$35,000 and \$60,000 a year in salary which is paid to them for the purposes of booking the events that take place at American Park. In addition like wait staff they are

Mr. Roger D. Lewer  
June 13, 2002  
Page 2 of 5

**Addendum I - Response from the  
Shellbank Restaurant Corp.**

also required to work the events that they book as a service facilitator of the event ensuring that the needs of the client and the timing of the party are executed in accordance with the client's wishes. Clients are advised at that the time of contract that a gratuity is being included for the sales manager as they will also be working the event. If the contract with the client indicates that it's a sales gratuity, its paid to the sales managers as a gratuity and Shellbank derives no benefit and no revenues from the sales gratuity, then in accordance with the terms of the License Agreement it should not be included in Gross Revenue and is not subject to license fees.

**Barter Expenses:**

In regard to the Comptroller's office finding that we inappropriately deducted \$328,692 in "barter expenses" we again refer to the License Agreement which states in Section 2, Paragraph (h), subsection (i):

"Gross Receipts" shall mean, except as otherwise provided in this sub-section 2.1(h), all funds received by Licensee without deduction or set-off of any kind, from the sale of food and beverages..."

As is clear from the Idine and Clever Ideas Agreements already supplied to the audit team, these entities purchased in advance and at a discount the right for each companies members to visit the restaurant operated by Shellbank Restaurant Corp. The fact that these two membership organizations purchased these meals in advance at a discount does not change the fact that Shellbank only "received" 50% of the retail value of the meals purchased by these membership groups. In fact Shellbank did record, report and pay license fees on the funds it *actually received* from the membership companies in accordance with generally accepted accounting principals. Suggesting that Shellbank is required to pay license fees on revenues it never received is in conflict with the License Agreement currently in existence between Shellbank Restaurant Corp and DPR. Shellbank should not be penalized for using every avenue available to increase the exposure and revenue generated at its restaurant operation because it discounted its "retail selling price" to encourage the increased viability and visibility.

**Compliance with License Agreement**

**Water and Sewer Use:**

Shellbank Restaurant Corp was current with all water and sewer bills having paid it last bill in August 2001. As a result of the WTC Attack the facility was closed and used as a police precinct for almost nine weeks following the attack. The facility itself remained essentially closed until April 1, 2002 when it was able to fully reopen. As the Comptroller's Office is aware, DEP is currently reviewing its records in an attempt to determine how much of the water and sewer bill should be credited to the restaurant as a result of the facilities use as a police precinct and for the period that it was closed. Given

Mr. Roger D. Lewer  
June 13, 2002  
Page 2 of 5

**Addendum I - Response from the  
Shellbank Restaurant Corp.**

the fact that DEP is currently reviewing its billing to Shellbank and has not, as yet, come to a conclusion we feel it is disingenuous to characterize Shellbank as owing the City \$16,142 until this issue has been resolved between DEP and Shellbank.

**Commercial Rent Tax:**

Unfortunately, when current management took over operations of the Company it was not aware that commercial rent tax was required to be paid on license fees paid to parks. As is evidenced by the Comptroller's office report these taxes had never been paid by American Park. We will be in contact with the Department of Finance to resolve any potential unpaid outstanding balances that may or may not be due and ensure that should such payments be due in the future they will be made in an appropriate and timely manner.

We do however, strongly question the Comptroller's Office inclusion of a separate License Agreement with a separate corporation within its audit of the license agreement between Shellbank Restaurant Corp and DPR. The Scope and Methodology section of the draft report clearly states that the focus of the audit was focused on Shellbank Restaurant Corp. and its compliance with the terms of its agreement with DPR. The inclusion of references to a former affiliate of Shellbank, operated by prior management of TAM Restaurants, Inc. we believe is inappropriately included in the context of this audit.

**Sales Tax:**

The Company admits that there were apparently a number of "dance events" that were inappropriately coded to "non-taxable" by the Company's prior management. However, the Comptroller's office is aware that when the new management of the Company took over Shellbank Restaurant Corp. significant changes were made to the way "dance events" were managed and booked. Further, the Comptroller's office is aware that all "dance parties" were recorded correctly and sales taxes paid once new management was installed.

**Minimum Wage:**

Like many companies we employ the services of PayChex Payroll Computing Services to process all of the Shellbank Restaurant Corp's payroll. We have provided the findings of the Comptroller's Office to them for review as they are responsible for the computation of overtime wage for all employees in compliance with New York State Wage and Hour Law.

We believe that our records are accurate and that we have accurately paid all license fees due DPR. Several of the operational issues that your report raised were already being addressed by the new management of the Company. As your auditors are aware we had entirely overhauled the management and control of dance events prior to the start of the audit and the new systems are tight and provide a thorough and complete audit trail, however it is a physical impossibility to

Addendum I - Response from the  
Shellbank Restaurant Corp.

Mr. Roger D. Lewer  
June 13, 2002  
Page 2 of 5

use the POS System during dance events. Further as your auditors are aware we have installed and instituted a new computerized tracking system for all catering events.

In closing, we hope this letter expresses the absolute desire of the new management of Shellbank Restaurant Corp. and TAM Restaurants, Inc. to perform in complete compliance with all the terms of its license agreement with DPR. We thank you for your help in identifying additional areas that may be of concern and I assure you will be addressed. We would be pleased to discuss any of these open items with you further and we hope that you reconsider your position on the areas we identified above. If you have any questions please feel free to contact me at my office number 718-273-2532.

Very truly yours,



Anthony B. Golio  
President  
Shellbank Restaurant Corp.

ABG/jf

cc: Ron Lieberman, DPR



City of New York  
Parks & Recreation

**Addendum II - Response from the  
City of New York Parks & Recreation**

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Joanne G. Imohiosen  
Assistant Commissioner  
Revenue

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

June 12, 2002

**BY FAX AND MAIL**

Roger D. Liwer  
Assistant Comptroller for Audits  
The City of New York  
Office of The Comptroller  
1 Centre Street - Room 1100  
New York, NY 10007-2341

**Re: Comptroller's Draft Audit Report on Shellbank Restaurant Corporation  
November 1, 1997 to October 25, 2000 FM02-076A, Dated May 30, 2002**

Dear Mr. Liwer:

This letter represents the Parks Department (DPR's) response to the recommendations contained in the subject audit of Shellbank Restaurant Corporation (Shellbank).

DPR agrees with all recommendations contained in the audit report and has issued the attached two (2) Notices To Cure (NTC's) requesting that Shellbank implement recommendations 1 through 6. Shellbank is required to:

- Pay the audit assessment of \$83,950 (**Recommendation 1**);
- Cease its practice of subtracting from gross receipts, "rentals", "barter expenses", and the other miscellaneous items identified in the audit (**Recommendation 2**);
- Implement internal control and record keeping **Recommendations 3, 4 and 5** and;
- Comply with **Recommendation 6** by:
  - Contacting the Department of Environmental Protection to settle its outstanding water and sewer charges;
  - Contacting the Department of Finance's Commercial Rent Tax Unit to settle the Commercial Rent Tax balances owed by Shellbank and TAM Restaurants, Inc.;
  - Properly including all taxable gross receipts in its future sales tax returns;

[www.nyc.gov/parks](http://www.nyc.gov/parks)

**Addendum II - Response from the  
City of New York Parks & Recreation**

Roger D. Liwer  
June 12, 2002  
Page 2

- Paying its staff in accordance with the New York State minimum wage law and;
- Ensuring that annual Income and Expense Statements are submitted to DPR on time within thirty (30) days after the end of each operating year.

**Recommendations 7** advises that DPR should, "Ensure that Shellbank pays the City \$83,950 in additional license fees." **Recommendation 9** states that DPR should, "Ensure that Shellbank complies with the remaining recommendations made in this report. These suggested actions have been addressed by DPR's issuance of the above mentioned NTC.

**Recommendation 8** states:

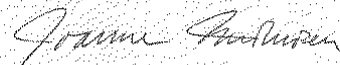
DPR should determine whether Shellbank should be assessed additional license fees for the operating year ending October 31, 2001 (which we did not audit), and if so, increase its reported gross receipts by 7.78 percent (percentage of underreported revenues, cited in this report) or another factor.

In its NTC to Shellbank DPR has calculated and billed an additional \$26,494 covering underreported license fees for 2001. This assessment is based on the underreported revenue percentage indicated above.

As mentioned in DPR's NTC, I have requested that Francisco Carlos, DPR Internal Auditor, conduct a follow-up review in two months to verify that Shellbank has fully complied with all audit recommendations.

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

Sincerely,



Joanne Imohiosen

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



City of New York  
Parks & Recreation

**Addendum II - Response from the  
City of New York Parks & Recreation**

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Joanne G. Imohiosen  
Assistant Commissioner  
Revenue

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

June 12, 2002

**BY FAX AND MAIL**

Mr. Anthony Golio, President  
Shellbank Restaurant Corporation  
114 348 Dyckman Street  
New York, NY 10034

**NOTICE TO CURE**

Re: Comptroller's Draft Audit Report on Shellbank Restaurant Corporation  
November 1, 1997 to October 25, 2000 FM02-076A, Dated May 30, 2002

Dear Mr. Golio:

This letter addresses the findings and recommendations contained in the subject draft audit report on Shellbank Restaurant Corporation (Shellbank). The Comptroller's audit disclosed that Shellbank underreported gross receipts by \$712,349 and owes the City \$83,950 in license fees and late charges. In addition, Shellbank owes the City \$16,142 for water and sewer use. Furthermore, the audit report states that Shellbank never paid commercial rent tax and penalties in the amount of \$57,000. Also, Shellbank underpaid its New York State sales taxes, did not pay its staff in accordance with New York State minimum wage law, and did not submit its income and expense statements to the Department of Parks and Recreation (DPR) on time. Finally, the audit report found that Shellbank did not maintain adequate records to support reported revenue, such as catering contracts, catering event calendars, and documentation of its gross receipts from dance events.

To resolve the deficiencies cited in its report the Comptroller's Office recommends that Shellbank:

**Recommendation 1.** Pay the City \$83,950 in additional license fees and late charges owed.

For the audit test period from June 29, 2000 to September 27, 2000, the audit report found that Shellbank underreported its catering gross receipts by \$70,052. This

[www.nyc.gov/parks](http://www.nyc.gov/parks)



**Addendum II - Response from the  
City of New York Parks & Recreation**

Anthony Golio  
June 12, 2002  
Page 2

amount represents:

|  |                        |
|--|------------------------|
| Equipment, chair and utensil rentals, wages for coat attendants that Shellbank deducted from gross receipts, for food and beverage charges in excess of catering contract amounts, for a deposit for a canceled catering contract, and for overpayments that were not returned to customers. | \$33,444               |
| Tips received from customers and not distributed to its serving staff.   | 28,879                 |
| Sales commissions that are not excludable from gross receipts.   | <u>7,729</u>           |
| <b>Total Underreported Catering Gross Receipts (6/02 - 9/02)</b>   | <b><u>\$70,052</u></b> |

Therefore, for the period June 29, 2000 to September 27, 2000, Shellbank should have reported catering receipts of \$900,411, instead of \$830,359 (represents 92.219997313% of the auditor's total). Since Shellbank reported total catering receipts of \$4,547,671 for the audit period, the auditors calculated that catering gross receipts were understated by \$383,657:

|  |  |
|--|--|
| \$4,547,671 / 92.219997313 = \$4,931,328 | Audited Gross Receipts per extrapolation     |
| <u>4,547,671</u>                         | Reported Gross Receipts by Shellbank         |
| <b>\$ 383,657</b>                        | <b>Total Underreported Catering Receipts</b> |

Furthermore, the audit disclosed that Shellbank inappropriately deducted \$328,692 in "barter expenses" from the gross receipts it reported to DPR during 1998, 1999 and 2000. Shellbank's license agreement with the City does not contain a provision that allows for the deduction of barter expenses from gross receipts.

Therefore, for the audit period Shellbank understated its gross receipts by the total amount of \$712,349:

|  |                         |
|--|-------------------------|
| Underreported Catering receipts                | \$383,657               |
| Disallowed "Barter Expense" Deductions         | <u>328,692</u>          |
| Total Underreported Revenue                    | \$712,349               |
|  | X <u>08</u>             |
| Addition License Fees Due City                 | \$ 56,988               |
| Late Charges on Balance Due                    | <u>26,962</u>           |
| <b>TOTAL BALANCE DUE CITY FOR AUDIT PERIOD</b> | <b><u>\$ 83,950</u></b> |
| <b>(NOVEMBER 1, 1997 TO OCTOBER 25, 2000)</b>  |                         |

**Addendum II - Response from the  
City of New York Parks & Recreation**

Anthony Golio  
June 12, 2002  
Page 3

In addition, Shellbank also owes the City additional license fees of \$26,494 for 2001 based on the underreporting practices described above. This amount was calculated as follows from Shellbank's reported 2001 Gross Receipts of \$3,925,508:

|                               |  |                                       |
|-------------------------------|--|---------------------------------------|
|                               | \$3,925,508 / .92219997313 = \$4,256,678 | 2001 Gross Receipts per extrapolation |
|                               | <u>3,925,508</u>                         | Reported Gross Receipts by Shellbank  |
|                               | \$ 331,170                               | Total 2001 Underreported G.R.         |
|                               | X .08                                    |                                       |
| 2001 Additional Fees Due City | \$ 26,494                                |                                       |

The total amount owed by Shellbank for the period from November 1, 1997 through October 30, 2001 is \$110,444 (\$83,950 + \$26,494).

Shellbank is afforded thirty (30) days from the date of this letter to remit a check for \$110,444, made payable to the City of New York Parks and Recreation, to clear the outstanding audit assessment balance and 2001 underreported fees.

**Recommendation 2.** Ensure that all revenues generated at the facility are reported on its monthly Gross Receipts Statements to Parks, including revenue from catering, restaurant, snack bar, and dance events, and pay all required fees due the City.

Section 2.1 (h) (i) of Shellbank's license agreement requires that it include in gross receipts, "all funds received by Licensee without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind, resulting directly or indirectly from the operation of this License . . ."

Shellbank must take immediate action to discontinue its practice of subtracting from gross receipts, "rentals", "barter expenses" and other items identified by the audit. Per Shellbank's contract with the City there is no provision that allows for these deductions.

**Recommendation 3.** Ensure that all receipts from dance events are processed into its point-of-sales system and are properly recorded in its books and records.

**Recommendation 4.** Maintain all source documents to support and adequately evidence the gross revenues reported to Parks.

**Recommendation 5.** Maintain all catering calendars and contracts, in accordance with its agreement.

The audit report contained a "Scope Limitation" statement because Shellbank failed to provide the following critical documents: Catering Contracts, Catering Event

**Addendum II - Response from the  
City of New York Parks & Recreation**

**Anthony Golio**  
**June 12, 2002**  
**Page 4**

Calendars, and documentation to support its gross receipts from Dance Events.

Shellbank's license requires that it "... shall maintain adequate systems of internal control and shall keep 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 Licensee and the Gross Receipts therefrom. Licensee shall maintain each year's records, books of account and data for a minimum of six (6) years."

Shellbank is required to take immediate action to implement the above internal control and record keeping recommendations 3,4 and 5 to bring it into compliance with the above license provision.

**Recommendation 6.** Comply with the non-revenue terms of its license agreement. In this regard Shellbank should:

- **Pay \$16,142 for its outstanding water and sewage use and ensure that all subsequent bills are paid;**

The audit report disclosed that according to Department of Environmental Protection (DEP) records, Shellbank owes the City \$16,142 (including interest) for water and sewer use through May 8, 2002.

Shellbank is afforded thirty (30) days from the date of this letter to contact DEP to arrange for payment of the above outstanding balance. Shellbank is also required to maintain a current status for all current and future billing of water and sewer charges. Shellbank should send DPR a copy of the paid invoice and cancelled check as proof that this matter has been resolved. By copy of this letter to Jeffrey Shatz, DPR Revenue Division Project Manager I am requesting that he follow-up on this item to ensure that it has been properly addressed.

- **File quarterly Commercial Rent Tax Returns and pay \$489,000 for taxes due (which includes the \$432,000 owed by TAM Restaurant Inc.);**

The auditors calculated that Shellbank owes approximately \$37,000 in commercial rent tax (CRT) for the period June 1, 1995 through May 31, 2001. In addition, the Department of Finance's (DOF) Commercial Rent Tax Unit determined that Shellbank owes approximately 20,000 in related penalties and interest.

Shellbank is afforded thirty (30) days from the date of this letter to contact the DOF - CRT Unit to arrange for payment of the cited outstanding balance. Proof of payment via

**Addendum II - Response from the  
City of New York Parks & Recreation**

**Anthony Golio  
June 12, 2002  
Page 5**

a copy of the paid invoice and cancelled check should be sent to this office as evidence that this item has been remedied.

The auditors also determined that Shellbank's parent company, TAM Restaurants, Inc., owes approximately \$432,000 in CRT and related penalties and interest charges covering the period June 1995 to September 2000. This assessment will be covered under a separate Notice To Cure to Shellbank.

- **Include all taxable gross receipts in its sales tax returns and pay the appropriate amount to New York State Department of Taxation and Finance;**

The audit report found that Shellbank failed to report \$61,487 in tips that it did not pay to its "wait staff" covering 53 catered events held during the period June 29, 2000 through September 27, 2000. In addition, Shellbank failed to include certain catering revenue, and it deducted certain operating expenses from taxable revenue when it reported taxable sales. Furthermore, Shellbank reported the revenue generated from beverage sales at dance events as tax-exempt. The auditors determined that under sales tax regulations, this revenue is not exempt. The Comptroller's Office plans to send a copy of the audit report to the New York State Department of Finance and Taxation so that they can calculate the amount of tax due and take appropriate action.

Shellbank should comply with this recommendation by properly including all taxable gross receipts in its future sales tax returns.

- **Pay its serving staff in accordance with the New York State minimum wage law;**

The auditors found that Shellbank did not pay its serving staff the correct minimum wage for overtime hours. Shellbank paid its staff \$4.95 per hour for each overtime hour worked instead of the mandated hourly rate of \$5.87.

Shellbank should comply with this recommendation by paying its staff in accordance with the New York State minimum wage law.

- **Submit certified income and expense statements on time to DPR.**

The auditors reported that Shellbank submitted its 1999 and 2000 Certified Income and Expense Statements late by twenty-one (21) months and thirteen (13) months respectively.

**Addendum II - Response from the  
City of New York Parks & Recreation**


Anthony Golio  
June 12, 2002  
Page 6

Shellbank is required to take the necessary action to ensure that its annual Income and Expense Statements are submitted to DPR on time within thirty (30) days after the end of each operating year.

By copy of this letter to Francisco Carlos, DPR Internal Auditor, I am requesting that he schedule a follow-up review in two months to verify that Shellbank has fully complied with all audit recommendations.

We anticipate Shellbank's prompt reply and full compliance with this notice. The failure of Shellbank to resolve the serious deficiencies noted in the audit report and this letter, can result in the termination its license agreement.

Sincerely,

  
Joanne Imohiosen

cc: R. Lieberman  
D. Stark  
F. Carlos  
J. Shatz



City of New York  
Parks & Recreation

**Addendum II - Response from the  
City of New York Parks & Recreation**

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Joanne G. Imohiosen  
Assistant Commissioner  
Revenue

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

June 12, 2002

**BY FAX AND MAIL**

Mr. Anthony Golio, President  
Shellbank Restaurant Corporation  
114 348 Dyckman Street  
New York, NY 10034

**NOTICE TO CURE**

Re: Comptroller's Draft Audit Report on Shellbank Restaurant Corporation  
November 1, 1997 to October 25, 2000 FM02-076A, Dated May 30, 2002

Dear Mr. Golio:

This letter addresses part of Recommendation 6 of the subject draft audit report on Shellbank Restaurant Corporation (Shellbank) which states that Shellbank should:

- File quarterly Commercial Rent Tax Returns and pay \$489,000 for taxes due (which includes the \$432,000 owed by TAM Restaurant Inc.).

This Notice To Cure (NTC) addresses the portion of outstanding Commercial Rent Tax (CRT) (\$432,000), owed by TAM Restaurant Inc. (TAM). Shellbank's CRT assessment of \$57,000 has been addressed in a separate NTC.

The audit report disclosed that TAM, the owner of Shellbank, as former operator of the Loeb Boathouse restaurant in Central Park from February 1985 to September 2000 did not pay CRT for the period June 1995 to September 2000. The auditors calculated that TAM owes CRT of approximately \$234,000 and the Department of Finance's (DOF) Commercial Rent Tax Unit calculated that TAM owes an additional amount of approximately \$198,000 for penalties and interest.

To clear this audit recommendation Shellbank is afforded thirty (30) days from the date of this letter to contact the CRT Unit of DOF to arrange for payment of TAM's outstanding CRT balance of \$432,000. A copy of the paid invoice and cancelled check should be forwarded to this office to verify that this matter has been properly resolved.

[www.nyc.gov/parks](http://www.nyc.gov/parks)

**Addendum II - Response from the  
City of New York Parks & Recreation**

Anthony Golio  
June 12, 2002  
Page 2

By copy of this letter to Francisco Carlos, DPR Internal Auditor, I am requesting as part of his follow-up review of Shellbank that he also verify Shellbank's compliance with the part of audit recommendation 6 described above.

We anticipate Shellbank's prompt reply and full compliance with this notice.

Sincerely,

  
Joanne Imohiosen

cc: R. Lieberman  
D. Stark  
F. Carlos