



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

WILLIAM C. THOMPSON, JR.
Comptroller

**Audit Report on the Compliance of PBE Golf, Inc.,
With its License Agreement and the
Payment of License Fees Due the City**

FR02-089A

June 13, 2002

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

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EXECUTIVE SUMMARY

Background

On November 17, 2000, the Department of Parks and Recreation (Parks) entered into a 15-year licensing agreement with PBE Golf, Inc. (PBE) to operate, maintain, and manage Turtle Bay Cove, an outdoor recreational facility at Pelham Bay Park in the Bronx. Turtle Bay Cove has a driving range, a batting cage, a miniature golf course, and a food concession.

The agreement requires that PBE pay the City a minimum annual fee ranging from \$90,000 in the first year to \$100,000 in the fifteenth year, or a percentage of PBE's gross receipts received from operating the facility, whichever is greater. PBE must also pay 10 percent of the revenue earned from the food concession and from miscellaneous sales.

Objectives, Scope, and Methodology

The audit covered the period May 1, 2000 through April 30, 2001. To achieve our audit objectives, we reviewed the license agreement between Parks and PBE, interviewed PBE's president and other essential personnel, and conducted a walk-through of the operations. We tested transactions to verify whether the internal controls over gross receipts were adequate and operating as represented by management. We also determined whether PBE complied with the principal requirements of its license agreement (e.g., the security deposit, liability insurance, payment of utility charges, and the completion of capital improvements).

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in

accordance with the City Comptroller's audit responsibilities, as set forth in Chapter 5, § 93, of the New York City Charter.

Results in Brief

For May 1, 2000 through April 30, 2001, PBE reported gross receipts of \$353,499 and paid \$90,000 (the minimum) to the City in license fees. PBE maintained the required security deposit, had the required insurance coverage, and paid its utility bills on time. As of November 8, 2001, PBE had expended \$351,463 (of the \$629,400 required) on capital improvements in substantial conformance to the approved schedule. However, PBE did not report its gross receipts in conformance with its license agreement because it did not include the receipts of an unauthorized sublicensee on its gross receipts statements, and its receipts from vending machines lacked documentation.

Recommendations

The audit resulted in six recommendations. The following are the report's major recommendations.

- PBE should obtain proper approval from Parks before entering into any sublicense agreements and should report the revenue earned by any sublicensee in the gross receipts reported to Parks.
- Parks should ensure that PBE complies with the report's recommendations and ensure that the Castner Academy, an unauthorized sublicensee, operates under approved sublicense agreements at the City's other golf facilities.

Discussion of Audit Results

The matters covered in this report were discussed with PBE and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to PBE and Parks officials and was discussed at an exit conference on May 22, 2002. On May 23, 2002, we submitted a draft report to PBE and Parks officials with a request for comments. We received a written response from PBE on June 5, 2002. PBE's response did not specifically address the report's recommendations. However, in its response PBE stated that "it is management's belief that the concerns outlined in your audit report will be resolved. . . . Any and all recommendations that can improve on the daily operations . . . are always greatly appreciated."

We received a written response from Parks on June 5, 2002. In its response, Parks stated that it agreed with all of the report's recommendations and has issued a Notice to Cure directing PBE to implement the recommendations that relate to PBE's operation.

The full texts of PBE's and Parks's comments are included as addenda to this report.

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INTRODUCTION

Background

On November 17, 2000, the Department of Parks and Recreation (Parks) entered into a 15-year licensing agreement with PBE Golf, Inc. (PBE) to operate, maintain, and manage Turtle Bay Cove, an outdoor recreational facility at Pelham Bay Park in the Bronx.¹ Turtle Bay Cove has a driving range, a batting cage, a miniature golf course, and a food concession.

The agreement requires that PBE pay the City a minimum annual fee ranging from \$90,000 in the first year to \$100,000 in the fifteenth year, or a percentage of PBE's gross receipts received from operating the facility, whichever is greater. The percentage of gross receipts is calculated for the driving range, the miniature golf course, and the batting cage, as follows:

- 15 percent of the revenue earned up to \$500,000;
- 20 percent of the revenue earned between \$500,001 and \$750,000;
- 30 percent of the revenue earned between \$750,001 and \$1,000,000;
- 35 percent of the revenue earned between \$1,000,001 and \$1,250,000; and,
- 40 percent of the revenue earned exceeding \$1,250,000.

PBE must also pay 10 percent of the revenue earned from the food concession and from miscellaneous sales.

In addition, the agreement requires that PBE spend at least \$629,400 on capital improvements to the recreational facility and complete these improvements by November 2002. PBE must also deposit \$25,000 with the New York City Comptroller's Office as a security for the payment of fees, pay the utility charges for the facility, and maintain the proper insurance coverage for the property, naming the City as an additional insured party.

¹ Although the agreement was not signed until November 2000, the terms of the agreement state that the agreement commenced on May 1, 2000.

Objectives

Our audit objectives were to determine whether PBE:

- maintained adequate internal controls over the recording and reporting of gross receipts;
- properly calculated its gross receipts and fees due the City, and paid these fees on time; and
- complied with the principal requirements of its license agreement (e.g., the security deposit, liability insurance, payment of utility charges, and the completion of capital improvements).

Scope and Methodology

This audit covered the period May 1, 2000, through April 30, 2001.

To achieve our audit objectives, we reviewed the license agreement between Parks and PBE and on July 18, 2001 conducted an unannounced pre-audit observation of the driving range, the batting cage, the miniature golf course, and the concession stand. On October 26, 2001, we interviewed PBE's president and other essential personnel, and conducted a walk-through of the operations. During the walk-through, we obtained an understanding of PBE's record keeping, the responsibilities of key personnel, and the flow of documents (from the receipt of cash to its subsequent deposit).

We tested transactions made during the scope period to verify whether the internal controls over gross receipts were adequate and operating as represented by management. Specifically, we reconciled transactions to the gross receipt reports to determine whether the monthly transactions processed through PBE's computerized system were accurate and complete. We also compared and reconciled the income amounts reported to Parks in the gross receipts statements to the amounts shown in PBE's general ledger, income statements, and tax returns.

We traced the daily register tapes (summary-by-group tapes known as "Z-tapes") processed through PBE's computerized cash register, and reconciled these amounts to the Daily Register Sheets and the Monthly Summary Reports. We reviewed PBE's bank deposit slips and bank statements to determine whether all the cash received during the scope period was deposited. We also determined the reliability of the daily register sheets, the Z-tapes, and the detailed register tapes by comparing transactions on these documents for the five-day period November 14–18, 2001.

We reviewed PBE records showing the amounts spent on capital improvements to determine whether PBE complied with the requirements of the license agreement. Further, we examined documents showing that PBE filed the correct security deposit with the New York City

Comptroller's Office, that PBE carried the proper liability insurance, and that PBE's utility bills were paid on time, as required by the license.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the City Comptroller's audit responsibilities, as set forth in Chapter 5, § 93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with PBE and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to PBE and Parks officials and was discussed at an exit conference on May 22, 2002. On May 23, 2002, we submitted a draft report to PBE and Parks officials with a request for comments. We received a written response from PBE on June 5, 2002. PBE's response did not specifically address the report's recommendations. However, in its response PBE stated that "it is management's belief that the concerns outlined in your audit report will be resolved. . . . Any and all recommendations that can improve on the daily operations . . . are always greatly appreciated."

We received a written response from Parks on June 5, 2002. In its response, Parks stated that it agreed with all of the report's recommendations and has issued a Notice to Cure directing PBE to implement the recommendations that relate to PBE's operation.

The full texts of PBE's and Parks's comments are included as addenda to this report.

OFFICE OF THE COMPTROLLER NEW YORK CITY

DATE FILED: June 13, 2002

FINDINGS AND RECOMMENDATIONS

For the audit period, PBE reported gross receipts amounting to \$353,499, and paid \$90,000 (the minimum) to the City in license fees. During this period, PBE maintained the required security deposit, had the required insurance coverage (i.e., general liability, workers' compensation, and property insurance) and paid its utility bills on time. As of November 8, 2001, PBE had expended \$351,463 (of the \$629,400 required) on capital improvements in substantial conformance to the approved schedule.

However, PBE did not report its gross receipts in conformance with its license agreement, because it did not include the receipts of an unauthorized sublicensee on its gross receipts statements and its receipts from vending machines lacked documentation.

PBE Did Not Enter Into a Properly Authorized Sublicense Agreement with a Golfing Academy And Did Not Include the Receipts of That Golfing Academy in Its Gross Receipts

PBE permits the Castner Academy to provide golf lessons at Turtle Bay Cove. PBE's agreement with Parks states, "Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request." PBE did not obtain permission from Parks, as required by its agreement, to enter into a sublicense agreement with Castner. It is important that Parks strictly enforce this provision, both to ensure that the City receives all fees that it is entitled to under the license agreement, and to ensure that only responsible sublicensees are using City property under agreements that contain appropriate provisions to protect the City.

In addition, we could not determine whether PBE included Castner's gross receipts in its gross receipts reports to Parks.² PBE officials stated that they do include the revenue received from Castner in PBE gross receipts statements. According to the officials, the agreement between PBE and Castner is verbal, and it requires that Castner pay PBE twice the normal cost for a bucket of balls. However, without a sublicense agreement approved by Parks, we have no way of verifying this "verbal" agreement. Moreover, even if PBE is accurately reporting the revenue received from Castner, the failure of PBE to enter into a properly authorized sublicense agreement undermines the requirements of the license agreement that PBE also include in its gross receipts report all of the sales made by Castner.

In order to determine whether PBE included Castner's gross receipts in its submissions to Parks, we requested that Castner provide us a schedule of lessons given for April 2001, a list of students taking those lessons, the names of the pros giving the lessons, and records showing the payments made to PBE. The only records Castner provided were the names of the pros.

² PBE's agreement with Parks states that "gross receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 18 herein."

Therefore, we could not determine the amount of Castner's gross receipts. Consequently, we have no way of knowing whether the addition of Castner's gross receipts would have raised PBE's gross receipts above the threshold over which PBE would owe additional fees to Parks. However, our most important concern is that the City may be forgoing significant revenues, independently of how the gross revenue issue affects PBE, because the Castner Academy, according to its web site, has instructors working at three City-owned golf facilities in addition to Turtle Bay Cove. Since Castner may be generating significant revenue from its operations on City-owned property, and since it did not provide us with the information necessary for us to determine its gross receipts, we believe that Castner should not be allowed to continue to operate at the golf courses unless and until it enters into formal sublicense agreements with PBE and the other golf course operators that have been approved by Parks.

PBE Does Not Document Vending Machine Revenue

PBE has various vending machines and video games at Turtle Bay Cove that are supplied by an outside vendor. The revenue generated from the vending sales is split between the vendor and PBE. PBE officials claim that this revenue is listed under "Miscellaneous Revenue" in the gross receipts statements, but we cannot verify this, since there are no separate records for this revenue. In contrast to Castner's gross receipts, these revenues were strictly related to the threshold, and in and of themselves would not have resulted in additional fees to the City. Nevertheless, PBE should have adequately accounted for this revenue and reported it to Parks.

Recommendations

PBE should:

1. Negotiate and obtain Parks's approval for a sublicense agreement with Castner.
2. Obtain proper approval from Parks before entering into any sublicense agreements.

PBE's Response: "It was never management's intention to enter into a sublicense agreement with a golf academy. PBE Golf, Inc. is in the business of selling buckets of golf balls to the public The golf academy purchased the balls from PBE Golf, Inc. at twice the normal rate. In exchange for this additional charge, PBE Golf, Inc. allowed the academy to display promotional material on the premises. All income from the sale of the golf balls to the golf academy was properly recorded in the cash register and reported to the City of New York.

"Due to the concerns outlined in your audit report, PBE Golf, Inc. has removed all promotional material relating to the golf academy. All buckets of balls will be sold at the same price regardless of who makes the purchase. Should PBE Golf, Inc. desire to enter into a business relationship with a golf academy in the future, the City of New York Parks Department will be notified and all requirements

detailed in the license agreement between PBE Golf, Inc. and the City of New York will be strictly followed.”

3. Report the revenue earned by any sublicensee in the gross receipts reported to Parks.

PBE’s Response: This recommendation was not addressed in PBE’s response.

4. Maintain records of the receipts received from vending machines.

PBE’s Response: “All income earned from vending machine sales was properly recorded in the cash register . . . Management has initiated new procedures to record future vending machine earnings that will clearly identify the income retrieved from each machine. These procedures include preparing a log sheet for each vending machine that identifies the date, the person, and the amount of money withdrawn from each machine. Also, a new code will be established on the cash register to record all vending machine sales. These procedures will allow better tracing of these earnings into the books and records of PBE Golf, Inc.”

Parks should:

5. Ensure that PBE complies with the above recommendations.
6. Ensure that Castner operates under approved sublicense agreements at the City’s other golf facilities.

Parks’s Response: Parks stated that it “agrees with all recommendations contained in the audit report and has issued [a] . . . Notice To Cure requesting that PBE implement recommendations 1 through 4.” Parks stated in regard to Recommendation 5 that the issuance of the Notice to Cure to PBE has addressed this issue. With regard to Recommendation 6, Parks stated that it has “checked with our other golf concessions and have been advised that Castner Academy does not operate at any of them.”

PBE GOLF, INC.
One City Island Road
Bronx, NY 10464
(718) 885-2646

May 31, 2002

Mr. Roger D. Liver
The City of New York
Office Of The Comptroller
Bureau Of Audits
1 Centre Street Room 1100
New York, N.Y. 10007-2341

**Re: Response to the Audit Report on the Compliance of PBE Golf, Inc.,
With its License Agreement and the Payment of License Fees Due
The City FR02-089A**

Dear Mr. Liver,

I have reviewed the final audit report prepared by your office concerning the above referenced Audit. I discussed these concerns in a recent meeting attended by several members of your staff, along with a representative from the Mayor's office, and my accountant, Joseph Apuzzo.

The Audit Report lists six recommendations, two of which were considered more significant than the others. My response to these major recommendations is as follows:

- **Finding:** PBE did not enter into a properly authorized sublicense agreement with a golfing academy and did not include the receipts of that golfing academy in its gross receipts.
- **Response:** It was never management's intention to enter into a sublicense agreement with a golf academy. PBE Golf, Inc. is in the business of selling buckets of golf balls to the public so that an individual can improve on his or her golf skills. The golf academy purchased the balls from PBE Golf, Inc. at twice the normal rate. In exchange for this additional charge, PBE Golf, Inc. allowed the academy to display promotional material on the premises. All income from the sale of the golf balls to the golf academy was properly recorded in the cash register and reported to the city of New York.

Due to the concerns outlined in your audit report, PBE Golf, Inc. has removed all promotional material relating to the golf academy. All buckets of balls will be sold at the same price regardless of whom makes the purchase. Should PBE Golf,

May 31, 2002
continued

Inc. desire to enter into a business relationship with a golf academy in the future, the City of New York Parks Department will be notified and all requirements detailed in the license agreement between PBE Golf, Inc. and the city of New York will be strictly followed.

- *Findings:* PBE does not document vending machine revenue
- *Response:* All income earned from vending machine sales was properly recorded in the cash register and reported to the city of New York. Management has initiated new procedures to record future vending machine earnings that will clearly identify the income retrieved from each machine. These procedures include preparing a log sheet for each vending machine that identifies the date, the person, and the amount of money withdrawn from each machine. Also, a new code will be established on the cash register to record all vending machine sales. These procedures will allow better tracing of these earnings into the books and records of PBE Golf, Inc.

It is management's belief that the concerns outlined in your audit report will be resolved by employing the above mentioned actions. PBE Golf, Inc. is looking for a long and trusting relationship with the city of New York. Any and all recommendations that can improve on the daily operations of PBE Golf, Inc. are always greatly appreciated.

Very truly yours,



Gary Moretto



City of New York
Parks & Recreation

Page 1 of 4

The Arsenal
Central Park
New York, New York 10021

Adrian Benepe
Commissioner

Joanne C. Imohielsen
Assistant Commissioner
Revenue

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

June 4, 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: **Draft Audit Report on the Compliance of PBE Golf, Inc. With its Lease Agreement
May 1, 2000 Through April 30, 2001 Audit No. FR02-089A**

Dear Mr. Liwer:

This letter represents the Parks Department's (DPR), response to the recommendations contained in the subject audit of PBE Golf, Inc. (PBE).

DPR agrees with all recommendations contained in the audit report and has issued the attached Notice To Cure requesting that PBE implement recommendations 1 through 4. We have requested that PBE submit for DPR approval a formal sublicense agreement between PBE and Castner Academy along with a statement of gross receipts covering the period of Castner's operation at the Turtle Bay Cove facility (Recommendation 1). DPR also required PBE to follow Recommendations 2 and 3 concerning the establishment and reporting of income for sublicense contracts.

For Recommendation 4, PBE must implement procedures to separately account for vending machine revenue and report such income as a separate line item on its monthly gross receipts statements. Also, we have requested that DPR's internal auditor, Francisco Carlos review PBE's operation in three months to ensure compliance with all audit recommendations.

Recommendation 5, that Parks should "Ensure that PBE complies with the above recommendations", has been addressed by issuance of the Notice To Cure to PBE.

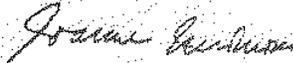
www.nyc.gov/parks

Roger D. Liwer
June 4, 2002
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Recommendation 6 states that, "Parks should ensure that Castner operates under approved sublicense agreements at the City's other golf facilities." We have checked with our other golf concessions and have been advised that Castner Academy does not operate at any of them.

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

The Arsenal
Central Park
New York, New York 10021

Adrian Benepe
Commissioner

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Revenue

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joanne.imohiessen@parks.nyc.gov

June 4, 2002

BY FAX AND MAIL

Mr. Gary Moretto, President
PBE Golf, Inc.
1749 Crosby Avenue
Bronx, NY 10461

NOTICE TO CURE

Re: Comptroller's Draft Audit Report on PBE Golf, Inc.
May 1, 2000 Through April 30, 2001 Audit No. FR02-089A

Dear Mr. Moretto:

This letter addresses the findings and recommendations contained in the subject draft audit report on PBE Golf, Inc. (PBE). The audit disclosed that, "PBE did not report its gross receipts in conformance with its license agreement, because it did not include the receipts of an unauthorized sublicensee on its gross receipts statements and its receipts from vending machines lacked documentation." These items are the basis of the Comptroller's recommendations that follow.

PBE should:

- Recommendation 1.** Negotiate and obtain Parks' approval for a sublicense agreement with Castner.
- Recommendation 2.** Obtain proper approval from Parks before entering into any sublicense agreements.
- Recommendation 3.** Report the revenue earned by any sublicensee in the gross receipts reported to Parks.

The audit report stated that PBE did not enter into a properly authorized sublicense agreement with Castner Academy who was providing golf lessons at the Turtle Bay Cove facility. Also, the report indicated that PBE did not include the sales income of Castner in its gross receipts reports to the Parks Department (DPR).

Gary Moretto

June 4, 2002

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Section 2.1 (1) (iii) of PBE's license agreement requires that it obtain DPR approval for any sublicensee operating on the licensed premises. This section also requires that all sales of the sublicensee, as well as any payments by the sublicensee to PBE under the sublicense agreement also must be included in PBE's gross receipts reported to DPR.

To comply with the audit recommendations PBE is afforded thirty (30) days from the date of this letter to:

- Submit to this office for consideration and approval, a formal sublicense agreement between PBE and Castner Academy.
- Report to DPR the gross receipts of Castner Academy covering the period of its operation at Turtle Bay Cove.

Also, PBE should make certain to follow Recommendation 2, by obtaining proper approval from DPR before entering into any sublicense agreements, and Recommendation 3, by reporting all revenue earned by any sublicensee in PBE's gross receipts reported to Parks.

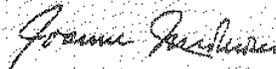
Recommendation 4. Maintain records of the receipts received from vending machines.

PBE should comply with this recommendation by implementing procedures to separately account for vending machine revenue. Also, the receipts from this revenue source should be reported as a separate line item on PBE's monthly gross receipts statements.

By copy of this letter to Francisco Carlos, DPR's Internal Auditor, I am requesting that he schedule a follow-up review of PBE's operation in three months to ensure that they have properly complied with the above cited recommendations.

Finally, we wish to thank PBE for its cooperation during the audit and prompt attention in resolving the above stated issues.

Sincerely,



Joanne Imohiesen

cc: D. Stark
F. Carlos