



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Follow-up Audit Report on the Financial
and Operating Practices of the Kings
County Public Administrator's Office

MD14-122F

June 30, 2015

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
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June 30, 2015

To the Residents of the City of New York:

My office has audited the Office of the Kings County Public Administrator (KCPA) to determine whether it implemented the recommendations made in a prior New York City Comptroller's audit report. We audit entities such as this to increase accountability and ensure that their operations follow applicable laws and guidelines in a consistent manner.

This follow-up audit assessed the implementation status of the prior audit's 18 recommendations and determined that the conditions disclosed in the prior audit have largely remained unchanged. Specifically, this audit found that two of the recommendations we made were implemented, one was partially implemented, and 14 were not implemented. Among other things, the follow-up audit found that there was little evidence that staff consistently performed sufficient database searches for possible estate assets; disbursements did not have all the required supporting documentation; inventory records of estate assets were inaccurate; bank reconciliations were not always performed; outstanding checks were not voided; mandatory financial and operational reports were not always submitted to appropriate oversight bodies timely, if at all; and W-9 forms were not obtained from vendors to determine their legal entity type and tax status.

During the course of the follow-up audit, auditors identified additional findings. Specifically, the KCPA has not been vigilant in keeping track of estate monies once they have been deposited in its bank accounts and is unable to credit those funds back to the estates to which they belong. There were also a number of closed estates where the estate assets had not been distributed. Further, the follow-up audit found that estates have not been closed in a timely manner.

To address the issues from the prior audit that still exist, this follow-up audit recommends that the KCPA ensure that basic databases are searched in order to identify all possible assets; strengthen its controls over disbursements; ensure that estate property inventories are accurate; independently review and document its review of bank reconciliations; and file and submit all required reports. To address some of the new findings identified, this follow-up audit recommends that the KCPA make a determination of what should be done with funds that are not associated with specific estates and take all steps to appropriately close estates that remain open.

The results of this audit have been discussed with KCPA officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report. If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Follow-up Audit Report on the Financial and Operating Practices of the Kings County Public Administrator's Office

MD14-122F

EXECUTIVE SUMMARY

The objective of the audit was to determine whether the Office of the Kings County Public Administrator (KCPA) implemented the recommendations made in a prior audit report.

The KCPA is responsible for administering estates of Brooklyn residents who die intestate (without a will) and have no close relatives, or where there is no other person willing or qualified to administer the estate. As an estate administrator, the KCPA has a fiduciary duty to conduct thorough investigations to identify assets; collect those assets; make and pay for funeral arrangements; pay bills and expenses; search for persons who may be entitled to inherit from the estate; and distribute estate property to those heirs as determined by the court, or to such persons named in the decedent's will. The Public Administrator (PA) and a Deputy PA are appointed by the two elected Brooklyn County Surrogate Court Judges.

A prior audit by this office of the KCPA, *Audit Report on the Financial and Operating Practices of the Kings County Public Administrator's Office* (Audit No. FK12-079A, issued on June 28, 2013), found that KCPA failed to fulfill its fiduciary responsibilities by not acting in estates' best interests, failing to carry out its duties prudently, and failing to comply with statutory rules and regulations. The prior report made 18 recommendations.

Audit Findings and Conclusion

In this follow-up audit, we assessed the implementation status of our prior audit's 18 recommendations. We determined that two of the recommendations were implemented, one was partially implemented, and 14 were not implemented. We could not determine the implementation status of the recommendation that formal and informal estate legal counsel fees be paid in accordance with new Guidelines, effective May 1, 2012 because there was not sufficient documentation in the files. Of the conditions disclosed in the prior audit, this audit found that many have remained unchanged. Among other things, we found little evidence that staff consistently performed sufficient database searches for possible estate assets; disbursements did not have all the required supporting documentation; inventory records of estate assets were

inaccurate; bank reconciliations were not always performed; outstanding checks were not voided; mandatory financial and operational reports were not always submitted to appropriate oversight bodies timely, if at all; and W-9 forms were not obtained from vendors to determine their legal entity type and tax status.

We also made additional findings in the course of our follow-up audit. In particular, we determined that the KCPA has not been vigilant in keeping track of estate monies once they have been deposited in its bank accounts and is unable to credit those funds back to the estates to which they belong. We also found a number of closed estates where the estate assets had not been distributed. Further, we found estates have not been closed in a timely manner.

Audit Recommendations

To address the issues from the prior audit that still exist we made 15 recommendations, including:

- The KCPA should ensure that basic databases are searched in order to identify all possible assets for the decedents. KCPA should conduct searches for the remaining five sampled estates with possible unclaimed funds identified by the auditors and for which the KCPA had not conducted searches.
- The KCPA should strengthen its controls over disbursements made from estate accounts to ensure that they are properly reviewed and approved and ensure all supporting documentation is completed and attached to the payment package.
- The KCPA should ensure the estate property inventories it maintains are accurate, complete, and the proceeds from the sales of those properties are appropriately accounted for.
- The KCPA should examine the Outstanding Check Register from the Master Estate account to ensure that it is accurate and void and reissue outstanding checks.
- The KCPA should establish procedures to ensure that bank reconciliations are independently reviewed and documented.
- The KCPA should file and submit all reports required by SCPA on a timely basis, ensure that the status of all estates are regularly examined and correctly reported, and ensure that external audits are conducted on an annual basis.
- The KCPA should ensure that completed W-9 forms are collected from all vendors to ensure that 1099-MISC forms are issued to all vendors with 1099 reportable payments of \$600 or more.

To address the new findings of this follow-up audit we made seven recommendations, including:

- The KCPA should make a determination of what should be done with the funds that are not associated with specific estates.
- The KCPA should review the estates that remain open and take all necessary steps to appropriately close them.

Agency Response

The KCPA generally agreed with 20 of the 22 recommendations made in this follow-up report. The KCPA's response did not specifically address the recommendations that it establish

procedures for competitive vendor selection and that it conduct an investigation into an account for which over \$45,000 could not be traced.

In their response, KCPA officials also cited concerns with our sample selection. After carefully reviewing the KCPA's concerns, however, we find no basis to alter our report or our findings.

AUDIT REPORT

Background

The KCPA is responsible for administering estates of Brooklyn residents who die intestate (without a will) and have no close relatives, or where there is no other person willing or qualified to administer the estate. As an estate administrator, the KCPA has a fiduciary duty to conduct thorough investigations to identify assets; collect those assets; make and pay for funeral arrangements; pay bills and expenses; search for persons who may be entitled to inherit from the estate; and distribute estate property to those heirs as determined by the court, or to such persons named in the decedent's will. The Public Administrator (PA) and a Deputy PA are appointed by the Brooklyn County Surrogate Court Judges.

The KCPA utilizes the CompuTrust database system to track and record all estate activities, including all income and expenses. According to the CompuTrust estate balance report, as of July 1, 2014, the KCPA was responsible for managing 42,407 estates valued at \$95.7 million.¹ A small estate is one valued at over \$500 but not exceeding \$30,000. A large estate is one valued at more than \$30,000.

If an estate is a large estate, the PA must determine whether there are any persons otherwise eligible and willing to administer the estate. If there are none, the KCPA files a petition with the Surrogate's Court for Letters of Administration to gain legal authorization to administer the estate. For small estates, the KCPA issues voluntary letters of administration to administer the estate. For estates valued at \$500 or less, no Letters of Administration are issued. Upon the conclusion of the administration of an estate, the KCPA is entitled to a commission based on a sliding scale of up to five percent.² However, this commission is not retained by the KCPA but rather remitted to the New York City Department of Finance (DOF). The KCPA also is entitled to retain one percent from all estates upon settlement for administrative expenses.³ The commissions and administration expenses are calculated on an estate's gross value. In addition, the KCPA also received \$664,000 from the City to underwrite its operations in Fiscal Year 2014.

A prior audit of the KCPA, *Audit Report on the Financial and Operating Practices of the Kings County Public Administrator's Office* (Audit No. FK12-079A, issued on June 28, 2013), found that the KCPA failed to fulfill its fiduciary responsibilities by not acting in estates' best interests, failing to carry out its duties prudently, and failing to comply with statutory rules and regulations. The prior report made 18 recommendations.

The KCPA's activities are governed by Article 11 of the New York State Surrogate's Court Procedures Act (SCPA); all other provisions of the SCPA and Estates Powers and Trusts Law that govern the conduct of fiduciaries; the Report and Guidelines of the Administrative Board for the Office of Public Administrators (Guidelines); Part 207 of the Uniform Rules for NYS Trial Courts; Title 2, § 72.1 of the New York Codes, Rules, Regulations, and the New York City Comptroller's Directive #28, "Reporting Requirements for Public Administrators."

¹ According to KCPA officials, decedent cases include estates, undertaker and medical examiner cases, and funds received for nursing home and police department cases.

² The KCPA receives commissions for acting as the estates' administrator which are turned over to the City's general fund.

³ The KCPA one percent commission of the gross estate value is applied towards the reasonable and necessary expenses of the office.

Objective

To determine whether the KCPA implemented the recommendations made in the prior audit report.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was July 1, 2013 through December 31, 2014. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results with KCPA

The matters covered in this report were discussed with KCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to KCPA officials and discussed at an exit conference held on May 13, 2015. On May 21, 2015, we submitted a draft report to the KCPA with a request for comments. We received a written response from KCPA officials on June 5, 2015. In its response, the KCPA generally agreed with 20 of the 22 recommendations made in this follow-up report and stated “in the past several months progress has been made implementing policies and procedures to address the findings initially reported in the Comptroller’s June 2013 report.” The KCPA’s response did not specifically address the recommendations that it establish procedures for competitive vendor solicitation and that it conduct an investigation into an account for which over \$45,000 could not be traced.

KCPA officials cited concerns with our sample selection, stating that a number of the estates we selected, due to their value and/or type, were not administered in the same manner as other estates. However, regardless of the value or type of estate, the KCPA is required by the Guidelines to use due diligence and investigate whether it is appropriate to petition for appointment as the estate fiduciary including searching for decedent’s distributees. We audited against these guidelines.

Officials also raised a concern that the closed estates selected were opened prior to the issuance of the prior audit report in June 2013. However, this is a non-issue. We randomly selected the files to review from estates that were closed between July 2013 and December 2014; since it frequently takes the KCPA several years to fully administer and close estates, it is not surprising that these estates would have been initially opened prior to June 2013. However, as we explained to KCPA officials several times during the audit, our audit findings are based on transactions that occurred subsequent to the prior audit report issuance (i.e., on or after July 1, 2013).

After carefully reviewing the KCPA’s concerns, we find no basis to alter our report or our findings. The full text of the KCPA’s response is included as an addendum to this report.

RESULTS OF FOLLOW-UP AUDIT

In this follow-up audit, we assessed the implementation status of our prior audit's 18 recommendations. We determined that two were implemented, one was partially implemented, 14 were not implemented, and the implementation status of one could not be determined. (The appendix lists the 18 recommendations and their implementation status.⁴)

We also made additional findings in the course of our follow-up audit. In particular, we determined that the KCPA has not been vigilant in keeping track of estate monies once they have been deposited in its bank accounts, and so cannot credit those funds back to the estates to which they belong. We also found a number of closed estates where the estate assets had not been distributed. Further, we found estates have not been closed in a timely manner.

Previous Finding: The KCPA “Did Not Identify, Collect, or Credit Decedents’ Estates for Assets Worth \$2.2 Million”

The previous audit found that the KCPA did not identify, collect, or credit estates for significant assets. KCPA did not establish policies and procedures or checklists to identify assets, or list basic databases to search for property holdings and unclaimed funds. The KCPA supervisory personnel also did not review estate files with staff to ensure that they had taken all the appropriate steps to collect assets. Consequently, for 27 of 50 sampled open estates, the KCPA did not identify, collect, or credit estates for assets worth \$2.2 million.

Previous Recommendation #1: Implement asset identification checklists detailing basic databases for staff to search, including but not limited to ACRIS public database of real property records, OSC public database of unclaimed funds, and NYS-DMV database of automobiles, boats, and other motorized vehicles records.

Previous KCPA Response: The KCPA did not address this recommendation.

Current Status: NOT IMPLEMENTED

Since the previous audit, the KCPA's small estate manager designed a checklist for tracking estates from the death notice to the estate settlement. However, only the small estate manager uses the checklist, and it does not include any databases to search other than the OSC unclaimed funds database. The KCPA also created a “Public Administrator’s Office Checklist for Asset Collection” which lists the databases to be searched; however, we found no evidence that this list in use. As a result, the KCPA has an increased risk of closing some estates without collecting all their assets.

Previous Recommendation #2: “Periodically review asset identification checklists and estate files with staff to ensure that assets are identified, collected, and credited to decedents' estates.”

Previous KCPA Response: The KCPA did not address these recommendations.

⁴ As of December 31, 2014, the end of the audit scope period.

Current Status: NOT IMPLEMENTED

We found little evidence that staff consistently searched various databases for possible estate assets or that supervisors reviewed estate files with staff to ensure all assets have been found and collected. However, in most cases, the KCPA staff searched the Accurint database⁵ for next of kin. Of 12 closed estates we sampled, five had no evidence that the KCPA had performed any database searches to identify possible assets, and four had evidence of only one database search. Of 9 open estates we sampled, seven had no evidence of searches. The remaining two had evidence that only one database, Accurint, was searched. However, our searches of the Office of the New York State Comptroller's public database of unclaimed funds identified possible assets for 10 sampled estates. After we informed the KCPA about the possible unclaimed funds, the KCPA searched five of the 10 estates and was able to identify unclaimed funds for three. By failing to consistently search these basic databases, the KCPA may not be identifying and collecting all existing estate assets.

Previous Finding: The KCPA "Did Not Maintain Documentation to Support Expenses"

The previous audit found that the KCPA did not properly document expenses it paid from open estate accounts. To help ensure that expenses were reasonable, appropriate, and adequately supported, the KCPA used a Desk Review Form (DRF) Disbursement Cover Sheet, which documented the amount, reason, review and approval for expenses. A review of 1,017 expense transactions totaling \$3,538,276 (from 50 sampled open estates) revealed that 446 transactions totaling \$2,323,107 lacked properly completed forms and documentation. Consequently, auditors were unable to confirm with reasonable assurance that disbursements from those estate accounts were reasonable, appropriate, and legitimate.

Previous Recommendation #3: "Ensure that staff properly completes Desk Review Form Disbursement Cover Sheets detailing the amount, reason, review and approval for expenses, attach supporting documentation to them, and maintain them in estate files."

Previous KCPA Response: "The Report states that the KCPA did not monitor its staff to ensure that they consistently completed authorization forms and maintained supporting documentation for expenses paid on behalf of estates. This is untrue. Staff in fact do not have the ability to obtain checks without the authorization of the public administrator or the deputy public administrator. . . . Checks can only be signed by the Public Administrator or the Deputy Public Administrator and they sign checks supported by the check disbursement requests."

Current Status: NOT IMPLEMENTED

Our review of controls over disbursements determined that they remain inadequate. Some payment packages we reviewed did not include the coversheets or other required supporting documentation. Of the 111 disbursements reviewed for our closed estates sample, 67, totaling \$966,847, did not have one or more of the required documents (e.g., invoices, copies of checks, check stubs, DRFs, or other relevant documents). Further, we found no evidence that the DRFs

⁵ Accurint is a web-based research tool that can be used to locate possible relatives and links individuals with addresses and vehicles.

for 36 disbursements were reviewed by the Case Managers or Bookkeeper, including one disbursement for \$60,686 that was not approved.

After discussing this issue in connection with our follow-up audit, the Deputy PA showed us new payment packages and indicated that they are enforcing new requirements regarding DRFs to ensure all are properly completed and authorized.

Previous Finding: The KPCA “Did Not Competitively Solicit Vendors”

The KCPA did not competitively solicit and evaluate vendors, including accountants, appraisers, auctioneers, and tradesmen, as required on an annual basis by the Guidelines of the Administrative Board for the Office of Public Administrators. As a result, auditors had no reasonable assurance that fees charged to estates were competitive and reasonable.

Previous Recommendation #4: Advertise for vendors by posting a standing announcement on its website or other acceptable websites, or on an annual basis advertise for vendor services in a newspaper of general circulation in Brooklyn.

Previous KCPA Response: The KCPA did not address this recommendation.

Current Status: IMPLEMENTED

The KCPA website has a “Vendors Wanted” tab on its website which states that the KCPA is seeking vendors to provide certain services. It asks that interested vendors contact the office and provide relevant information.

Previous Recommendation #5: “Prepare a list of vendors based on responses and on KCPA’s knowledge of competent outside vendors. The list should detail vendor fees and be updated at least annually.”

Previous Recommendation #6: “Select vendors who are competitive with other vendors providing the same services.”

Previous KCPA Response #5 and #6: The KCPA did not address these recommendations.

Current Status: NOT IMPLEMENTED

Our review of the KCPA vendor selection process revealed that the KCPA does not update its vendor list annually. Further we found no evidence that its vendors had been selected through a competitive bidding process. In addition, according to KCPA officials, they did not obtain prices from vendors for competitive comparison because all its vendors are offering reasonable prices. Several of the KPCA’s vendors who have worked for KCPA since 2007 raise particular concerns. One vendor was recommended by a previous KCPA employee, and for two vendors used by the KCPA counsel, one was selected by the counsel and one was selected by the PA’s office. In the absence of a competitive price comparison, we are unable to ascertain whether these vendors were used because they had a familiar relationship with PA employees and counsel and not because their prices were competitive.

Previous Finding: The KPCA “Approved Excessive Counsel Fees”

The KCPA charged estates inappropriate legal fees. According to the Administrative Board Guidelines, counsel fees should not exceed 6 percent of an estate’s gross value. Based on a review of 30 sampled closed informal estates, the KCPA approved legal fees in excess of 6 percent for 16 of them.⁶ For these 16 estates, excess legal fees totaled \$2,438.

Previous Recommendation #7: Pay formal and informal estate legal counsel fees in accordance with new Guidelines, effective May 1, 2012.

Previous KCPA Response: “We disagree with the assertion that the PA paid excessive legal fees for small estates. The fee structure was in place well before 2008 and was used in Kings County and I believe in other counties. Further, the Office of Court Administration was aware of these fees and the attorney at OCA who was counsel to the Administrative Board recognized the fee structure used by our office and decided to change that fee structure in the new guidelines.”

Current Status: UNABLE TO DETERMINE

The final accountings for two sampled closed estates did not have all the required schedules in the file. Therefore, we could not verify the accuracy of the receipts and disbursements. Furthermore, for four sampled closed estates, the proceeds reported in the final accounting did not reconcile with the receipts in the general ledger in CompuTrust. For example, there was a difference of \$4,025 between the general ledger and the final accounting proceeds for one of the estates. As a result, we could not determine a reliable gross value for the estate, verify the accuracy of the commissions and legal fees charged and determine whether counsel fees had been paid in accordance with the guidelines.

Previous Finding: The KCPA “Estate Accounting System Is Not Reliable”

The previous audit found that KCPA did not ensure that critical CompuTrust data was reliable, did not credit estates for all assets, and did not maintain documentation to support expenses. Because the KCPA did not maintain documentation, such as appraisal reports, bills of sale, receipts, and checks to support CompuTrust entries, there was limited assurance that estates had all assets credited, or that expenses were legitimate, reasonable, and appropriate.

Previous Recommendation #8: Ensure that staff maintain in estate files documentation of estate income transactions, including but not limited to appraisal reports, bills of sale, receipts, and checks.

Previous Recommendation #9: Periodically compare source documents, including but not limited to income and expense documentation and Letters of Administration to data recorded in CompuTrust to ensure accuracy and reliability.

Previous KCPA Response #8 and #9: KCPA did not address these recommendations.

Current Status: NOT IMPLEMENTED

⁶ Small estates under \$30,000 are closed by informal accountings.

Our review of 22 estates (10 open and 12 closed) revealed that staff failed to maintain documentation of estate income transactions in estate files. Preliminarily, three estate files for open estates could not be located at all. In addition, CompuTrust credited \$566,093 to six sampled closed estates and \$63,106 to three open sampled estates but no documentation existed in the files to show the funds' source or that these amounts had been credited correctly.

Further, our review of 10 open and 12 closed estate files revealed limited evidence of periodic reconciliations between source documents and CompuTrust information. Consequently, we found that all 22 estate files had at least one relevant document missing. For example, 9 of the 22 sampled estates did not contain death certificates and 19 were missing a copy of the change of address forms.

In addition, we found instances where CompuTrust records were either inaccurate or incomplete. In one instance, an annuity of \$19,959 for one sampled open estate was not credited to the estate account in CompuTrust even though the file contained documentation from the financial institution verifying the asset's existence. In another instance, the estate file did not indicate the reason that KCPA failed to make payments of \$1,500 to each distributee as required. The absence of supporting documentation for some CompuTrust entries and the incomplete documentation for others indicate that estate documents are neither properly reviewed nor reconciled with CompuTrust entries, which increases the risk that an estate may be settled without taking all assets into account.

Previous Finding: The KPCA "Did Not Appropriately Restrict Access to Estate Accounting System"

The KCPA did not appropriately restrict access to CompuTrust as required by Comptroller's Directive # 18, "Guidelines for the Management, Protection, and Control of Agency Information and Information Processing Systems." Unique user accounts and passwords were not established for all users and user accounts were not deactivated when employees left. Thus the KCPA did not appropriately restrict access to sensitive information, establish accountability for transactions, or protect against inappropriate and fraudulent transactions.

Previous Recommendation #10: Appropriately restrict user access to CompuTrust by deactivating shared and inactive user accounts.

Previous KCPA Response: "In connection with access to CompuTrust, all inactive users have been removed from CompuTrust. Further, any inactive user did not have a pass word to gain access to the system. . . . Each individual at KCPA has particular access that limits their ability to use the system and restricts their ability to use the system. So, a person needs special authority to cut checks."

Current Status: IMPLEMENTED

Based on the permission user access list, the KCPA now only grants CompuTrust access to current employees and an additional guest user. Every user has an individual user name and has access to only certain CompuTrust modules depending on their job functions. The system does not have remote access capability and user passwords are changed every three months.

Previous Finding: The KPCA “Did Not Maintain a Master Inventory of Estate Assets”

The KCPA did not maintain a comprehensive inventory of estate assets, nor did it maintain master inventory lists in each estate file. Although CompuTrust can maintain estate inventories, the KCPA did not utilize this feature. Instead, various KCPA staff maintained separate inventory spreadsheets for assets kept in its safe, including stock and bond certificates; jewelry and coins; real property; and automobiles. However, these inventory records were incomplete and did not sufficiently detail assets.

Previous Recommendation #11: Maintain a master inventory record in each estate file or in CompuTrust that details every item of estate property held by the PA in its safe, warehouse, banks, and other locations.

Previous KCPA Response: “[W]e do keep a master inventory of each item in the vault. We did a complete new inventory of the vault to correct flaws in the previous inventory of the vault. Our inventory records information about vault property in CompuTrust and there is also an excel spreadsheet master list of the inventory in the vault including coins, bonds, stock certificates and jewelry. The bank information is recorded in CompuTrust. Regarding the vault, we have an inventory system that is updated at the time that any inventory is put into to the vault or released.”

Current Status: NOT IMPLEMENTED

The KCPA maintained a list of estate properties in a spreadsheet called the Excel Master Vault Spreadsheet and in CompuTrust. We found that four of five sampled estates with personal property did not have accurate records of their assets in these inventory master files. Our review disclosed discrepancies between the Excel spreadsheet, the CompuTrust inventory master listing, and the estate files. Articles of jewelry for one of the four estates were not recorded in CompuTrust or on the spreadsheet even though the sale proceed was recorded in the general ledger. Jewelry for one estate was recorded in CompuTrust but not on the spreadsheet. In two other instances, the spreadsheet and CompuTrust indicated that personal property was sent to auction; however, no sale proceeds were recorded in the estate’s general ledger.

This failure to track inventory increases the risk that assets may be lost or stolen. Had a supervisor regularly reconciled the inventory in CompuTrust with the Excel spreadsheet, the estate files, and the auction information, the KCPA would have detected these discrepancies. In the absence of a comprehensive and reliable inventory, we are not reasonably assured that decedent assets were accounted for and, ultimately, that estate distributees received all assets to which they were entitled.

Previous Finding: The KPCA “Did Not Maintain and Utilize a Reliable Estate Management Tracking System”

The KCPA did not maintain and utilize a reliable estate management tracking system as required by the Administrative Board Guidelines. Although CompuTrust can track estates’ progress and includes a “tickler” function when certain actions must be performed, the KCPA did not utilize these features. Based on a review of 50 sampled open estates, the KCPA did not properly record or document the dates that 15 Letters of Administration were issued. These dates are used to measure how long estates remain open while being administered, which is information that the

KCPA must report to oversight agencies. This spotty tracking contributed to delays in the KCPA's settling estates and distributing estate proceeds in a timely manner.

Previous Recommendation #12: Utilize CompuTrust "tickler" functions or implement an alternative system that is capable of notifying KCPA when critical actions need to be performed and tracking estates' progress.

Previous KCPA Response: "I note that for a substantial period my office did not have a deputy who could oversee the activities of the case managers and investigators. We have had a deputy in place for about 3 months and she meets with the case managers and investigators on a weekly basis to discuss matters that they are working on. She and I are discussing specific matters on a daily basis, with the weekly meeting designed to discuss the overall caseload of these staff members."

Current Status: NOT IMPLEMENTED

According to KCPA officials, the "tickler" is not developed in the CompuTrust system. They are in the process of implementing an email reminder system for certain relevant estate settlement dates.

Previous Finding: The KPCA Failed to Properly Perform "Bank Reconciliations"

The prior audit found that the KCPA did not properly perform bank reconciliations for estate accounts that had June 2011 balances totaling \$77.1 million. In addition, KCPA supervisory personnel did not review and sign off on reconciliations to ensure that they had been done properly. Failure to perform reconciliations can allow errors and misappropriation of estate assets to go undetected. Therefore distributees might not have received all the assets to which they were entitled.

Previous Recommendation #13: Properly reconcile CompuTrust and bank balances on a monthly basis.

Previous KCPA Response: "We do not agree with the statement that reconciliations are not done properly. Also, when adjustments need to be made the accountant writes a letter to the bank regarding the adjustments, which is signed by the Public Administrator, after review of the validity of the adjustment from the reconciliation."

Previous Recommendation #14: "Ensure that bank reconciliations are independently reviewed and signed by both preparers and reviewers."

Previous KCPA Response: "The deputy and I will go over the monthly reconciliations with our accountant and will sign the reconciliations after the review."

Current Status: NOT IMPLEMENTED

Our review of the June and July 2013 and June and July 2014 bank reconciliations revealed that the KCPA failed to perform bank reconciliations for eight bank accounts where estate funds are

maintained. Our review of these accounts found differences between the balances recorded in the general ledger (book) and in the bank statements, as shown in Table I.

Table I

Summary of Estate Funds for Which
the Balances in General Ledger and
Bank Statements Do Not Agree

	Account Balances as per General Ledger	Account Balances as per Bank Statements	Discrepancies Between Bank And Book Balances
July 2013	\$474,188.97	\$504,437.79	\$30,248.82
July 2014	\$461,879.44	\$494,387.09	\$32,507.65

As shown above, the KCPA’s accounting records understated the amounts deposited in the bank. The discrepancy may indicate that certain estates have not been credited funds to which they are entitled.

Of the four accounts for which the KCPA performed a reconciliation, only two were properly reconciled. We attempted to reconcile the Master Estate account (one of the two accounts that did not reconcile) for July 2014 and calculated a discrepancy of \$130,299 less in the bank, per the bank statement, versus the General Ledger, while the KCPA’s reconciliation calculated a difference of only \$35. For June 2014, we calculated a difference of \$119,226 less in the bank. This could be due in part to the fact that some of the adjustments used by the KCPA during its bank reconciliation either were not justified or did not have support.

Previous Finding: The KCPA Failed to Void “Long-Outstanding Checks”

The KCPA did not void long-outstanding checks or determine why checks were not cashed in a timely manner as required. The KCPA should have voided uncashed checks after 180 days, determined why they were not cashed, and reissued checks accordingly. We identified 75 checks totaling \$981,653, including checks payable to vendors, distributees, and the City, from the KCPA’s Outstanding Check Register that were outstanding for between 182 and 540 days. During the course of the audit, the KCPA stopped payment on these checks; however, the KCPA did not investigate why these checks were not cashed in a timely matter and nor did it reissue them.

Previous Recommendation #15: “Periodically review its Outstanding Check Register, void checks outstanding more than 180 days, determine why they were not cashed, and reissue checks accordingly.”

Previous KCPA Response: The KCPA did not address this recommendation.

Current Status: NOT IMPLEMENTED

Our review of the bank reconciliations performed for June and July 2013 and June and July 2014 revealed that outstanding checks are not voided after 180 days. Further, the Outstanding Check Registers (Registers) generated for the bank reconciliations are not reliable.

To facilitate its bank reconciliations, the KCPA generates an Outstanding Check Register from CompuTrust. The register lists the checks that have been written from the various KCPA accounts that have not yet cleared the bank. In the bank reconciliation process, the total amount of outstanding checks is subtracted from the final balance on the bank statement when computing the adjusted balance per the bank. During the review of the July 2014 bank reconciliation for the Master Estate account, we identified outstanding checks totaling \$61,977 that were issued in 2003 and still carried forward. In another instance, we found four checks totaling \$77,351 issued in 2009 and 11 checks totaling \$58,066 issued in 2013 were still listed as outstanding as of December 31, 2014.

Moreover, we found numerous discrepancies and inconsistencies with the Registers. The July 2014 Register included checks totaling \$61,977 that were reportedly issued in 2003; however, the Register for the previous month did not include these checks. In another example, outstanding checks issued in 2009 listed in the December 2014 Register do not appear in the Register that was prepared six months earlier in July 2014. Based on the discrepancies and inconsistencies we identified, we are able to place only limited reliance on the Registers.

Previous Finding: The “KCPA Failed to File Required Financial and Operating Reports with Various Oversight Agencies”

The prior audit found that the KCPA repeatedly failed to submit the required financial and operational reports as required by Section 1109 of the SCPA to the Surrogate’s Court, State Attorney General, State and City Comptroller’s Offices, and the Mayor. In addition, the KCPA did not have an annual independent audit performed as required by Section 1109.

According to SPCA Article 11, Section 1109, “Each public administrator shall file monthly with the surrogate of the county where appointed, mayor, and the comptroller of the City of New York a statement of such of his accounts as have been closed or finally settled in such form as the Comptroller may prescribe.” Furthermore, the KCPA “shall file every six months with the surrogate of the county where appointed a report of every estate administered by public administrator which has not been fully distributed within two years from the date when the first permanent letters of administration or letters testamentary were issued.” Section 1109 also requires that the KCPA conduct an annual audit by an independent public accountant that is filed with the Surrogate Court, the Mayor, the State Attorney General and the City and State Comptrollers.

Previous Recommendation #16: “Immediately submit to the Surrogate’s Court, State Attorney General, State and City Comptroller’s Offices, and the Mayor outstanding audits and reports. Thereafter, submit audits and reports within prescribed timeframes.”

Previous KCPA Response #16: “Our office filed the different annual reports with the Office of Court Administration and timely filed the 2012 annual report with the Office of Court Administration. We also filed through 2011 the report with the State Comptroller, so all the agencies could monitor the activities regarding these estates.”

Current Status: NOT IMPLEMENTED

The KCPA has failed to consistently submit required financial and operational reports to appropriate oversight bodies in a timely manner, if at all. In addition, a number of the required independent audits have not been conducted.

The KCPA has not submitted the closed estate reports to the City Comptroller's Office, Surrogate Court, and Mayor's Office on a monthly basis as required. The KCPA did not send any of its 2013 reports until April 14, 2014, at which time it sent all of them. It did not send any monthly reports for 2014 until April 24, 2014. However, since April 2014, KCPA has generally submitted this report to the City Comptroller's Office in a timely manner. Regarding the semi-annual reports that must be sent to the Surrogate Court identifying estates that have been open six months or longer, as of August 2014 the latest KCPA report only went through December 2012.

Finally, the most recent external independent audit that the KCPA could produce was of 2008, and this was not produced until September 5, 2013. The KCPA provided copies of engagement letters dated March 10, 2014 and August 19, 2014, respectively, for external audits to be conducted by a CPA firm for 2009 and 2010. After the exit conference, KCPA officials provided us with a letter from a CPA firm dated April 23, 2015, that indicated that external audits would be conducted for 2011, 2012, 2013, and 2014.

Previous Finding: The KCPA "Did Not Report to Tax Authorities Vendor Payments of \$103,377"

The KCPA did not report to the Internal Revenue Service (IRS) and the New York State Department of Taxation and Finance all payments of \$600 or more made to vendors. Depending on how a vendor is organized—for instance, in a partnership or a corporation—a 1099-MISC may be required. For Calendar Year 2011, the KCPA did not issue eight legal service providers 1099-MISC forms and report to the IRS payments totaling \$103,377. Depending on how their business is structured, these providers should have received 1099s, and as a result, they may have underreported their income and reduced their tax liability.

Previous Recommendation #17: "Appropriately report to the IRS and state tax authorities' vendor income and issue 1099-MISC forms to all vendors paid more than \$600."

Previous KCPA Response: KCPA did not address this recommendation.

Current Status: NOT IMPLEMENTED

Our review of disbursements from estates and suspense accounts in Calendar Year 2013 revealed that KCPA did not consistently issue 1099-MISC forms to vendors with 1099 reportable payments. In addition, the KCPA did not obtain W-9 forms from the vendors to determine their legal entity type and tax status. We determined that the KCPA did not report payments totaling \$393,369 on 1099-MISC forms for 17 vendors that provided legal services and one individual.⁷ In addition, it appears that the 1099-MISC forms issued to five vendors underreported their income by a total of \$25,399 and those issued to another four vendors overreported their income by a total of \$58,627. Further, it is possible that the KCPA did not report additional payments totaling \$274,509 to an additional 13 vendors. However, we were unable to determine whether those 13 vendors should have been issued 1099-MISC forms because the KCPA was unable to provide W-9 forms for these vendors.⁸ Without W-9 forms, the KCPA was unable to produce evidence that these vendors should not have been issued 1099-MISC forms.

⁷ According to the IRS's Form 1099-MISC instructions, payments of \$600 or more made to an attorney for legal services (even where the attorney is legally organized as a professional or other corporation) and to individuals who are not employees should be reported on 1099-MISC forms.

⁸ Generally, a 1099-MISC form is not required for payments to a corporation, including a limited liability company that is treated as a C- or S-Corporation.

When we brought this issue to the attention of KCPA officials, they explained they will be implementing new procedures and payments will be made to vendors only when all 1099 reporting documents are presented, such as W9 forms.

Previous Finding: The KPCA “Did Not Institute Written Policies and Procedures”

The KCPA did not implement internal controls for critical estate administration functions and document them in written policies and procedures. These functions include asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expense transactions; and estate management, monitoring, and tracking. Failing to establish written policies and procedures contributed to the deficiencies identified throughout the audit.

Previous Recommendation #18: “Institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expenses transactions; and estate management, monitoring, tracking, and distribution.”

Previous KCPA Response: “Finally, we disagree regarding the issue of internal controls. We believe that our use of Positive Pay Payee combined with the review of cut checks by the PA and the deputy along with the detailed spreadsheets that show each activity that we are conducting on an ongoing basis provides the controls needed especially given the size of our agency and other work that must be done by the Public Administrator and Deputy in review of active matters and the review of court filings.”

Current Status: PARTIALLY IMPLEMENTED

Since the prior audit, KCPA has developed written procedures to describe key employees’ responsibilities and functions critical to the administration of estates. However, our review of these procedures revealed that functions such as review of bank reconciliations, administration of auctions of decedent property, management of loans made to estates, and management of the disbursement account were not described in the KCPA’s procedures. To strengthen controls over estate management, the KCPA’s procedures need to include these critical functions.

Recommendations

To address the issues that still exist, we recommend the following:

1. The KCPA should ensure that basic databases are searched in order to identify all possible assets for the decedents. KCPA should conduct searches for the remaining five sampled estates with possible unclaimed funds identified by the auditors and for which the KCPA had no evidence it conducted searches.

KCPA Response: “We are developing Asset Identification and Collection Checklists for formal estates, nursing home files and Police Department files to be utilized by case managers. Our written procedures for asset collection will be revised requiring that asset identification and collection checklists be placed in all files. With respect to the sampled estates with possible unclaimed funds we will

look into whether there are unclaimed funds on deposit with the State Comptroller's office. If funds are being held, we will collect all identified unclaimed funds on deposit with the State Comptroller and distribute them accordingly."

2. The KCPA should establish a review process of case managers' work to ensure that investigation steps are effectively followed from the notification of death to the closing of decedent's file. A checklist may be designed to help track the process.

KCPA Response: "[T]he use of asset identification checklists for informal and formal estates will be implemented as soon as possible. A checklist for informal estates is already in use. Updated procedures for asset collection will require that a supervisor periodically review each case file to ensure that case managers properly identify, collect and credit decedent's estates. The new asset identification checklists will contain a section reflecting such periodic review. In addition to implementing the checklists, we recently instituted a Weekly Case Manager's Report. This weekly report requires each Case Manager to report on the status of his or her collection of estate assets. . . . The weekly report is instrumental in tracking the progress of asset collection."

3. The KCPA should strengthen its controls over disbursements made from estate accounts to ensure that they are properly reviewed and approved and ensure all supporting documentation is completed and attached to the payment package.

KCPA Response: KCPA officials agreed with the recommendation but took issue with the estates sampled, stating "[p]ayment authorization forms (Desk Review Disbursement Cover Sheets) have been in use since the Comptroller's June 28, 2013 recommendations were issued. For the reasons described in the 'General Comments Regarding the Audit' section above, the sample of estates selected by the Comptroller for review clarifies why some Desk Review Disbursement Cover Sheets were not included in some estate files. The selection of closed estate files all predate the date of the Comptroller's June 2013 recommendations. Under current procedures, vendor payments are not processed unless a disbursement form is completed and authorized by either the Commissioner or Deputy Commissioner. Procedures in effect at the time of the June 2013 audit did not require that copies of Desk Review Disbursement Cover Sheets be placed in estate files but instead were maintained by our accounting staff. Current procedures require that disbursement forms along with supporting documentation be submitted before a payment can be authorized and a check issued. Disbursement forms are marked as paid and placed, along with related payment documentation, in estate files once checks have been issued."

Auditor Comment: As stated previously, many of the estates that the KCPA closed during our audit scope were opened prior to June 2013. However, the disbursements we selected for review occurred subsequent to June 2013. Accordingly, our finding remains.

4. The KCPA should review its vendor listing to ensure that they offer competitive prices and establish procedures for competitive vendor solicitation.

KCPA Response: KCPA officials did not directly address the recommendation. Instead, they provided justifications for the vendors selected, stating "[w]e maintain a list of vendors which is updated as new vendors are added. This list

does not however currently set forth fees charged by vendors. The office is working on updating our internal vendor list to include vendor fees where appropriate.

“The vendor referred to as having been recommended by a previous KCPA employee is a plumber who performed work on estate real property administered by our office during 2014. As a result of the Comptroller’s findings we have ceased working with this vendor.

“The vendor referred to as having been selected by counsel is a reporting service utilized to transcribe court proceedings. The vendor, Aria Services Inc., was selected from the New York State Office of Court Administration’s approved list of authorized reporting services. Although selected by counsel to the PA, this vendor was chosen from a list containing numerous reporting services which are authorized by OCA.

“The vendor the Comptroller refers to as having been used by counsel and selected by the KCPA is E Brooklyn Media, the parent company of the Brooklyn Eagle, one of five newspapers the office utilizes to advertise real estate auctions. ... Due to the limited number of local Brooklyn publications available for advertising it is not possible to utilize a bidding process for advertising of our public auction. This vendor is not used by KCPA counsel as stated in the audit report but rather selected by the PA for the purpose of placing ads for the real estate auction.”

Auditor Comment: While it is important that the KCPA update its vendor listing, more importantly, the KCPA should competitively solicit vendors to ensure that it is receiving the best prices. Regardless of who selects the vendors, the fees are being paid from the decedent estates’ and the KCPA has a responsibility to ensure that the fees are fair and competitive with other vendors providing the same type of services. With regard to the vendor selected by the counsel for transcription, we are unable to confirm whether this vendor was on the New York State Office of Court Administration’s approved list of authorized reporting services because the KCPA did not provide us with a copy of the list.

5. The KCPA should ensure that estates’ final accountings are reliable and accurate so that the legal fees and commissions charged to the estate are accurate and conform to the Guidelines.

KCPA Response: “At the time of the follow-up audit, Accounting Schedules were filed separately from estate files. Updated procedures now require copies of Accounting Schedules be placed in estate files. To ensure that each closed estate contains documentation of the calculation of counsel fees, the office will coordinate with counsel to ensure that we receive accountings at the time they are filed with the Court. Additionally, the Office Manager will be assigned the responsibility of reviewing files to ensure that all asset collection, distribution and legal documents, including final accountings, are contained in estate files and that the proceeds reconcile with the records in CompuTrust.”

Auditor Comment: Although requested several times, KCPA officials did not provide the accounting schedules in question. Consequently, we were unable to confirm their existence.

6. The KCPA should ensure it establishes proper controls so that all transactions and relevant documents are maintained in the estate file and recorded in CompuTrust.

KCPA Response: “[O]ur Office Manager will be assigned the responsibility of ensuring that copies of all asset collection, distribution and legal documents are contained in estate files and that estate transactions are accurately reflected in CompuTrust. Our accountant will continue to retain back-up copies of income and payment transaction documents, i.e. checks deposited into estate accounts and copies of checks drawn against estate accounts, along with Desk Review Form Disbursement Cover Sheets and supporting documentation. In the event that items are missing from a particular file, back-up copies are available.”

7. The KCPA should perform periodic reconciliations of the information in CompuTrust and the information received for the estates.

KCPA Response: “Office procedures will be updated requiring copies of documents, determined by the Comptroller to be source and income and expense documents...shall be placed in estate files and periodically compared to CompuTrust to ensure accuracy and reliability prior to preparation of the final accounting. As stated above, the Office Manager will have responsibility for ensuring that all assets collected and distributed along with legal documents are contained in estate files and that all associated data is properly recorded in CompuTrust.”

8. The KCPA should ensure the estate property inventories it maintains are accurate, complete, and the proceeds from the sales of those properties are appropriately accounted for.

KCPA Response: “We are in the process of reconciling the master inventory list to property we are holding. Upon completion of this task, the master list will be reconciled to individual estate property lists maintained in CompuTrust. Once both inventory files are reconciled, we will periodically review and reconcile inventoried items to the inventory files.”

9. The KCPA should implement an effective tracking system of the important steps, such as date of closing, final accounting, and letter of administration, in the management of estates.

KCPA Response: “Although CompuTrust does not provide a formal ‘tickler’ function, CompuTrust advises us that with input into the system of additional estate information, the office can periodically generate reports for each estate that detail outstanding tasks. . . . Written procedures which are being updated to conform to the above recommendations will also include directions on entering the information required to generate the periodic CompuTrust reports.”

10. The KCPA should examine the Outstanding Check Register from the Master Estate account to ensure that it is accurate and void and reissue outstanding checks.

KCPA Response: With regard to this recommendation, KCPA officials referred to their response to recommendations 18 – 20 which states “[o]nce all current outstanding checks are identified we will then be able to ascertain why checks did not clear bank accounts and make determinations on how to distribute the remaining funds....We intend to tackle outstanding checks by identifying all outstanding checks and distributing the funds associated with the outstanding

checks to the proper payees. Future problems concerning checks outstanding for more than 180 days will be addressed by performing timely bank account reconciliations, quickly identifying checks outstanding and re-issuing checks.”

11. The KCPA should establish procedures to ensure that bank reconciliations are independently reviewed and documented.

KCPA Response: “Additional staffing is needed to tackle the backlog of bank reconciliations as well as the volume of open estates. In May of 2015 the Office of Management and Budget denied our request for two additional City line positions. Despite the need for an additional bookkeeper dedicated solely to getting up-to-date on reconciliations, we will begin the process of reconciling bank accounts and identifying checks outstanding for more than 180 days. As the reconciliations are performed going forward they will be reviewed by the Commissioner or Deputy Commissioner.”

12. The KCPA should file and submit all reports required by SCPA on a timely basis, ensure that the status of all estates are regularly examined and correctly reported, and ensure that external audits are conducted on an annual basis.

KCPA Response: “The Comptroller’s finding with respect to the filing of required reports predates the audit time frame of July 1 through December 31, 2014. In his report the Comptroller states ‘The KCPA did not send any of its 2013 reports until April 14, 2014, at which time it sent all of them.’ Monthly Closed Case, Semi-Annual and Annual report have been submitted on time and to the appropriate parties since April 2014 with one exception. Copies of the Annual Report are required to be filed with the New York State Comptroller. Although completed and filed with other required authorities, due to an oversight the 2013 and 2014 Annual Reports were not filed with the State Comptroller on time. The Annual Reports have been sent to the State Comptroller and thus all reports are current and up to date. Copies of our internal audit are filed with the State Comptroller as they are completed. The Monthly, Semi-Annual, Annual and audit reports will continue to be submitted to the appropriate authorities in a timely manner.

“The external audit for fiscal year ending June 30, 2009 is in progress. We have signed an engagement letter for the 2010 through 2014 fiscal year external audits and the auditors have begun work on the fiscal year 2010 audit. We sought and received funding from the Office of Management and Budget to cover the cost of all of the outstanding external audits. Thus all prior external audits are proceeding and will be completed as expeditiously as possible.”

Auditor Comment: As we state earlier in this report, the audit scope covered the period beginning July 1, **2013**, not 2014 as KCPA officials mistakenly state. Therefore, the failure to timely file reports includes the audit scope period of July 1, 2013, through December 31, 2013.

13. The KCPA should ensure that completed W-9 forms are collected from all vendors to ensure that 1099-MISC forms are issued to all vendors with 1099 reportable payments of \$600 or more.

KCPA Response: “Procedural changes recently put in place require tax identification numbers (W-9s) for all vendors doing business with our office. Additionally, payments are only issued to vendors who have supplied tax identification numbers to us. Forms used to process vendor payments require tax

identification numbers. Payments are not approved unless tax identification numbers are on file.”

14. The KCPA should issue 1099-MISC forms to the vendors that required one and reissue corrected 1099-MISC forms for all payments requiring adjustments for 2013.

KCPA Response: “Our accountant has been directed to issue IRS 1099-Misc forms to all vendors, except corporations, receiving cumulative payments of \$600 or more per calendar year and ensure that we [sic] 1099’s issued for tax years 2013 and 2014 are consistent with this criteria.”

15. The KCPA should revise its procedures to include all functions critical to the management of the decedents’ estates.

KCPA Response: “A written procedure for asset collection of informal estates, not in place at the time of the Comptroller’s June 2013 audit, is currently in place. This procedure requires case managers search Accurint, ACRIS and unclaimed funds databases. The procedures also require that case managers send letters to the IRS for transcripts of tax returns to identify possible assets based on past years interest and dividends earnings. Additionally, an informal estate asset identification and collection checklist is currently in use. We’re also developing and implementing written procedures and asset identification and collection checklists for formal, nursing home and Police Department estates. Additionally, written procedures for asset collection will be revised requiring that asset identification and collection checklists be included in all estate files.

“Written procedures will be updated to include the functions of bank reconciliations, administration of auctions of decedent property, management of loans made to estates and management of the disbursement account (non-interest bearing account).”

NEW FINDINGS AND RECOMMENDATIONS

The KCPA Cannot Identify the Estates Associated with Certain Bank Accounts

According to the Guidelines, the PA has a fiduciary duty to the estates it manages and “shall take all steps necessary to assure that all personal properties belonging to a decedent’s estate is collected and credited to the decedent’s estate.” However, the KCPA is not taking all necessary steps to assure that all personal properties belonging to an estate have been credited to the estate account. We found that the KCPA does not know to which estates funds totaling \$91,299 in various bank accounts should be credited. Balances in some of these accounts have been carried over for years. A breakdown is shown below.

Table II

List of Accounts without Records to Indicate which Estate Funds Should be Credited

Account Maintained By KCPA	Bank Balance As of September 2014
Auction Real Estate Account	\$11,930
Auction Jewelry and Furniture Account	\$22,059
Nursing Home (Fiduciary)	\$17,537
Suspense Loan Account	\$7,651
Signature Police Department Transfer	\$15,340
Unapplied Suspense	\$16,782
Total	\$91,299

Our review of CompuTrust revealed that the Auction Real Estate, Auction Jewelry and Furniture, and Nursing Home accounts are not even being tracked—there are no associated general ledgers for them in CompuTrust. In addition, the PA and the Deputy PA are not performing independent reviews of these accounts to help ensure the transactions’ accuracy.

Due to these deficiencies, there is a heightened risk that these funds’ intended beneficiaries will not receive those funds and that the City will not receive the commissions to which it is due. Furthermore, the KCPA’s failure to reconcile the estates’ account balances and keep accurate records has created an environment where there is significant risk that fraud and abuse can occur and go undetected.

In fact, we identified one additional account not shown in Table II, identified as the Police Department Transfer Account at Esquire Bank, for which the general ledger reports a balance but we were unable to verify that these funds exist. According to CompuTrust, this account had a balance of \$45,635 as of September 2014. In fact, the general ledger indicates that the balance in this account has been over \$45,000 since June 2013. However, KCPA records do not identify

the estates to which these funds belong and the KCPA was unable to identify the bank account in which these funds are being held. We are unable to determine whether the discrepancy is an indication that the general ledger is incorrect or that funds are missing.

Recommendations

16. The KCPA should make a determination of what should be done with the funds that are not associated with specific estates.

KCPA Response: “The accounts [the Auction Real Estate and Auction Jewelry and Furniture accounts] hold pooled funds for real estate and personal property sold at prior auctions. The source of funds in these accounts cannot be traced to specific estates. We will seek an opinion from the New York City Law Department as to what the disposition of the funds in these two accounts should be.

“The Nursing Home (Fiduciary) and Signature Police Department Transfer bank accounts are pooled accounts also established prior to when individual bank accounts were opened for each estate. . . . The funds contained in these accounts are traceable and will be disbursed to the appropriate distributees, or if the distributees cannot be established, placed on deposit with the Commissioner of Finance for the benefit of the decedent’s unknown distributees.

“The Unapplied Suspense account is a holding account used to distribute funds received in lump sums to individual estate accounts. For example, we utilize an outside vendor to administer the auctioning of personal property. The Auctioneer sends us one check for a number of items sold along with an inventory listing how much each item sold for. The lump sum payment is then proportionally credited to each estate account via the Unapplied Suspense account.

“The Suspense Loan Account is used as an intermediary account for the sole purpose of transferring funds from our general operating account to estate bank accounts. On a daily basis expenses such as filing fees must be paid for estates where no assets have been collected. For example, several estates may require payments totaling \$5,000. To comply with generally accepted accounting principles, the \$5,000 is transferred out of our General Suspense account and into the Suspense Loan Account from which the funds are distributed to individual estate accounts and payment checks issued. The money contained in the Suspense Loan Account is fully traceable and thus should not be included in Table II.”

Auditor Comment: Although the KCPA states that the funds in certain accounts are traceable, no evidence of this was provided during the audit. Accordingly, we find no basis to alter this finding.

17. The KPCA should conduct an investigation into the Police Department Transfer account to determine where the funds are and to which estates they belong.

KCPA Response: Recommendation 17 refers to the Police Department Transfer Account at Esquire Bank for which the general ledger reports a balance but where we were unable to verify that these funds exist. The KCPA did not indicate whether or not it agreed with this recommendation.

Auditor Comment: As we state in the report, the general ledger indicates that the balance in the Police Department Transfer account has been over \$45,000

since June 2013, with no indication of the estates to which these funds belong or the bank account in which these funds are being held. To ascertain whether or not these funds are missing, we urge the KCPA to implement this recommendation and conduct an investigation into this account.

Closed Estates' Funds Are Not Distributed

Under New York State Surrogate Court rules, the KCPA must prepare an accounting for each estate it administers and file it with the court to settle the account, distribute the funds, and close the account. Once the final accounting is completed and the Court decrees that the estate has been settled, the funds transfer to a non-interest bearing account from which the disbursements will be made (distribution account).

Our review of the distribution account revealed that the KCPA failed to distribute funds to beneficiaries in a timely manner, if at all. Although the final accountings were completed for many of the estates, the funds deposited into the distribution account, and the estates closed in CompuTrust, the checks remained outstanding for as long as five years. We learned that in a number of instances, the checks never were mailed to the appropriate recipients. The list of outstanding checks for the distribution account included checks that have been outstanding since 2009, as shown in Table III below.

Table III

Outstanding Checks for Closed
Estates as of July 2014

Year check written	Number of Checks	Dollar Amount Checks
2009	5	\$13,925.14
2010	15	\$42,074.03
2011	27	\$55,202.25
2012	26	\$153,277.81
2013	31	\$69,246.98
2014	79	\$179,556.59
Total	183	\$513,282.80

A review of the outstanding checks shows that their number has been generally increasing. The KCPA has failed to establish controls to ensure that funds are disbursed for closed estates and checks do not remain outstanding for significant periods.

A check that is outstanding for an extended period may indicate that it was lost, never mailed, or never received by the recipient. KCPA should contact the distributees and ascertain the reason that their checks have not been cashed. In instances where the checks were lost, the old checks should be stopped and new ones issued. For those cases in which the distributees cannot be located, KCPA should determine whether the funds should be forwarded to DOF's Unknown Kin unit.

By allowing these checks to remain outstanding, beneficiaries are not receiving funds to which they are entitled and the City is not receiving the commissions to which it is due.

Recommendations

18. The KCPA should ensure that it mails distribution checks to beneficiaries in a timely manner.
19. The KCPA should attempt to locate the distributees who should have received the outstanding checks and ascertain the reasons that the checks were not cashed. Where appropriate, the outstanding checks should be voided and new ones issued.
20. If a distributee with an outstanding check cannot be located, the KCPA should determine whether the funds should be forwarded to DOF.

KCPA Response: With regard to recommendations 18, 19, and 20, KCPA officials stated, “It should be noted that of the seventy-nine outstanding checks listed in the Comptrollers Table III as outstanding as of July 31, 2014, sixty-one were issued during May, June and July of 2014, and thus were not stale as of July 31, 2014.

“In the event that we are unable to locate an outstanding check payee, pursuant to guidelines, the funds will be sent to the New York City Department of Finance for the benefit of the payee.

“We intend to resolve issues regarding the outstanding checks by identifying any such outstanding checks and distributing the funds associated with them. Going forward checks outstanding for more than 180 days will be addressed by performing timely bank account reconciliations, promptly identifying checks outstanding and re-issuing checks when necessary.”

Auditor Comment: Table III is intended to illustrate the total number of outstanding checks for closed estates, regardless of when they were issued. As shown in the table, 104 of the 183 outstanding checks, accounting for \$333,726 of the total dollar value of \$513,283, have been outstanding since 2013 or earlier.

Estates Are Not Closed in a Timely Manner

According to the New York State Surrogate Court Procedures Act, Article 11, Section 1109, the KCPA should file a report every six months with the Surrogate Court for every estate that has not been fully distributed within two years (or three years if a federal estate tax return is required) from the date when the first letters of administration or letters testamentary were issued. The report must include the reason that the estate has not been fully distributed. In addition, according to KCPA officials, small estate accounts (with less than \$500), which do not need any formal accounting, should be closed by the KPCA and the money transferred to the DOF when no next of kin is found.

Our review of the CompuTrust estate account report revealed that many estates remain open for a long period without any distribution. However, the KCPA has not filed the required semi-annual reports for those estates that were open for two years or more.

As of June 30, 2014, the KCPA had 457 open estates with dates of death from 1934 to 2000 with a value totaling \$7.5 million. We judgmentally selected 10 estates that were assigned to the KCPA between 1997 and 2011 for review and found that no final accounting was done for five of the 10 sampled estates with account balances totaling \$636,345.

We also found that nursing home and police department pool accounts remained open with balances that are carried over indefinitely.⁹ According to the KCPA, these accounts are not used any more, and no funds have been deposited in them since 2010. However, these accounts still have significant balances. As of December 2014, the nursing home account, which includes 706 estates totaling \$228,643, has balances as small as one cent and as large as \$8,860 (the highest balance). The nursing home pool account balance has been over \$220,000 since June 2013. The police department account is comprised of 1,054 estates totaling \$189,522 as of December 2014—one with a balance of \$8,230 (the highest balance). A breakdown of these accounts is shown in Table IV.

Table IV

Pool Account Balances as of
December 2014

Type of Pool Account	# of Estates with Balances of \$500 or less	Dollar Amount	# of Estates with Balances greater than \$500	Dollar Amount	Total # of Estates	Total Dollar Amount
Nursing Home	606	\$67,220	100	\$161,423	706	\$228,643
Police Department	996	\$79,014	58	\$110,508	1,054	\$189,522

As stated earlier, no one at the KCPA oversees estate management and the office does not have a tickler system in place to help ensure that accounts are closed in a timely manner. As a result, distributees do not receive proceeds in a timely manner and the City and the KCPA do not receive commissions timely.

Recommendations

21. The KCPA should review the estates that remain open and take all necessary steps to appropriately close them.

KCPA Response: “[W]e first plan to forward the funds in estates containing \$500 or less to the New York City Department of Finance for the benefit of unknown distributees.

“For estates with assets in excess of \$500 we have begun to tackle these estates focusing on estates, focusing primarily on formal estates that were distributed pursuant to an accounting decree but contained tax reserves to pay final income taxes and costs to prepare the returns. The number of estates containing undistributed tax reserves has grown significantly over many years. Identifying these estates, determining who is entitled to the remaining funds and then

⁹ The nursing home account is a pooled account for small nursing home estates and the police department account holds funds received from the police for a decedent. Nursing home accounts are comprised of the remaining funds in the decedent’s nursing home account and may include other identified assets. Police Department accounts include decedent funds and property collected by the police department and given to the PA and may include other identified assets.

distributing the remaining funds, is a long term project that will take a significant period of time to correct. We are also working with our counsel to prepare informatory accountings for small estates greater than \$500 but less than \$30,000 so that they can be closed and the funds distributed or placed on deposit.”

22. The KCPA should file the required semi-annual reports for those estates that were open for two years or more.

KCPA Response: “In terms of the filing of reports, as noted above in response to recommendation number 12, all reports are current and have been submitted to the appropriate authorities. All reports will be filed in a timely manner going forward.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The primary audit scope was July 1, 2013 through December 31, 2014.

To gain an understanding of the responsibilities of the different units within the KCPA, we conducted interviews and walkthroughs with KCPA officials and staff including the PA, Deputy PA, an investigator, the case managers, the office supervisor, the bookkeeper, the administrative assistant, the filing clerk, the intake clerk, and the accountant. We also conducted several observations of CompuTrust operations such as the creation of new accounts, bank reconciliations, and the check writing process from the suspense accounts and the decedents' accounts. We also observed the vault where decedents' properties are kept.

To evaluate the control environment over the management and administration of estate accounts, we reviewed policies, procedures and guidelines that governed the KCPA's activities such as Article 11,13, 22 and 23 of the New York State Surrogate's Court Procedures Act (SCPA); the Report and Guidelines of the Operations of the Office of the Public Administrators (The Guidelines); Part 207 of the Uniform Rules for the Surrogate Court; Title 2, § 72.1 of the New York Codes, Rules, and Regulations, and the New York City Comptroller's Office Directive # 28, "Reporting Requirements for Public Administrators." In addition, we reviewed internal guidelines and procedures for the operation of the office of Public Administrator of Kings County New York, and the PA's office checklist for asset collection, Retrieving Decedent's Property, Safe Box Procedure, and Outline of Burial Procedure

In order to ensure that the KCPA has implemented the prior Comptroller's audit report (FK12-079A) recommendations and had adequate controls in place to manage the decedents' estates, we randomly selected and reviewed documentation maintained for 10 of the 13,765 open estates and 12 closed estates (five from the 59 estates closed between January and July 2014 and 7 from the 96 estates closed between January and December 2013) files, as well as relevant information recorded in the decedent accounts in CompuTrust. For all sampled estates, we obtained CompuTrust screen shots and general ledger trial balances to determine whether the KCPA maintained supporting documentation for recorded income and expenses in estate files and whether all the required documents were in the decedent's file. We also examined whether the transactions were properly approved and whether the KCPA complied with the guidelines, the regulations, and its own procedures.

To determine whether the KCPA identified all possible assets for the 22 randomly sampled estates, we searched for decedents' assets on the public databases such as the DOF database of real property records (ACRIS); Office of the State Comptroller database of unclaimed funds; NYS-DMV database of automobiles, boats, and other motorized vehicles records, and LexisNexis Comprehensive Person Report.

To assess the accuracy of the decedent inventory maintained by the KCPA, we verified whether the sampled estates' properties were recorded in CompuTrust and in the master inventory spreadsheet. We also determined whether the bidding procedures were followed when applicable. Additionally, for all 12 closed sampled estates, we determined whether the KCPA paid administrative fees, legal counsel fees, and DOF commissions in accordance with the final accounting and the guidelines, and whether the KCPA filed the final accounting as required. Furthermore, we ensured that the KCPA filed tax returns for all the estates according to IRS regulations.

To assess the reliability of computer-processed data, we requested the computer-processed data generated from the CompuTrust system for all open and closed estates as of July 2014. We compared the information for our randomly selected sample of 22 estates to the information in CompuTrust. We also selected five open and five closed estates from the filing cabinets and compared the information in the estate files to the information in CompuTrust.

To assess the KCPA's access controls for CompuTrust, we reviewed the CompuTrust manual and the current user Profile List. Moreover, to determine whether the KCPA conducted all required audits and submitted required reports to oversight agencies, we requested copies of the most recent monthly, semiannual and annual reports for review.

To determine whether the KCPA implemented the previous audit recommendations related to bank reconciliations, we judgmentally tested bank reconciliations done for June and July 2013 and June and July 2014. We performed a detailed review of all bank reconciliations related to the estate Master Estate account, Suspense account, Nursing Home account, Police Department account, Auction accounts, and disbursement account. We also examined the outstanding checks to ensure that the KCPA was voiding and reissuing all checks outstanding for more than 180 days.

Furthermore, we judgmentally selected a sample of 23 of 183 outstanding checks from the July 2014 outstanding checks report from the disbursement account to determine whether closed estates have been properly settled and funds distributed. We selected the outstanding checks because their distribution account consistently had a large balance. We also examined bank balances and the related general ledger reports to identify the estates whose funds were managed by the KCPA.

We also examined the records of the 10 highest paid vendors (i.e., the top 10 recipients of payments by the PA for the provision of goods and services) in 2013, to verify whether the KCPA competitively selected vendors and properly documented the selection process. For one of these vendors, a periodical where notices were published, we later learned that the periodical was designated by the Surrogate judges, and not the PA, pursuant to the Surrogate Court's authority to issue orders of publication. Accordingly, this periodical was omitted from our analysis. Further, we excluded government agencies, utility companies, attorneys and the distributees (decedents' beneficiaries) from the list.

Moreover, we examined the suspense account transactions to assess controls over the funds deposited into the suspense account. We also verified whether the KCPA complied with procedures for managing the suspense account. We initially randomly selected the first quarter of Fiscal Year 2014, including July, August and September 2013, and reviewed transactions recorded during those months. We further evaluated controls over the suspense account by reviewing transactions made in the beginning of Fiscal Year 2015, including July, August and September 2014.

The results of the above tests, while not projected to their respective populations, provides a reasonable basis for us to assess the KCPA's implementation of the recommendations made in the previous audit.

APPENDIX

Implementation Status of Recommendations from Prior Audit as of March 24, 2015

Recommendation	Status
Implement asset identification checklists detailing basic databases for staff to search, including but not limited to ACRIS public database of real property records, OSC public database of unclaimed funds, and NYS-DMV database of automobiles, boats, and other motorized vehicles records.	<u>NOT</u> Implemented
Periodically review asset identification checklists and estate files with staff to ensure that assets are identified, collected, and credited to decedents' estates.	<u>NOT</u> Implemented
Ensure that staff properly completes Desk Review Form Disbursement Cover Sheets detailing the amount, reason, and review and approval for expenses, attach supporting documentation to them, and maintain them in estate files.	<u>NOT</u> Implemented
Advertise for vendors by posting a standing announcement on its website or other acceptable websites, or on an annual basis advertise for vendor services sought in a newspaper of general circulation in Brooklyn.	Implemented
Prepare a list of vendors based on responses and on KCPA's knowledge of competent outside vendors. The list should detail vendor fees and be updated at least annually.	<u>NOT</u> Implemented
Select vendors who are competitive with other vendors providing the same services.	<u>NOT</u> Implemented
Pay formal and informal estate legal counsel fees in accordance with new Guidelines, effective May 1, 2012.	Unable to Determine
Ensure that staff maintain in estate files documentation of estate income transactions, including but not limited to appraisal reports, bills of sale, receipts, and checks.	<u>NOT</u> Implemented
Periodically compare source documents, including but not limited to income and expense documentation and Letters of Administration to data recorded in CompuTrust to ensure accuracy and reliability.	<u>NOT</u> Implemented
Appropriately restrict user access to CompuTrust by deactivating shared and inactive user accounts.	Implemented
Maintain a master inventory record in each estate file or in CompuTrust that details every item of estate property held by the PA in its safe, warehouse, banks, and other locations.	<u>NOT</u> Implemented
Utilize CompuTrust "tickler" functions or implement an alternative system that is capable of notifying KCPA when critical actions need to be performed and tracking estates' progress.	<u>NOT</u> Implemented
Properly reconcile CompuTrust and bank balances on a monthly basis.	<u>NOT</u> Implemented
Ensure that bank reconciliations are independently reviewed and signed by both preparers and reviewers.	<u>NOT</u> Implemented
Periodically review its Outstanding Check Register, void checks outstanding more than 180 days, determine why they were not cashed, and reissue checks accordingly.	<u>NOT</u> Implemented
Immediately submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor outstanding audits and reports. Thereafter, submit audits and reports within prescribed timeframes.	<u>NOT</u> Implemented
Appropriately report to the IRS and state tax authorities' vendor income and issue 1099-MISC forms to all vendors paid more than \$600.	<u>NOT</u> Implemented
Institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expenses transactions; and estate management, monitoring, tracking, and distribution.	Partially Implemented

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General Comments Regarding the Audit

As the newly appointed Public Administrator, I had not yet been appointed at the time the Comptroller's office conducted their audit field work and for the time encompassing the scope of the audit, which runs from July 1, 2013 through December 31, 2014. Nevertheless, I have some comments regarding the audit.

My first comment relates to the use of the phrase "current status" for each finding. The scope of the Comptroller's audit covered the period from July 1, 2013 through December 31, 2014. Therefore, the use of the term "current status" is misleading as it clearly implies that the findings made are as of the date of the audit report rather than the period covered by the audit. As indicated below in my comments to each of the Comptroller's recommendations, in the past several months progress has been made implementing policies and procedures to address the findings initially reported in the Comptroller's June 2013 report. Thus, to avoid confusion, a more precise and accurate way of describing the time frame of the Comptroller's findings should more appropriately read, *Status as of December 31, 2014*.

The second comment I have has to do with the sampling of open and closed estate files selected by the Comptroller. The Comptroller's recommendation numbers 1-6 contained in his Audit Report are directly related to the sample of estates selected for review. The Public Administrator's office handles a tremendous variety of different types of cases, of which a significant number do not become estates subject to formal administration by us. Of the ten "Open Estate" files selected for review by the Comptroller, eight were either nursing home, Police Department or miscellaneous files; seven of those were estates which contained assets of less than \$500 and thus, for the reasons explained below are not administered in the same manner as estates containing over \$500 in assets.

Because the majority of nursing home files and Police Department files have assets of little to no value, for practical and logistical reasons these cases are not “administered” as estates by the Public Administrator in the same fashion as estates qualifying either as informal (small) estates under Article 13 of Surrogates Court Procedure Act (SCPA) or formal (large) estates with assets in excess of \$30,000. In many nursing home and Police Department cases, the decedents are survived by family members who have priority of administration, or there may be individuals who qualify to collect estate assets pursuant to SCPA 1310 but have not come forward to do so. As no action has been taken by families in these cases, nursing homes and the Police Department turn these cases over to the Public Administrator in order to discharge their respective responsibility for decedents’ property.

The vast majority of nursing home cases have *de minimis* assets beyond the funds in the decedents’ nursing home accounts. Typically, these decedents have qualified for Medicaid benefits, leaving their estates almost bereft of assets to administer beyond the permitted personal needs allowances (\$50 per month) deposited into the decedents’ nursing home accounts. Police Department cases also often yield no assets for collection, other than those deposited with the Public Administrator from Police Department sweeps. If other assets exist, those estates are usually reported to the office by other means, such as a report of death filed by a friend or distant relative, or a landlord.

Pursuant to SCPA 1123 (d), the Public Administrator is authorized to distribute assets of an informal estate without first commencing a formal accounting proceeding in the Surrogate’s Court. Prior to the legislative change to SCPA 1123 (e) effective July 18, 2012, the office would file an informatory in an estate where the value of the assets exceeded \$500 but was less than the monetary amount defined as a small estate under SCPA 1301(1). If an estate had less than \$500 in assets, the PA would deposit the funds for safekeeping with the Commissioner of Finance of the City of New York. This practice continues to be utilized by other counties in the City of New York. It is borne out of necessity and the recognition that the limited resources of the office of the Public Administrator would be overwhelmed by sheer volume of nursing home and Police Department cases if resources were dedicated to investigating these cases in the same manner as estates with greater assets. This is particularly true for nursing home and Police Department cases, as their files frequently do not contain documentation similar to that found in larger estates which permits the Public Administrator to conduct further inquiry as necessary. The above referenced “necessity” for the administration for such estates was recognized in both the New York State Assembly Memorandum in Support of Legislation and The New York State Senate Memorandum wherein it was stated that the amendment to SCPA 1123 did not abridge the procedure for administering estates of \$500 or less. The Surrogate’s Court Advisory Committee report

from 2008 also indicates that the amendment was not meant to abridge any local procedures from administering any estates below the \$500 threshold.

Of the ten sampled “Open Estate” files selected by the Comptroller, six are designated Police Department files and one is a nursing home file. The eighth file is a “miscellaneous file,” a case in which the decedent’s sister, who lived out of state, petitioned the Court for an Order to have Citibank open her brother’s safe deposit box. Thus, Letters of Administration were not issued to the Public Administrator, nor did our office collect assets or otherwise administer this estate.

Just two files in the sampled ten “Open Estates” would properly be classified as “Estate files.” With respect to first estate, the petitioner in this proceeding was seeking to name the decedent's estate as a defendant in an eviction action the landlord sought to commence to recover possession of an apartment. The petitioner only sought the issuance of Limited Letters of Administration to the PA for the sole and limited purpose of having a fiduciary appointed so that the petitioner could sue the decedent’s estate in an eviction proceeding. The Public Administrator did not receive Full Letters of Administration in this estate and without such an appointment, the Public Administrator had no authority to do anything other than to represent the estate as a named defendant in the eviction proceeding brought by the petitioner. Consequently, neither asset collection documents nor Court documents (Letters of Administration, Decrees, etc.) would be contained in the case folder.

The second file was the only case of the ten sampled “Open Estates” in which full Letters of Administration were issued to the PA.

It is worth noting that there are numerous estate proceedings, such as in the above estate, where the Surrogate's Court only issues Limited Letters of Administration to the Public Administrator to enable a petitioner to commence or maintain an action in Supreme Court against the decedent's estate. Examples of this include matters where a petitioner wishes to name the decedent's estate as a defendant in a foreclosure action, personal injury or wrongful death case against a decedent, and cases where a landlord or managing agent is seeking to recover possession of an apartment. In many of these estates there are distributees, such as a spouse or children, who have a priority to the appointment over the Public Administrator, but do not wish to serve because there are no assets in need of administration and they do not wish to assume any liability with respect to the causes(s) of action against the decedent). In foreclosure actions, many of the properties have little or no equity in light of the underlying mortgage indebtedness, or the distributees with priority to

the appointment reside at the property and have no desire to see it sold. Accordingly, unless the Public Administrator commences a separate proceeding and is granted Full Letters of Administration in these estates, the Public Administrator has no right to collect and/or administer the estate assets or in the case of a foreclosure, even if there is equity in the property worth protecting. In these estates the PA does not expend resources and time identifying assets unless there is the strong likelihood that the Public Administrator could benefit the estate and successfully petition the Surrogate's Court for Full Letters of Administration and there are clearly other estate assets in need of collection. For these reasons, estates where Limited Letters of Administration were issued to the Public Administrator should not have been chosen for this audit as they are not a proper sampling of the informal and formal estates routinely administered by the PA.

Upon review of the fifteen "Closed Estate" files, I note that each of the cases sampled by the Comptroller were estates in which Letters of Administration were issued well before publication of the Comptroller's 2013 recommendations. Any expectation that recommendations requiring procedural changes affecting estate files be implemented retroactively is unreasonable. Procedures implemented subsequent to the 2013 recommendations addressed all estates for which Letters of Administration were issued thereafter. A retroactive review of the thousands of closed estate files to assess what, if any, documentation may be missing or incomplete would be a monumental task and in my opinion, an unproductive task.

As stated in the Background section of the Comptroller's Report, "as of July 1, 2014 the KCPA was responsible for managing 42,407 estates¹ valued at \$97.7 million." Although it is likely that many of those estates are not what this office would categorize as formal estate files, the Public Administrator's Office does in fact administer thousands of estates. Yet, the entire sample of estates selected by the Comptroller consisted of 10 open estates and 12 closed estates valued at a total of less than \$75,000. These 22 estates represent 0.052%, less than one-percent, of the entire universe of open and closed estates in our inventory, and 0.0764%, again less than one-percent, of the assets under this office's administration. In light of the sheer volume of estates and the limited resources available to staff the office, invariably greater time is devoted to the larger estates, which often contain real property in need of immediate administration, and which have the greater potential for liability to the City in the event the administration is not done properly, than the smaller estates. In

¹ This figure includes all open and closed estates files as well as undertaker, medical examiner, nursing home and Police Department decedent files.

addition to the disproportionate number of open estates containing less than \$500 in assets and the selection and review of closed estate files that predate the Comptroller's prior recommendation discussed earlier, I do not believe this limited sampling meets the standards required to provide a reasonable basis for the Comptroller's findings and conclusions with respect to Recommendations 1–6.

Lastly, the Detailed Scope and Methodology section of the Comptroller's Report, refers to the random selection and review of "10 of the 13,765 open estates." According to the Comptroller, this list of "unique" open estates was derived from the CompuTrust list mentioned in the above paragraph, containing 42,407 open and closed estates files and open and closed undertaker, medical examiner, nursing home and Police Department files. The Comptroller culled this list by deleting estates with a "closed" status thus obtaining a total of 13,765 open estates. This figure does not however accurately reflect the number of open estates managed by our office at the time the CompuTrust list was generated and provided to the Comptroller. The approximate number of open estates managed by our office as of July 31, 2014 was 4,467. The CompuTrust list discrepancy is explained by procedures in place at the time of the audit which did not require our staff to change the status of a case in CompuTrust to "closed" upon closing a file. Our bookkeeper now changes the status of cases to closed at the time final payment is made from estate accounts. We are in the process of reviewing the list of open cases in CompuTrust to appropriately reflect all case statuses.

Recommendations

Recommendation #1- The KCPA should ensure that basic databases are searched in order to identify all possible assets for the decedents. KCPA should conduct searches for the remaining five sampled estates with possible unclaimed funds identified by the auditors and for which the KCPA had no evidence is conducted searches.

As a result of the Comptroller's June 2013 Report, written procedures for asset collection for informal (small) estates and informal (large) estates were created, and an Asset Identification and Collection Checklist was created for small estates. These procedures require case managers search Accurint, ACRIS and unclaimed funds databases. The procedures also require case managers to send letters to the IRS for transcripts of income tax returns, which help identify possible assets based on past years' interest and dividends earnings. We are developing Asset Identification and Collection Checklists for formal estates, nursing home files and Police Department files to be utilized by case managers. Our

written procedures for asset collection will be revised requiring that asset identification and collection checklists be placed in all files. With respect to the sampled estates with possible unclaimed funds we will look into whether there are unclaimed funds on deposit with the State Comptroller's office. If funds are being held, we will collect all identified unclaimed funds on deposit with the State Comptroller and distribute them accordingly. It should be noted however that of the five sampled estates where the Comptroller's, June 2013 Report, found no evidence of searches of unclaimed funds, two were Police Department estates where for reasons explained under the "General Comments Regarding the Audit" section above, the Public Administrator does not search, collect or administer Police Department or any other informal estates containing less than \$500 in assets. Thus these files would not contain asset collection documentation.

Recommendation #2- The KCPA should establish a review process of case managers' work to ensure that investigation steps are effectively followed from the notification of death to the closing of decedent's file. A checklist may be designed to help track the process.

As discussed above in comments to Recommendation number 1, the use of asset identification checklists for informal and formal estates will be implemented as soon as possible. A checklist for informal estates is already in use. Updated procedures for asset collection will require that a supervisor periodically review each case file to ensure that case managers properly identify, collect and credit decedent's estates. The new asset identification checklists will contain a section reflecting such periodic review. In addition to implementing the checklists, we recently instituted a Weekly Case Manager's Report. This weekly report requires each Case Manager to report on the status of his or her collection of estate assets. The report includes: i) the estate name and number, ii) the date of request/receipt of the death certificate, iii) the estate balance, and iv) asset collection status (copies of letters to financial institutions and responses received, amount funds expected, and real and personal property collection status). The weekly report is instrumental in tracking the progress of asset collection.

Recommendation #3- The KCPA should strengthen its controls over disbursements made from estate accounts to ensure that they are properly reviewed and approved and ensure all supporting documentation is completed and attached to the payment package.

Payment authorization forms (Desk Review Disbursement Cover Sheets) have been in use since the Comptroller's June 28, 2013 recommendations were issued. For the reasons

described in the “General Comments Regarding the Audit” section above, the sample of estates selected by the Comptroller for review clarifies why some Desk Review Disbursement Cover Sheets were not included in some estate files. The selection of closed estate files all predate the date of the Comptroller’s June 2013 recommendations. Under current procedures, vendor payments are not processed unless a disbursement form is completed and authorized by either the Commissioner or Deputy Commissioner. Procedures in effect at the time of the June 2013 audit did not require that copies of Desk Review Disbursement Cover Sheets be placed in estate files but instead were maintained by our accounting staff. Current procedures require that disbursement forms along with supporting documentation be submitted before a payment can be authorized and a check issued. Disbursement forms are marked as paid and placed, along with related payment documentation, in estate files once checks have been issued.

Recommendation #4- The KCPA should review its vendor listing to ensure that they offer competitive prices and establish procedures for competitive vendor solicitation.

A “Vendors Wanted” link soliciting vendors appears on our website <http://www.nyc.gov/html/kcpa/html/vendors/vendors.shtml>. The link lists the types of vendors sought and requests that interested vendors provide: name; address; telephone number; email address; fax number; fee schedule; copy of license and/or business registration; and any other relevant information. We maintain a list of vendors which is updated as new vendors are added. This list does not however currently set forth fees charged by vendors. The office is working on updating our internal vendor list to include vendor fees where appropriate. For instance, a fee schedule for fixed or hourly rate jobs for existing vendors is in the process of being prepared. It should be noted that for some services such as real property emergency repairs (i.e. plumbing, break-in repairs, snow removal) it is not possible to set specific fees until the scope of the particular work is defined and thus vendor fees cannot be quantified for these types of jobs.

With respect to the Comptroller’s Vendor selection comment, “Several of the KPCA’s vendors who have worked for the KCPA since 2007 raise particular concerns. One vendor was recommended by a previous KCPA employee, and for two vendors used by the KCPA counsel, one was selected by counsel and one was selected by the PA’s Office” is inaccurate and misleading.

The vendor referred to as having been recommended by a previous KCPA employee is a plumber who performed work on estate real property administered by our office during 2014. As a result of the Comptroller's findings we have ceased working with this vendor.

The vendor referred to as having been selected by counsel is a reporting service utilized to transcribe court proceedings. The vendor, Aria Services Inc., was selected from the New York State Office of Court Administration's approved list of authorized reporting services. Although selected by counsel to the PA, this vendor was chosen from a list containing numerous reporting services which are authorized by OCA.

The vendor the Comptroller refers to as having been used by counsel and selected by the KCPA is E Brooklyn Media, the parent company of the Brooklyn Eagle, one of five newspapers the office utilizes to advertise real estate auctions. The vast majority of properties we auction are in Brooklyn. Advertising in a local Brooklyn newspaper is cost-effective and meets the requirements set forth in the SCPA and the Administrative Board Guidelines governing the Offices of the Public Administrators for advertising the sale of real property at auction. Due to the limited number of local Brooklyn publications available for advertising it is not possible to utilize a bidding process for advertising of our public auction. This vendor is not used by KCPA counsel as stated in the audit report but rather selected by the PA for the purpose of placing ads for the real estate auction.

Recommendation #5- The KCPA should ensure that estates' final accountings are reliable and accurate so that the legal fees and commissions charged to the estate are accurate and conform to the Guidelines.

Counsel fees are paid in accordance with the Guidelines put in effect on May 1, 2012. However, it appears that two of the sampled closed cases the Comptroller examined did not have final accounting schedules in the files. At the time of the follow-up audit, Accounting Schedules were filed separately from estate files. Updated procedures now require copies of Accounting Schedules be placed in estate files. To ensure that each closed estate contains documentation of the calculation of counsel fees, the office will coordinate with counsel to ensure that we receive accountings at the time they are filed with the Court. Additionally, the Office Manager will be assigned the responsibility of reviewing files to ensure that all asset collection, distribution and legal documents, including final accountings, are contained in estate files and that the proceeds reconcile with the records in CompuTrust.

Recommendation #6- The KCPA should ensure it establishes proper controls so that all transactions and relevant documents are maintained in the estate file and recorded in CompuTrust.

Procedures established after the Comptroller's Report of June 28, 2013 require Case Managers to "record the collection of funds in CompuTrust, case manager activity spreadsheet and in the file." The Comptroller's findings as related to this recommendation are a reflection of the sampling of estate files selected for review. As discussed earlier, the vast majority of open estate files selected for review did not contain collection or disbursement documentation as these estates were nursing home or Police Department files, containing assets of less than \$500. In fact seven out of the ten open estates selected by the Comptroller were either nursing home or Police Department files containing assets of less than \$500. As for the closed estate files selected for review, all of the closed estates sampled by the Comptroller were estates in which Letters of Administration were issued well before publication of the Comptroller's 2013 recommendations. Thus, procedures put into place subsequent to those recommendations did not pertain to the estates the Comptroller reviewed. Since procedures are currently in place requiring that documentation be placed in estate files, we will focus on full compliance with this requirement. Again, our Office Manager will be assigned the responsibility of ensuring that copies of all asset collection, distribution and legal documents are contained in estate files and that estate transactions are accurately reflected in CompuTrust. Our accountant will continue to retain back-up copies of income and payment transaction documents, i.e. checks deposited into estate accounts and copies of checks drawn against estate accounts, along with Desk Review Form Disbursement Cover Sheets and supporting documentation. In the event that items are missing from a particular file, back-up copies are available.

Recommendation #7- The KCPA should perform periodic reconciliations of the information in CompuTrust and the information received for the estates.

Office procedures will be updated requiring copies of documents, determined by the Comptroller to be source and income and expense documents (appraisal reports, bills of sale, bonds, stocks, bank statements, annuities, life insurance documentation, police vouchers, investigation reports, nursing home checks, retirement fund information, real estate ownership, paychecks, tax refunds, checks, check stubs, receipts, invoices and DRF's) shall be placed in estate files and periodically compared to CompuTrust to ensure accuracy

and reliability prior to preparation of the final accounting. As stated above, the Office Manager will have responsibility for ensuring that all assets collected and distributed along with legal documents are contained in estate files and that all associated data is properly recorded in CompuTrust.

Recommendation #8- The KCPA should ensure the estate property inventories it maintains are accurate, complete, and the proceeds from the sales of those properties are appropriately accounted for.

As a result of a CompuTrust software issue going back several years, the office records estate tangible personal property in two separate computer-based inventory files. The first is the Excel master inventory spreadsheet, a cumulative list of all tangible personal property held on behalf of estates administered by our office. The second is a list of personal property inventoried by individual estate and maintained in CompuTrust. The Comptroller found that these two lists did not reconcile. We are in the process of reconciling the master inventory list to property we are holding. Upon completion of this task, the master list will be reconciled to individual estate property lists maintained in CompuTrust. Once both inventory files are reconciled, we will periodically review and reconcile inventoried items to the inventory files.

All documents (appraisals, title searches, closing documents, etc.) pertaining to the sale of real property are maintained in estate files.

Recommendation #9- The KCPA should implement an effective tracking system of the important steps such as date of closing, final accounting, and letter of administration, in the management of estates.

Although CompuTrust does not provide a formal “tickler” function, CompuTrust advises us that with input into the system of additional estate information, the office can periodically generate reports for each estate that detail outstanding tasks. Although this will not result in a typical “tickler” function, whereby a case manager is notified automatically of significant steps such as dates Letters of Administration issued, final accounting and closing, it will require periodic action by the case manager. Written procedures which are being updated to conform to the above recommendations will also include directions on entering the information required to generate the periodic CompuTrust reports.

With respect to tracking the steps involved in the collection of assets, the new asset identification and collection check list, described in my comments for Recommendation numbers 1 and 2 above, will include a section requiring periodic supervisor review of each case file. The Case Managers Report, which has already been implemented, requires case managers to provide updates on the status of the collection of estate assets. The use of the periodic CompuTrust reports, the asset identification and collection check list along with the weekly Case Managers Report will enable us to keep track of when critical actions are needed.

Recommendation #10- The KCPA should examine the Outstanding Check Register from the Master Estate account to ensure that it is accurate and void and reissue outstanding check.

See comments to Recommendation numbers 18 - 20.

Recommendation #11- The KCPA should establish procedures to ensure that bank reconciliations are independently reviewed and documented.

The first step in ensuring bank reconciliations are independently reviewed and documented is to have all bank account reconciliations brought up to date. Reconciliation of bank accounts is a challenging and long-term project. The reconciliation of eight main bank accounts and hundreds of estate sub-accounts on a monthly basis, all the while performing necessary daily accounting functions, is an enormous task, and an operation which is simply not possible with current staffing levels. Additional staffing is needed to tackle the backlog of bank reconciliations as well as the volume of open estates. In May of 2015 the Office of Management and Budget denied our request for two additional City line positions. Despite the need for an additional bookkeeper dedicated solely to getting up-to-date on reconciliations, we will begin the process of reconciling bank accounts and identifying checks outstanding for more than 180 days. As the reconciliations are performed going forward they will be reviewed by the Commissioner or Deputy Commissioner.

Recommendation #12- The KCPA should file and submit all reports required by SCPA on a timely basis, ensure that the status of all estates are regularly examined and correctly reported and ensure that external audits are conducted on an annual basis.

The Comptroller's finding with respect to the filing of required reports predates the audit time frame of July 1 through December 31, 2014. In his report the Comptroller states "The KCPA did not send any of its 2013 reports until April 14, 2014, at which time it sent all of them." Monthly Closed Case, Semi-Annual and Annual report have been submitted on time and to the appropriate parties since April 2014 with one exception. Copies of the Annual Report are required to be filed with the New York State Comptroller. Although completed and filed with other required authorities, due to an oversight the 2013 and 2014 Annual Reports were not filed with the State Comptroller on time. The Annual Reports have been sent to the State Comptroller and thus all reports are current and up to date. Copies of our internal audit are filed with the State Comptroller as they are completed. The Monthly, Semi-Annual, Annual and audit reports will continue to be submitted to the appropriate authorities in a timely manner.

The external audit for fiscal year ending June 30, 2009 is in progress. We have signed an engagement letter for the 2010 through 2014 fiscal year external audits and the auditors have begun work on the fiscal year 2010 audit. We sought and received funding from the Office of Management and Budget to cover the cost of all of the outstanding external audits. Thus all prior external audits are proceeding and will be completed as expeditiously as possible.

Recommendations #13- The KCPA should ensure that completed W-9 forms are collected from all vendors to ensure that 1099-MISC forms are issued to all vendors with 1099 reportable payments of \$600 or more.

Procedural changes recently put in place require tax identification numbers (W-9s) for all vendors doing business with our office. Additionally, payments are only issued to vendors who have supplied tax identification numbers to us. Forms used to process vendor payments require tax identification numbers. Payments are not approved unless tax identification numbers are on file.

Recommendation #14- The KCPA should issue 1099-Misc forms to the vendors that required one and reissue corrected 1099-Misc forms for all payments requiring adjustments for 2013.

Our accountant has been directed to issue IRS 1099-Misc forms to all vendors, except corporations, receiving cumulative payments of \$600 or more per calendar year and ensure that we 1099's issued for tax years 2013 and 2014 are consistent with this criteria.

Recommendation #15- The KCPA should revise its procedures to include all functions critical to the management of the decedent's estates.

A written procedure for asset collection of informal estates, not in place at the time of the Comptroller's June 2013 audit, is currently in place. This procedure requires case managers search Accurint, ACRIS and unclaimed funds databases. The procedures also require that case managers send letters to the IRS for transcripts of tax returns to identify possible assets based on past years interest and dividends earnings. Additionally, an informal estate asset identification and collection checklist is currently in use. We're also developing and implementing written procedures and asset identification and collection checklists for formal, nursing home and Police Department estates. Additionally, written procedures for asset collection will be revised requiring that asset identification and collection checklists be included in all estate files.

Written procedures will be updated to include the functions of bank reconciliations, administration of auctions of decedent property, management of loans made to estates and management of the disbursement account (non-interest bearing account).

Recommendation #16: The KCPA should make a determination of what should be done with the funds that are not associated with specific estates.

Recommendation #17: The KCPA should conduct an investigation into the Police Department Transfer account to determine where the funds are and to which estates they belong.

Recommendations numbers 16 and 17 are discussed together. In Table II of his report, the Comptroller identified six bank accounts "without records to indicate which estate funds should be credited."

The Auction Real Estate account and the Auction Jewelry and Furniture account were established by prior Public Administrators several years before the office opened individual bank accounts for each estate. These accounts have not had any transaction activity (deposits

or withdrawals) since September 2010 and August 2011 respectively. The accounts hold pooled funds for real estate and personal property sold at prior auctions. The source of funds in these accounts cannot be traced to specific estates. We will seek an opinion from the New York City Law Department as to what the disposition of the funds in these two accounts should be.

The Nursing Home (Fiduciary) and Signature Police Department Transfer bank accounts are pooled accounts also established prior to when individual bank accounts were opened for each estate. As their names indicate, the nursing home account and the Police Department account contain proceeds received from these entities. The funds contained in these accounts are traceable and will be disbursed to the appropriate distributees, or if the distributees cannot be established, placed on deposit with the Commissioner of Finance for the benefit of the decedent's unknown distributees.

The Unapplied Suspense account is a holding account used to distribute funds received in lump sums to individual estate accounts. For example, we utilize an outside vendor to administer the auctioning of personal property. The Auctioneer sends us one check for a number of items sold along with an inventory listing how much each item sold for. The lump sum payment is then proportionally credited to each estate account via the Unapplied Suspense account.

The Suspense Loan Account is used as an intermediary account for the sole purpose of transferring funds from our general operating account to estate bank accounts. On a daily basis expenses such as filing fees must be paid for estates where no assets have been collected. For example, several estates may require payments totaling \$5,000. To comply with generally accepted accounting principles, the \$5,000 is transferred out of our General Suspense account and into the Suspense Loan Account from which the funds are distributed to individual estate accounts and payment checks issued. The money contained in the Suspense Loan Account is fully traceable and thus should not be included in Table II.

Recommendation #18: KCPA should ensure that it mails distribution checks to beneficiaries in a timely manner.

Recommendation #19: The KCPA should attempt to locate distributees who should have received the outstanding checks and ascertain the reasons that the checks were not cashed. Where appropriate, the outstanding checks should be voided and new ones issued.

Recommendation #20: If a distributee with an outstanding check cannot be located, KCPA should determine whether the funds should be forwarded to DOF.

Recommendation numbers 18, 19 and 20 are addressed together.

In order to identify outstanding checks illustrated in Table III, “Outstanding Checks for Closed Estates as of July 2014,” bank account reconciliations must first be performed. Once all current outstanding checks are identified we will then be able to ascertain why checks did not clear bank accounts and make determinations on how to distribute the remaining funds. As stated above in response to recommendation number 11, the reconciliation of bank accounts is a challenging and long term project. We intend to tackle outstanding checks by identifying all outstanding checks and distributing the funds associated with the outstanding checks to the proper payees. Future problems concerning checks outstanding for more than 180 days will be addressed by performing timely bank account reconciliations, quickly identifying checks outstanding and re-issuing checks.

It should be noted that of the seventy-nine outstanding checks listed in the Comptrollers Table III as outstanding as of July 31, 2014, sixty-one were issued during May, June and July of 2014, and thus were not stale as of July 31, 2014.

In the event that we are unable to locate an outstanding check payee, pursuant to guidelines, the funds will be sent to the New York City Department of Finance for the benefit of the payee.

We intend to resolve issues regarding the outstanding checks by identifying any such outstanding checks and distributing the funds associated with them. Going forward checks outstanding for more than 180 days will be addressed by performing timely bank account reconciliations, promptly identifying checks outstanding and re-issuing checks when necessary.

Recommendation # 21: The KCPA should review the estates that remain open and take all necessary steps to appropriately close them.

In terms of the number of open estates including informal, nursing home and Police Department estates containing assets of less than \$500, pursuant to SCPA Section 1123 the

Public Administrator is authorized to distribute assets contained in these estates without filing an informal (“informatory”) accounting with the Surrogate’s Court. Thus, we first plan to forward the funds in estates containing \$500 or less to the New York City Department of Finance for the benefit of unknown distributees.

For estates with assets in excess of \$500 we have begun to tackle these estates focusing on estates, focusing primarily on formal estates that were distributed pursuant to an accounting decree but contained tax reserves to pay final income taxes and costs to prepare the returns. The number of estates containing undistributed tax reserves has grown significantly over many years. Identifying these estates, determining who is entitled to the remaining funds and then distributing the remaining funds, is a long term project that will take a significant period of time to correct. We are also working with our counsel to prepare informatory accountings for small estates greater than \$500 but less than \$30,000 so that they can be closed and the funds distributed or placed on deposit.

Recommendation #22: The KCPA should file the required Semi-Annual reports for those estates that were open for two years or more.

In terms of the filing of reports, as noted above in response to recommendation number 12, all reports are current and have been submitted to the appropriate authorities. All reports will be filed in a timely manner going forward.