

AUDIT REPORT



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

Audit Report on the Department of Consumer Affairs' Administration of Its Fiduciary Accounts

FM03-154A

January 15, 2004



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 conducted an audit to determine whether the Department of Consumer Affairs (the Department) had adequate controls over depositing and disbursing fiduciary account funds and whether it adequately recorded revenues and expenses and ensured that funds were used in accordance with the fiduciary agreements.

The results of our audit, which are presented in this report, have been discussed with Department officials, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that City agencies have adequate controls over fiduciary accounts and that moneys in these accounts are used in accordance with applicable rules and regulations.

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.

Report: FM03-154A
Filed: January 15, 2004

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

**Audit Report on the
Department of Consumer Affairs'
Administration of Its Fiduciary Accounts**

FM03-154A

AUDIT REPORT IN BRIEF

This audit determined whether the Department of Consumer Affairs (the Department) had adequate controls over depositing and disbursing for its six fiduciary account funds; and whether the Department accurately recorded revenues and expenses and ensured that account funds were used in accordance with the fiduciary agreements.

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York, the principal and income of which benefit individuals, private organizations, or other non-City government entities. Six fiduciary accounts have been established for the Department's use—the Bingo Trust Fund, the Home Improvement Contractor Fund, the Tow Truck Fund, the Tow Truck Escrow account, the Legal Escrow account, and the Adjudication Escrow account. As of June 30, 2003, a total of \$3,170,780 was on deposit in these accounts.

Audit Findings and Conclusions

The Department has adequate controls over the deposits and the disbursements of funds for the Bingo Trust Fund, the HIC Fund, the Tow Truck Fund, the Legal Escrow account, and the Adjudication Escrow account. The Department also accurately recorded revenues and expenses and generally used the funds in the Bingo Trust Fund, the Tow Truck Fund, the Legal Escrow account, and the Adjudication Escrow account in accordance with the conditions of the respective fiduciary agreements. However, the Department does not have procedures in place to allow it to track funds deposited in the Legal Escrow and Adjudication Escrow accounts; and it does not regularly ensure that revenues are posted to the correct fiduciary account.

In addition, according to the Rules of the City of New York the Department may make disbursements from the Home Improvement Contractors Fund to pay awards to aggrieved consumers and to satisfy outstanding Department fines. However, the Department allowed excess moneys to accumulate in the HIC account instead of paying contractors' fines to the City.

Finally, no opinion is given on the administration of the Tow Truck Escrow account since the account has been dormant for several years.

Audit Recommendations

To address these issues, we recommend that the Department:

- Establish procedures to track deposits made into the Legal Escrow and Adjudication Escrow accounts and once judgments have been rendered, distribute the funds accordingly.
- Reconcile the current balance in the Legal Escrow and Adjudication Escrow accounts to determine how much of the balance in each account are funds pertaining to pending cases and transfer the remaining balances to the appropriate parties according to the rendered judgments.
- Determine whether the Tow Truck Escrow account is necessary. If it is not necessary, the account should be closed and the remaining balance should be transferred to the City.
- Ensure that revenue transactions are posted to the appropriate fiduciary account and adjust all incorrectly posted transactions identified in Appendix I.
- Transfer money from the HIC Fund to the general fund to satisfy outstanding fines while ensuring that an appropriate reserve is maintained to pay awards to aggrieved consumers. In that regard, the Department should determine whether the current \$200 biannual fee charged to contractors is sufficient to ensure that an appropriate fund reserve is maintained.

INTRODUCTION

Background

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York, the principal and income of which benefit individuals, private organizations, or other non-City government entities. The strictly custodial nature of these assets prohibits the use of fiduciary funds in the direct support of any of the City's own program.¹ All expenditures from fiduciary accounts must comply with applicable federal, State, and City rules and regulations.

The Comptroller's Office, in conjunction with the City's Office of Management and Budget, establishes fiduciary accounts at the request of various organizations, including City agencies and public benefit corporations. According to Comptroller's Directive 27: "Resources

¹ City fiduciary accounts were formerly known as "trust and agency" accounts.

of Fiduciary Accounts are generally under the custodianship of the New York City Office of the Comptroller. The accounts are maintained and controlled by the City agency that requests their establishment.” Directive 27 also states: “The City agency will then be responsible for recording all cash receipts and disbursements in FMS as well as ensuring that all activity in the account is in compliance with the purpose for which it was created.”

The Department of Consumer Affairs requested the establishment of six fiduciary accounts for the Department’s use—the Bingo Trust Fund, the Home Improvement Contractor Fund, the Tow Truck Fund, the Tow Truck Escrow account, the Legal Escrow account, and the Adjudication Escrow account. As of June 30, 2003, a total of \$3,170,780 was on deposit in these accounts.

The Department receives bingo license fees from organizations authorized to conduct bingo games (charitable or educational non-profit organizations, religious, fraternal, or service organizations, etc.) and from commercial lessors who lease space to organizations authorized to operate bingo games. The Department deposits these license fees in the Bingo Trust Fund. These funds are distributed to the State and City in accordance with State law. As of June 30, 2003, \$100,862 was on deposit in the Bingo Trust Fund.

The Home Improvement Contractor (HIC) Fund was established “to facilitate the re-entry of thousands of HICs into the industry” by giving contractors the option of contributing \$200 biannually to the Fund rather than obtaining a surety bond. In addition, the Fund provides for payments to aggrieved consumers for damages caused by contractors and to the Department for fines owed. As of June 30, 2003, the HIC Fund had a balance of \$2,609,787 million.

The Tow Truck Fund, which had a balance of \$242,449 as of June 30, 2003, was established to provide approved tow truck operators with the option of contributing to the fund in lieu of providing the surety bond required under local law and to “provide coverage for any and all consumer complaints resulting in restitution and/or any fines due the Department of Consumer Affairs.”

The remaining fiduciary accounts—the Tow Truck Escrow, the Legal Escrow, and the Adjudication Escrow—were established to secure funds from respondents while a decision or appeal is pending on a violation or judgment order. Based on the decision, funds may be returned, used to award restitution to the consumer, or to satisfy the assessed fine. As of June 30, 2003, the balances in the Adjudication Escrow account, the Legal Escrow account, and the Tow Truck Escrow account were \$130,288, \$81,051, and \$6,343 respectively.

Objectives

Our audit objectives were to determine whether the Department:

- Had adequate controls over depositing and disbursing fiduciary account funds; and,

- Accurately recorded revenues and expenses and ensured that funds were used in accordance with the fiduciary agreements.

Scope and Methodology

The scope of the audit was July 1, 2001, to June 30, 2002 (Fiscal Year 2002). However, as discussed later in this report, our analysis of outstanding fines issued to those contractors who contributed to the HIC Fund covered the period July 1, 2000, to June 30, 2003 (Fiscal Years 2001 through 2003). We reviewed financial information pertaining to the Department's six fiduciary accounts that were on file with the City Comptroller's Bureau of Accountancy.

To gain an understanding of the Department's internal controls over collecting, depositing, and disbursing fiduciary account funds, we interviewed officials of the Department's Financial, Cash Management, Bingo, and Licensing units. We documented our understanding of the internal controls through written narratives. In addition, we evaluated the adequacy of the internal controls to determine the type and extent of testing needed to ensure that funds were used in accordance with the fiduciary agreements.

To determine whether deposits to the six accounts were recorded accurately, we traced the amounts on the bank deposit slips to the Department's manual records and computerized cash receipts system (CAMIS) for fiscal Year 2002. To determine whether the account amounts recorded on the CAMIS system were properly posted to the appropriate fiduciary account, we reconciled the CAMIS revenue reports to the City's Financial Management System (FMS).

To determine whether disbursements from the accounts were accurately recorded and the funds were used in accordance with the fiduciary agreements, we obtained the FMS transaction reports and supporting documentation for each disbursement during Fiscal Year 2002. Specifically:

- For the Bingo Trust Fund, we traced the payments listed on the FMS reports to the cancelled checks, vouchers, and other supporting documents. We determined whether the payments distributed to the State and City were properly calculated and paid in accordance with the fiduciary agreement.
- For the HIC Fund, Tow Truck Fund, Adjudication Escrow Account, and the Legal Escrow Account, we obtained copies of hearing decisions, payment transmittal memos, cancelled checks, etc., to verify that the recipients of payments were entitled to the funds and to determine whether the amounts paid were accurate.

We did not review the controls for the Tow Truck Escrow account nor ensure that the revenues and expenditures were in accordance with its fiduciary agreement because there were no transactions for that account during our audit period.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests 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 Department officials during and at the conclusion of this audit. A preliminary draft report was sent to the Department and discussed at an exit conference held on November 20, 2003. On November 24, 2003, we submitted a draft report to the Department with a request for comments. We received a response from the Department on December 11, 2003.

In their response, officials from the Department agreed with the audit findings and described the steps that have been or will be taken to address the recommendations. The full text of the Department's response is included as an addendum to this report.

FINDINGS

The Department has adequate controls over the deposits and the disbursements of funds from the Bingo Trust Fund, the HIC Fund, the Tow Truck Fund, the Legal Escrow account, and the Adjudication Escrow account. In addition, the Department accurately recorded revenues and expenses and generally used the funds in the Bingo Trust Fund, the Tow Truck Fund, the Legal Escrow account, and the Adjudication Escrow account in accordance with the conditions of the respective fiduciary agreements. However, the Department does not have procedures in place to allow it to track funds deposited in the Legal Escrow and Adjudication Escrow accounts; it does not regularly ensure that revenues are posted to the correct fiduciary account; and it allowed excess moneys to accumulate in the HIC account instead of paying contractors' fines to the City.

Finally, no opinion is given on the controls over deposits to or disbursements from the Tow Truck Escrow account or over the recording of revenues and expenses and the propriety of expenditures in this account since the account has been dormant for several years.

Legal and Adjudication Escrow Account Funds Not Tracked

The Department does not have any procedures in place to allow it to identify funds deposited in the Legal Escrow and the Adjudication Escrow accounts with specific violations or judgement orders. As stated previously, these accounts were established to secure funds from respondents while a decision or appeal is pending on a violation or judgment order. Because the Department does not track these funds, it is unable to determine whether the balances in these accounts should remain in the accounts or be paid out to the appropriate party (the plaintiff, the respondent, or the City).

Inactive Tow Truck Account

The Tow Truck Escrow account has been dormant since 1996. As of June 30, 2003, the account had a balance of \$6,343. According to Directive 27, "If an agency determines that a Fiduciary Account is no longer necessary and the account is no longer legally required, the agency should immediately recommend its closure." According to Department officials, this account is no longer needed and not legally required to be kept open. Therefore, the Department should close this account and transfer the balance to the general fund.

Funds Posted to Wrong Account

The Department does not ensure that revenue transactions are posted to the correct fiduciary account in FMS. We found 24 instances, totaling \$96,664, in which the Department deposited funds to the wrong account—three in Fiscal Year 2001, three in Fiscal Year 2002, and 18 in Fiscal Year 2003. (See Appendix I for a list of the incorrectly posted transactions.) Incorrect postings of transactions cause the balances in each of the accounts to be overstated or understated in FMS.

HIC Fund Not Used to Pay More Than \$2 Million in Outstanding Fines

According to §2-224 of the Rules of the City of New York, the Department may make disbursements from the Home Improvement Contractors Fund to pay awards to aggrieved consumers and to satisfy outstanding Department fines. However, we found that the Department only uses the HIC Fund to satisfy consumer awards and does not use these funds to satisfy outstanding fines owed to the City. Moreover, as of June 30, 2003, the HIC Fund had a balance of approximately \$2.6 million that could have been used to satisfy the \$2.1 million in outstanding fines issued during Fiscal Years 2002 and 2003 to those contractors who contributed to the HIC Fund. Table I shows the revenues and expenses of the HIC Fund for the previous three fiscal years.

Table I
HIC Fund Revenue, Expenses and Balances
Fiscal Years 2001 through 2003

Fiscal Year	Revenue	Expenses	Balance
2001	\$1,251,610.00	\$361,497.00	\$1,565,097.00
2002	\$341,628.00	\$377,170.00	\$1,466,823.00
2003	\$1,766,074.00	\$623,110.00	\$2,609,787.00

RECOMMENDATIONS

The Department should:

1. Establish procedures to track deposits made into the Legal Escrow and Adjudication Escrow accounts and once judgments have been rendered, distribute the funds accordingly.

Department Response: “DCA agrees with your recommendation. DCA is currently performing an audit of the Legal and Adjudication Escrow accounts. Our internal procedure for the management of these two accounts is being reviewed and appropriate procedural changes will be made. This will include the establishment of a tracking mechanism for deposits and payouts.”

2. Reconcile the current balance in the Legal Escrow and Adjudication Escrow accounts to determine how much of the balance in each account are funds pertaining to pending cases and transfer the remaining balances to the appropriate parties according to the rendered judgments.

Department Response: “DCA agrees with your recommendation. Once the internal audit is completed, appropriate transfers of funds will be made. The new internal tracking procedure will facilitate this for the future.”

3. Determine whether the Tow Truck Escrow account is necessary. If it is not necessary, the account should be closed and the remaining balance should be transferred to the City.

Department Response: “DCA agrees with your recommendation. A review of the tow truck escrow account is currently being done to determine whether any of the funds belong to vendors. As soon as this is completed, DCA will prepare instructions to the Comptroller’s Office to close this account.”

4. Ensure that revenue transactions are posted to the appropriate fiduciary account and adjust all incorrectly posted transactions identified in Appendix I.

Department Response: “DCA agrees with your recommendation and has already contacted Michael Spitzer’s office in the [Comptroller’s] Bureau of Accountancy to adjust the incorrect postings. DCA would like to add that these mispostings were a result of Chase Bank entering the information into FMS (Financial Management System). This type of error should not be occurring in the future since, effective August 1, 2003, DCA is entering its own data into FMS. Additionally, FMS has an additional internal control where it will not allow an incorrect revenue and sub revenue code to be entered.”

5. Transfer money from the HIC Fund to the general fund to satisfy outstanding fines while ensuring that an appropriate reserve is maintained to pay awards to aggrieved consumers. In that regard, the Department should determine whether the current \$200 biannual fee charged to contractors is sufficient to ensure that an appropriate fund reserve is maintained.

Department Response: “DCA agrees with your recommendation. DCA has begun an analysis of the HIC trust fund and HIC outstanding fines. Once this analysis has been completed, DCA will begin to use the excess monies in the HIC trust fund to satisfy outstanding HIC debts.”

Schedule of Incorrectly Posted Transactions
Fiscal Year 2001 to 2003

Budget Code	Transaction Number	Fiscal Year	Amount	Account Credited	Account That Should Have Been Credited
8801	CR866INT01003032	2001	\$400.00	I71	I73
8801	CR866INT01003074	2001	\$1,600.00	I71	I73
8802	CR866INT01003076	2001	\$1,500.00	I73	I74
8801	CR866INT02002880	2002	\$800.00	I71	I73
0001	CR866INT02002574	2002	\$545.49	I73	I71
8803	CR866INT02002251	2002	\$200.00	I74	I75
8801	CR866INT03001171	2003	\$1,000.00	I71	I73
8801	CR866INT03001680	2003	\$18,500.00	I71	I73
8801	CR866INT03001686	2003	\$26,500.00	I71	I73
8801	CR866INT03001967	2003	\$8,285.00	I71	I73
8801	CR866INT03001943	2003	\$14,750.00	I75	I73
0001	CR866INT03001644	2003	\$5,783.33	I73	I71
0001	CR866INT03001872	2003	\$5,894.02	I73	I71
0001	CR866INT03002085	2003	\$1,020.39	I73	I71
0001	CR866INT03002091	2003	\$286.12	I73	I71
8802	CR866INT03002452	2003	\$1,400.00	I71	I74
8802	CR866INT03001985	2003	\$2,000.00	I72	I74
8803	CR866INT03001458	2003	\$200.00	I73	I75
8803	CR866INT03001562	2003	\$200.00	I73	I75
8803	CR866INT03001581	2003	\$200.00	I73	I75
8803	CR866INT03001897	2003	\$200.00	I73	I75
8803	CR866INT03001906	2003	\$200.00	I73	I75
8803	CR866INT03002188	2003	\$200.00	I73	I75
8803	CR866INT03002906	2003	\$5,000.00	I73	I72
Total			\$96,664.35		

Description of Budget Codes and Fiduciary Accounts Numbers

0001-I71 Bingo Trust Fund
8800-I72 Legal Escrow Account
8801-I73 Home Improvement Contractors Fund
8802-I74 Adjudication Escrow Account
8803-I75 Tow Truck Fund



The New York City
Department of
Consumer Affairs
42 Broadway
New York, NY
10004-1716

Gretchen Dykstra
Commissioner

December 10, 2003

Mr. Greg Brooks
Deputy Comptroller
Office of the New York City Comptroller
1 Centre Street, 5th Floor
New York, N. Y. 10007-2341

RE: Draft Audit Report # FM03-154A
Administration of Agency Fiduciary Accounts

Dear Mr. Brooks,

I am writing in response to your draft report on the above captioned audit.

Thank you for your audit recommendations. The draft report suggests that the Department of Consumer Affairs (DCA) implement five recommendations. Below are the recommendations made in your draft report and our comments:

The Department of Consumer Affairs should:

1. Establish procedures to track deposits made into the Legal Escrow and Adjudication Escrow accounts and once judgments have been rendered, distribute the funds accordingly.

DCA agrees with your recommendation. DCA is currently performing an audit of the Legal and Adjudication Escrow accounts. Our internal procedure for the management of these two accounts is being reviewed and appropriate procedural changes will be made. This will include the establishment of a tracking mechanism for deposits and payouts.

2. Reconcile the current balance in the Legal Escrow and Adjudication Escrow accounts to determine how much of the balance are funds pertaining to pending cases and transfer the remaining balances to the appropriate parties according to the rendered judgments.

DCA agrees with your recommendation. Once the internal audit is completed, appropriate transfers of funds will be made. The new internal tracking procedure will facilitate this for the future.

3. Determine whether the Tow Truck Escrow account is necessary. If it is not necessary, the account should be closed and the remaining balance should be transferred to the City.

DCA agrees with your recommendation. A review of the tow truck escrow account is currently being done to determine whether any of the funds belong to vendors. As soon as this is completed, DCA will prepare instructions to the Comptrollers' Office to close this account.

4. Ensure that revenue transactions are posted to the appropriate fiduciary account and adjust all incorrectly posted transactions identified in Appendix I.

DCA agrees with your recommendation and has already contacted Michael Spitzer's office in the Bureau of Accountancy to adjust the incorrect postings. DCA would like to add that these mispostings were a result of Chase Bank entering the information into FMS (Financial Management System). This type of error should not be occurring in the future since, effective August 1, 2003, DCA is entering its own data into FMS. Additionally, FMS has an additional internal control where it will not allow an incorrect revenue and sub revenue code to be entered.

5. Transfer money from the HIC Fund to the general fund to satisfy outstanding fines while ensuring that an appropriate reserve is maintained to pay awards to aggrieved consumers. In that regard, the Department should determine whether the current \$200 biannual fee is sufficient to endure that an appropriate fund reserve is maintained.

DCA agrees with your recommendation. DCA has begun an analysis of the HIC trust fund and HIC outstanding fines. Once this analysis has been completed, DCA will begin to use the excess monies in the HIC trust fund to satisfy outstanding HIC debts.

If you have any questions concerning this response, please feel free to call me at (212) 487 - 4240 or you can email me at bacchiaa@DCA.nyc.gov.

Sincerely,



Anna Bacchia, CFE, CGFM
Director of Audit Services

C: G. Dykstra, DCA
K. Lasky, DCA