

# AUDIT REPORT



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

## **Audit Report on the Compliance of Sterling Mets, L.P., (New York Mets) With Their Lease Agreement and Fees They Owe the City January 1–December 31, 2001**

*FN03-115A*

**June 30, 2003**



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

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WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has examined the compliance of Sterling Mets, L.P. (Mets), with the terms of their lease agreement with the New York Department of Parks and Recreation. Under the provisions of the agreement, the Mets are to pay the City fees based on reported revenues for the exclusive use of Shea Stadium during the baseball season. The results of our audit, which are presented in this report, have been discussed with officials from the Mets and the Parks Department, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that private concerns conducting business on City property comply with the terms of their agreements, properly report revenues, and pay the City all fees due.

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

Very truly yours,

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

William C. Thompson, Jr.

WCT/GR

Report: **FN03-115A**  
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*The City of New York  
Office of the Comptroller  
Bureau of Financial Audit*

**Audit on the Compliance of  
Sterling Mets, L.P., (New York Mets)  
With Their Lease Agreement and  
Fees They Owe the City  
January 1–December 31, 2001**

**FN03-115A**

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**AUDIT REPORT IN BRIEF**

This audit, which was requested by the New York City Department of Parks and Recreation (Parks), determined whether Sterling Mets, L.P., (doing business as the New York Mets) complied with their lease agreement with the City, maintained adequate internal controls over the recording of their gross receipts and reported them accurately, accurately deducted allowable credits in fees due the City, and paid those fees as well as fees outstanding from prior audit assessments.

In 1985, Doubleday Sports, Inc., and Parks entered into a 20-year lease agreement for the use of Shea Stadium. The lease, which is monitored by Parks, expires on December 31, 2004. However, a 2001 lease amendment extended the lease to December 31, 2005, and provided for five one-year renewal options that can be exercised at the discretion of the New York Mets. In August 2002, Sterling Doubleday Enterprises, L.P., amended its partnership certificate to effect a name change to Sterling Mets, L.P., (doing business as the New York Mets).

The original lease required that the Mets pay the City the greater of either an annual minimum rent of \$300,000 or a percentage of their revenues from admissions, concessions, wait service, parking, stadium advertising (less \$8,000 for scoreboard maintenance), and a portion of their cable television receipts. In calculating the amount due the City, the Mets are permitted to deduct: a portion (related to tickets sales and local cable revenues) of the amount they pay to Major League Baseball; and sales taxes included in the amounts collected. In addition to extending the lease, the first lease amendment allows the Mets to exclude certain cable television and advertising revenues from their receipts on which fees are due. A second amendment allowed the Mets to deduct new stadium planning costs equal to, or less than, \$5 million each year on their rent statements for calendar years 2001 through 2005.

**Audit Findings and Conclusions**

The Mets adhered to certain non-revenue-related requirements of the lease. In this regard, the Mets maintained the required liability insurance that named the City as an additional insured party, and they reimbursed Parks for electricity and for water and sewer use during the baseball season. In addition, the Mets have an adequate system of internal controls over their revenue

collection and accounting functions. However, for the period from January 1, 2001, through December 31, 2001, the Mets underreported revenue by \$422,780, overstated allowable deductions against revenue totaling \$6,929,804, overstated allowable credits against rent due by \$471,934, and took an unallowable credit totaling \$203,126. Consequently, the Mets owe the City \$1,178,815. Moreover, the Mets have yet to pay previous audit assessments totaling \$3,381,816. Therefore, the Mets now owe the City \$4,560,631. Specifically, for the audit period, the Mets:

- Underreported Skybox net income by \$40,878, which results in \$20,439 in fees due the City.
- Did not report \$362,102 in concession and wait service revenue because their subcontractor did not report these sales to them. In addition, the Mets did not report \$19,800 in advertising revenue because they overstated their bad debt expense. As a result, the Mets owe the City an additional \$6,759.
- Overstated the deduction allowed for payments to Major League Baseball by \$6,929,804. The Mets report their net operating revenue to Major League Baseball, and Major League Baseball uses these amounts in its revenue sharing calculations. However, the amounts deducted by the Mets were not the actual payments as defined in the lease and therefore should not have been deducted. As a result, the Mets owe the City additional fees totaling \$476,557.
- Overstated the credit allowed for new stadium planning costs by \$471,934 because they included costs incurred in years before the lease amendment took effect and costs expended in 2002 that the Mets would be allowed to apply to their 2002 rent. Thus, the Mets owe the City an additional \$471,934.
- Took an unallowable credit of \$203,126 for maintenance costs. Under the terms of the lease, maintenance of Shea Stadium is the responsibility of the City. Moreover, the lease does not contain a provision that allows the Mets to receive reimbursement credits covering expenses for maintenance work that they claim to have performed. Therefore, the Mets owe the City \$203,126.

### **Audit Recommendations**

The audit recommends that the Mets: pay the City \$4,560,631—\$1,178,815 for the fees due as a result of the current audit and \$3,381,816 owed the City from prior audits. In addition, the audit recommends that the Mets ensure: that all Skybox, concession, and advertising revenues are reported on their rent statements; that a deduction is taken for only the portion of payments from admissions and local cable receipts that were actually made to Major League Baseball; that only planning costs incurred within the calendar year are claimed as credits; and that credits are not taken for items that are not specified in the lease.

The audit also recommends that Parks ensure that the Mets pay the City \$4,560,631 in fees due from this and prior audits and comply with the report's four other recommendations. In the event that the Mets and Parks continue to disagree on the fees due, Parks can take immediate action to resolve the dispute either through the lease's panel arbitration process or through appropriate litigation.

In their response, Mets officials stated that: “As of this date [May 21, 2003], Sterling has made payment in full of all undisputed amounts due under prior rent audits. Any and all amounts still identified by the City as outstanding represent disputed items addressed in prior correspondence.”

In addition, the Mets did not agree that they overstated the deductions taken for payments to Major League Baseball and that they took planning costs and maintenance credits for which they are not entitled.

Parks responded that it: “has referred the additional fee items and other issues contained in the audit to the Law Department’s Commercial and Real Estate Litigation Division (Law Department) for settlement. . . . Law Department Officials have met with the Mets to discuss the issues and moneys owed.”

The specific issues raised by the Mets and our rebuttals are included within the respective sections of this report. The full texts of the Mets and Parks comments are included as addenda to this report.

## **INTRODUCTION**

### **Background**

On January 1, 1985, Doubleday Sports, Inc., and the New York City Department of Parks and Recreation (Parks) entered into a 20-year lease agreement for the use of Shea Stadium. In 1986, Doubleday Sports, Inc., assigned the lease agreement to Sterling Doubleday Enterprises, L.P. On December 28, 2001, two lease amendments were implemented between the City and the Mets, retroactive to January 1, 2001. The first amendment extended the expiration of the lease to December 31, 2005, and provided for five one-year renewal options that can be exercised at the discretion of the Mets. In addition to extending the lease, the first amendment allows the Mets to exclude revenues received from certain cable television broadcasts and advertising revenues from their receipts on which fees are due. A second amendment allows the Mets to deduct new stadium planning costs equal to, or less than, \$5 million each year on their rent statements for calendar years 2001 through 2005. In August 2002, Sterling Doubleday Enterprises, L.P., amended its partnership certificate to effect a name change to Sterling Mets, L.P., (doing business as the New York Mets).

The lease, which is monitored by Parks, permits the Mets exclusive use of Shea Stadium during the baseball season. In that regard, the lease allows the Mets to sell tickets; provide food and souvenir concessions; operate restaurant and catering services for the Diamond Club restaurant, the Grill Room Bar, and luxury suites; provide parking; provide cable television broadcasts; sell stadium advertising; and conduct post-season baseball games, if applicable. The agreement also allows the Mets to either operate or subcontract their concessions. The Mets chose to subcontract their concessions to Aramark Sports Entertainment Services, Inc. (Aramark), which include the stadium’s restaurant, bar, catering, and souvenir operations.

Under the terms of the amended lease, the Mets are required to pay the City the greater of either an annual minimum rent of \$300,000 or a percentage of revenues from gross admissions, concessions, wait service, parking, stadium advertising (less \$8,000 for scoreboard maintenance), and a portion of cable television receipts. The Mets are permitted to deduct the portions of what they actually pay to Major League Baseball that are related to their tickets sales and local cable revenues, planning costs up to \$5 million per year for a new stadium, and all sales taxes before calculating their rent payments to the City. The rent payments and the credits against rent payments under the lease agreement are shown in Table I, which follows:

**TABLE I**  
Mets Rent Payments and Credits Under Lease Agreement

**Rent Payments:**

Gross Admission Receipts (Ticket Sales)	7.5% of ticket sales.
Gross Concession Receipts	7.5% of Gross Concession Receipts, when paid attendance exceeds two million patrons.
Gross Wait Service Receipts	5% of Gross Wait Service Receipts, when paid attendance exceeds two million patrons.
Sales of Parking Privileges	\$1.00 per car plus 50% of the charges amount over \$2.50.
Advertising	10% of advertising receipts less \$8,000. The first amendment allows the Mets to exclude the fees on home plate advertising beginning January 1, 2001.
Scoreboard Maintenance	\$8,000 per year. The City receives this compensation to provide general repairs to the scoreboard.
Cable Television	10% of home game receipts after allowable adjustment.
Skybox Revenue	50% of net income from Skybox suites. 100% of maintenance, electrical, and plumbing costs.
Diamond Vision Board	100% of maintenance costs during the baseball season.
Utilities (Electricity and Water and Sewer)	100% of consumption costs during the baseball season.

**Credits/Deductions against Rent Payments:**

Payment to Major League Baseball	Percentage of payment related to their ticket sales and local cable revenues.
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New Stadium Planning Costs	\$5 million maximum annual credit for expenses incurred for the planning of a new stadium within the calendar year.
Sales Taxes	100% of sales taxes from ticket sales, concessions, and parking privileges.
Property Insurance	25% of premium payment.
Watchmen Charges	50% of Watchmen charges.

The Mets are allowed to deduct from their rent statements the actual payments to Major League Baseball that are related to a percentage of their ticket sales and local cable revenues. (Prior to the 1996 baseball season, the Mets were allowed to deduct the payments that were made to the visiting teams.) The Mets are also allowed rental credits for a portion of their yearly insurance premiums and a portion of their watchmen charges when no games are scheduled.

The lease requires that the Mets carry comprehensive property and liability insurance that names the City as an additional insured party, and submit to Parks every March an annual Statement of Rent, Reserved Parking Fees, and Scoreboard Maintenance, and a Skybox Net Income statement of the preceding year. For the 2001 audit period, the Mets reported gross revenues totaling \$155.8 million and, after deductions, paid the City a total of \$7.0 million (4.5%, which is 2.8% less than the 7.3% they paid in rent during the previous audit period).

### **Objectives**

Our audit objectives were to determine whether the Mets:

- complied with certain non-revenue-related requirements of their agreement (i.e., maintained required insurance and reimbursed the City for its utility use);
- maintained adequate internal controls over the recording and reporting of their gross receipts;
- accurately reported all gross receipts in accordance with the agreement;
- accurately deducted all allowable credits, including new stadium planning costs, and that the credits were valid and supported by proper documentation;
- paid the appropriate fees due the City and paid these fees on time; and
- paid the prior audit assessment to the City.

### **Scope and Methodology**

This audit, which was requested by Parks, covered the period January 1, 2001–December 31, 2001. To achieve our audit objectives, we reviewed and abstracted the relevant terms and conditions of the lease agreement. To ascertain whether the Mets submitted the required statements and paid all fees on time, we reviewed records on file at Parks, including the Parks Accounts Receivables Ledger and rent statements, Mets insurance certificates, and correspondence between the Mets and Parks.



We evaluated the internal controls over the Mets revenue collection and reporting functions. On April 10, 2002, we conducted a walkthrough of the Mets operations pertaining to ticket and concession sales, and game-day catering operations in the stadium's restaurant, bar, and luxury suites. We documented our understanding of Mets procedures and controls through memoranda and analyzed the Mets reported revenue amounts to identify large fluctuations or inconsistencies.

To determine whether the Mets reported ticket sales and attendance accurately, we traced the reported ticket sales to the general ledger detail and their daily Ticketing System (Game Sales reports) for the entire audit period. We traced the attendance from the Game Sales reports to the Sales Summary reports and the daily Turnstile reports. We reviewed whether the amounts for rain-check revenue were accurately calculated and properly deducted from gross ticket sales. We determined whether the required flat rental fees for post-season games played at Shea Stadium were accurately reported and paid.

We determined whether revenue generated from concession sales and catering services was reported accurately by reviewing Aramark's annual sales records and its independent auditor's statements and by comparing those amounts to the amounts the Mets reported to the City. We also determined whether the Mets accurately reported to Parks the amounts and numbers of parking privileges sold—prepaid parking spaces—by reviewing the Mets books and records, which included their trial balances, supporting schedules, and the daily game-by-game Parking Summary reports.

We determined whether the Mets reported all cash receipts generated from stadium advertising—Scoreboard, Diorama, and First and Third Base advertising—for the audit period by matching the amounts reported to Parks to the amounts in the Mets accounts receivable billing history and general ledger entries. We determined whether advertising revenue reported on the Mets' books and records matched the amounts on the contracts between the Mets and their advertisers.

To determine whether the Mets reported the net income for the Skybox suites accurately, we compared the revenue and expenses reported for the Skybox rentals to the Mets supporting schedules and general ledger entries. To determine whether Skybox concession revenue was accurate and was reported correctly, we traced the reported revenue amounts to the revenue on Aramark's operating statements for Skybox concessions. We also reviewed the mathematical accuracy of the overhead costs calculations pertaining to Skybox deductions and the correctness of the deducted amounts by tracing those amounts to the general ledger and to corresponding invoices for calendar year 2001. We then determined whether those deducted expenses were correct and allowable under the agreement.

We reviewed the contract between Fox Sports Network and the Mets as it related to cable television receipts. We traced reported cable television receipts to the amounts posted in the Mets general ledger and on their bank statements.

We determined whether the deductions for payments made to Major League Baseball were correct and reported accurately, and whether the Mets accurately calculated sales taxes deducted from reported revenue. We also determined whether the Mets satisfied the assessment owed according to the prior audits conducted by the Comptroller's Office (Reports FN02-125A, issued January 16, 2003, and FN97-098A, issued June 16, 1997).

To determine whether new stadium planning costs were reported accurately by the Mets on their rent statements for calendar year 2001 and were in accordance with the second amendment of the lease agreement, we reviewed the Mets Stadium Planning Costs statements. Specifically, we determined whether that the Mets incurred these costs for the purpose of planning a new stadium, whether the costs were accurate and reasonable, whether the costs submitted matched the underlying payment records, invoices, and receipts, and whether the costs were incurred solely in 2001. Furthermore, we reviewed the planning costs submitted to Parks to determine whether there were any duplicate costs directly reimbursed by the New York City Economic Development Corporation under separate agreements.

To determine whether the Mets maintained the proper insurance coverage that named the City as an additional insured party, we examined the Mets certificates of insurance. To determine whether the Mets received the appropriate insurance credit deduction, we reviewed their insurance policies and payments they made to their insurance carriers.

Furthermore, we determined whether the Mets made their monthly payments for scoreboard maintenance and made their minimum rental payments to Parks by tracing those payments to the amounts listed in Parks Accounts Receivable Ledger. We determined whether the Mets accurately calculated Watchmen credits—the cost of security personnel at Shea Stadium when no baseball games were scheduled—by tracing the amounts reported to Parks to the respective supporting schedules and payroll reports.

Finally, to determine whether Parks was reimbursed for all utility charges incurred by the Mets during the baseball season, we reviewed invoices and copies of canceled checks for electricity and for water and sewer use, and traced the amounts to the amounts listed in the Parks Accounts Receivable Ledger.

This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller, as set forth in Chapter 5, § 93, of the New York City Charter, and § 11.2 of the lease agreement between the City and the Mets, which gives the City Comptroller the right to audit.

### **Discussion of Audit Results**

The matters covered in this report were discussed with Mets and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Mets and Parks officials and was discussed at an exit conference on May 2, 2003. On May 6, 2003, we submitted a draft report to Mets and Parks officials with a request for comments. We received written responses from Mets and Parks officials on May 21, 2003.

In their response, Mets officials stated: “As of this date [May 21, 2003], Sterling has made payment in full of all undisputed amounts due under prior rent audits. Any and all amounts still identified by the City as outstanding represent disputed items addressed in prior correspondence.”

In addition, the Mets did not agree that they overstated the deductions taken for payments to Major League Baseball and that they took planning costs and maintenance credits to which they are not entitled.

Parks responded that it: “has referred the additional fee items and other issues contained in the audit to the Law Department’s Commercial and Real Estate Litigation Division (Law Department) for settlement. . . . Law Department Officials have met with the Mets to discuss the issues and moneys owed.”

The specific issues raised by the Mets and our rebuttals are included within the respective sections of this report. The full texts of the Mets and Parks comments are included as addenda to this final report.

## FINDINGS AND RECOMMENDATIONS

The New York Mets had an adequate system of internal controls over their revenue collection and accounting functions. However, the Mets overstated by \$7,604,864 the deductions against revenue that they were entitled to take, and underreported by \$422,780 their revenue on the rent report to Parks for 2001. Consequently, the Mets owe the City \$1,178,815, as shown in Table II, below. Moreover, the Mets have yet to satisfy the previous unpaid audit assessments totaling \$3,381,816. Therefore, the Mets now owe the City \$4,560,631 in unpaid rent assessments from these audits.

**TABLE II**

Schedule of Additional Rental Fees  
January 1, 2001, through December 31, 2001

	<b>Underreported Revenue and Overstated Deductions/Credits</b>	<b>Additional Fees Due the City</b>
<b>Underreported Revenue</b>		
Skybox Revenue	\$ 40,878	\$ 20,439
Concession Receipts	362,102	4,779
Advertising Revenue	19,800	1,980
Total Underreported Revenue	\$ 422,780	\$ 27,198
<b>Overstated Deductions/Credits</b>		
Revenue Sharing Payments	\$ 6,929,804	\$ 476,557
New Stadium Planning Cost Credits	471,934	471,934
Unauthorized Reimbursement Credits	203,126	203,126
Total Overstated Deductions/Credits	\$7,604,864	\$1,151,617
<b>Additional Fees Due the City – Current Audit</b>		\$1,178,815
<b>Fees Due From Prior Audits</b>		3,381,816
<b>Total Fees Due the City</b>		\$4,560,631

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

### **Skybox Net Income Underreported by \$40,878**

The Mets reported that Skybox luxury suite net income for 2001 totaled \$2,754,973. However, according to their books and records for 2001, Skybox luxury suite net income was \$2,795,851, a difference of \$40,878, which pertained to the overstatement of deducted expenses. Skybox net income is determined by luxury suite rental and concession sales revenue, less the cleaning, maintenance, and overhead expenses that are directly related to the Skyboxes. Since the lease requires that the Mets pay 50 percent of the net revenue generated from Skybox suites, the Mets owe the City \$20,439 in additional fees.

### **\$362,102 in Concession and Wait Service Revenue Not Reported**

The Mets underreported concession and wait service revenue by \$362,102. The Mets reported concession and wait service sales revenues based on the revenue amounts provided by their

subcontractor, Aramark. However, Aramark's 2001 audited financial statements included \$362,102 in revenues from scorecard and miscellaneous sales that Aramark failed to include when it provided the Mets with revenue amounts for concession and wait service sales. As a result, the Mets did not report this amount and owes the City an additional \$4,779 in concession and wait service fees for 2001.

### **\$19,800 in Advertising Revenue Not Reported**

The Mets underreported advertising revenue by \$19,800. Included in the Mets advertising revenue account was a write-off for \$80,000 for bad debt expense. Although we allow the write-off for bad debts to be taken against advertising revenue, the write-off claimed was overstated because their "Summary of Bad Debt" expenses account indicated that the write-off should have been for \$60,200, a difference of \$19,800. This resulted in additional fees due totaling \$1,980.

### **Major League Baseball Deductions Overstated by \$6,929,804**

In accordance with a 1997 agreement (effective retroactively to the 1996 baseball season) between Major League Baseball and the baseball teams, the Mets participate in a Revenue-Sharing program. Article VIII, § 8.1, and Article IX, § 9.4 (a) (ii), allow the Mets to deduct payments to Major League Baseball that relate to gross admission receipts and local cable television receipts from their calculation of rent due the City.

On their rent statement for 2001, the Mets reduced their reported revenues by \$16,764,269. According to the Major League Baseball Revenue Sharing Reports and the Mets' own books and records, the Mets should have deducted only \$9,834,465 (60.03%<sup>1</sup> of the \$16,382,583 actually paid) for 2001. As a result of overstating the deductions claimed on their rent statements by \$6,929,804, the Mets owe the City additional fees totaling \$476,557.<sup>2</sup>

The amount claimed by the Mets as a reduction of revenues on which fees to the City are based bears no relationship to the amount that they actually paid to Major League Baseball. Instead of deducting the portion of actual payments made, the Mets deducted a portion of their net operating revenue from ticket sales and local cable television receipts, thus overstating the deductions claimed. The Mets report their net operating revenue to Major League Baseball, and Major League Baseball uses these amounts in its revenue sharing calculations. Clearly, the amounts deducted by the Mets were not the actual payments as defined in the lease and therefore should not have been deducted.

**Mets Response:** Mets officials responded that: "Sterling objects to the statement that the claimed revenue sharing deduction 'bears no relationship' to the amount paid pursuant to the Major League Baseball revenue sharing system. Sterling's deduction was in fact based on the portion ticket revenues and 'Pay Television' revenues shared with other Major League Baseball clubs, as permitted in the Lease. The dispute arises out of the

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<sup>1</sup> The portion of Mets operating revenue attributable to gross admission and cable television receipts.

<sup>2</sup> The audited deduction, and therefore the amount due the City for 2001, is subject to change since Major League Baseball has not completed its final adjustment for that year.

Comptroller's contention that the deduction should be reduced by the Club's share of revenues earned by other clubs within their territories, which was never contemplated in the Lease and would represent a significant departure from the long-standing practice of the parties. This issue is addressed in further detail in my letter to you of October 10, 2002 regarding the same issue in connection with the 1996-2000 audit (attached)."

**Auditor Comment:** The Mets response misstates and misconstrues our finding. We did not state, as the Mets claim, that "revenue sharing deduction bears no relationship to the amount pursuant to the Major League Baseball revenue sharing system." Rather, we stated that the amount deducted by the Mets bears no relationship to the amount that they actually paid to Major League Baseball. Article VIII, § 8.1, and Article IX, § 9.4 (a) (ii), of the lease allow the Mets to deduct only actual payments made to Major League Baseball. Obviously, given this provision, the Mets are not entitled to take deductions for amounts not actually paid.

### **Stadium Planning Cost Credits Overstated by \$471,934**

The Mets overstated by \$471,934 the credits that they are allowed for new stadium planning costs for 2001. The amended lease allows the Mets to deduct up to \$5 million each year, the planning costs for a new stadium from the fees due the City for the years 2001 through 2005. The Mets are required to provide the City with invoices and other reasonable and customary evidence of these planning costs and submit only those costs that are incurred within that particular calendar year. For calendar year 2001, the Mets reduced their rent payments to the City by \$1,680,296 for such planning costs. However, the Mets claimed \$25,789 in credits that were incurred in 1998, 1999, and 2000—before the lease amendment took effect—and \$446,145 in credits, which were expended in 2002. The Mets should not be reimbursed for costs incurred before the lease amendment took effect, and the Mets should apply the 2002 expenses to the 2002 fees due. Thus, for the audit period, the Mets owe the City an additional \$471,934.

**Mets Response:** Mets officials responded: "The draft report identified credits totaling \$25,789 that predated the Lease amendment permitting such credits. However, those payments represent stadium planning costs that were incurred by the City during earlier stages of stadium planning, but paid by Sterling on behalf of the City. Sterling is therefore entitled to reimbursement of these amounts by the City."

**Auditor Comment:** Contrary to their response, the Mets are not entitled to be reimbursed for costs they claim to have incurred on behalf of the City prior to the 2001 lease amendment. The amendment clearly states that "planning costs means all costs and expenses incurred by or on behalf of Tenant during the **Credit Period.**" (Emphasis added.) The amendment defines the "Credit Period" as "the portion of the term of the Lease commencing on January 1, 2001 and ending on the earlier to occur of December 31, 2005 or the expiration or sooner termination of the Lease." Clearly, costs incurred in 1998, 1999, and 2000 do not fall within the terms of the amendment.

**\$203,126 in Unallowable Maintenance Costs Claimed**

The Mets took an unallowable credit of \$203,126 for maintenance credits. Under the terms of the lease, maintenance of Shea Stadium is the responsibility of the City. The lease does not contain a provision that allows the Mets to receive reimbursement for maintenance work that they claim to have performed. Article XVIII of the lease requires that the City maintain the “Stadium Premises” in good condition and good repair, and Articles XVI and XVII requires that the Mets maintain the Diamond Vision Board and the playing field. Wherever the maintenance work was done on the Stadium premises, and for whatever reason the Mets felt obligated to perform the work, the lease makes no provision for the Mets to deduct such costs from the fees due.

Moreover, in reaction to the Mets’ taking maintenance credits against their fees on their rent statement, Parks, in a letter to the Mets dated July 1, 2002, indicated to the Mets that the lease does not permit them to withhold rent payments for maintenance performed on behalf of Parks, or for any other reason, and requested that the Mets remit the “\$203,126 owed to the City immediately.” To date the Mets have not remitted such payment; therefore, the Mets owe the City an additional \$203,126.

**Mets Response:** Mets officials responded that: “The draft report correctly states that maintenance of Shea Stadium is the responsibility of the City. That is precisely the basis for Sterling’s claim for reimbursement of its expenditures in performing maintenance on behalf of the City. In each of the cases, Sterling performed time-sensitive maintenance items after the City failed to do so in a timely fashion. The credit amount was supported by detailed documentation of each of the expenditures involved. As the City has failed to reimburse Sterling for these expenditures that Sterling incurred two years ago, Sterling had no choice but to recoup the expenditures in this manner.”

**Auditor Comment:** As previously, stated there is **no** provision in the lease that allows the Mets to deduct maintenance and repairs costs from their rent. We should also note that the Mets are being somewhat disingenuous when they contend that the needed maintenance was “time-sensitive.” The \$203,126 included \$12,445 for painting; \$8,119 for replacement of front Diamond Club doors; \$8,119 for the installation of a flag at C gate; \$2,111 to repair the lettering at all gates above the entrances to the stadium; \$2,317 for suite elevator carpeting, etc. We fail to see how any of these expenditures can be characterized or defended as time-sensitive.

**\$3,381,816 Outstanding from Prior Audit Assessments**

The Mets have not paid the City \$3,381,816 that resulted from findings contained in prior audits—\$3,298,630 from audit #FN02-125A, issued January 16, 2003, which covered 1996 through 2000; and \$83,186 from audit #FN97-098A, issued June 16, 1997, which covered 1990 through 1996.

**Mets Response:** Mets officials responded that: “As of this date [May 21, 2003], Sterling has made payment in full of all undisputed amounts due under prior rent audits. Any and all amounts still identified by the City as outstanding represent disputed items addressed in prior correspondence.” To date, the Mets paid \$590,113 of the \$4,560,631 owed.

**Auditor Comment:** We note that the balance of \$3,970,518 remains unpaid and that this disputed balance, as mentioned in the Parks response, was referred to the Law Department for settlement.

### **Recommendations**

The Mets should:

1. Pay the City \$1,178,815 for outstanding fees due as a result of this audit, and \$3,381,816 that is owed the City from prior audit assessments.
2. Ensure that all Skybox, concession, and advertising revenues are reported on their rent statements to the City.
3. Calculate Revenue-Sharing payment deductions based on actual net payments to Major League Baseball.
4. Include as credits only those stadium planning costs incurred within the calendar year.
5. Cease deducting maintenance expenses as credits from the rent owed the City.

**Mets Response:** Mets officials responded that: “As of this date [May 21, 2003], Sterling has made payment in full of all undisputed amounts due under prior rent audits. Any and all amounts still identified by the City as outstanding represent disputed items addressed in prior correspondence.”

**Auditor Comment:** To date, the Mets paid \$590,113 of the \$4,560,631 owed. The balance of \$3,970,518 remains unpaid and that this disputed balance, as mentioned in the Parks response, was referred to the Law Department for settlement.

Parks should:

6. Ensure that the Mets pay the City \$4,560,631 in fees due from this and prior audits, and comply with the report’s four other recommendations. In the event that the Mets and Parks continue to disagree on the fees due, Parks can take immediate action to resolve the dispute either through the lease’s panel arbitration process or through appropriate litigation.

**Parks Response:** Parks responded that: “DPR has referred the additional fee items and other issues contained in the audit to the Law Department’s Commercial and Real Estate Litigation Division (Law Department) for settlement. . . . Law Department Officials have met with the Mets to discuss the issues and moneys owed.”





City of New York  
Parks & Recreation

APPENDIX I

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Alessandro G. Olivieri  
Counsel

(212) 360-1314  
alessandro.olivieri@parks.nyc.gov

July 1, 2002

VIA FIRST CLASS MAIL

David P. Cohen, Esq.  
Vice President & General Counsel  
New York Mets National League Baseball Club  
Shea Stadium  
Flushing, New York 11368

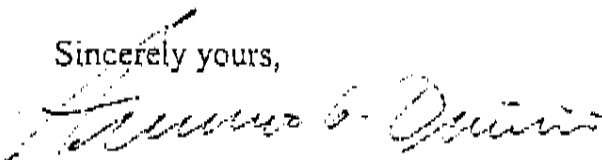
Dear Mr. Cohen:

Assistant Commissioner Imohiosen requested that I respond to your May 29, 2002 letter concerning *inter alia* withheld rent payments for 2001.

Parks is unaware of any provision in our lease with the Mets that permits withholding rent payments for maintenance performed on behalf of Parks or for any other reason. In addition, numerous items on your list appear to be for locations that the Mets are responsible for maintaining. Finally, most of the items that you list as maintenance costs were performed without prior notice to Parks. This lack of notice prevented Parks for performing any of the work, which in certain circumstances we might have agreed to complete under existing contracts.

Parks requests that the Mets remit the remaining \$203,125.83 owed to the City immediately. Upon receipt of this payment, Parks would be pleased to meet with the Mets concerning any areas of disputed responsibilities between the Mets and the City in order to resolve these issues on a timely basis.

Sincerely yours,



Alessandro G. Olivieri

c: Imohiosen



*David P. Cohen*  
Vice President and  
General Counsel

May 21, 2003

**VIA FACSIMILE**  
**ORIGINAL VIA FEDERAL EXPRESS**

Greg Brooks  
Deputy Comptroller  
The City of New York  
Office of the Comptroller  
1 Centre Street  
New York, NY 10007-2341

Re: 2001 Audit Report for Sterling Mets, L.P. ("Sterling")

Dear Mr. Brooks:

I am writing in response to your letter of May 6, 2003 to Fred Wilpon, soliciting our comments to the draft report prepared by the Comptroller's Office in connection with the above-referenced rent audit. The following are our comments, organized according to the section headings in your letter:

Introduction

The draft report mischaracterizes the nature of the 2001 amendments to the Restated Agreement between Sterling and the City (the "Lease"). The amendments did not "allow the Mets to exclude" revenues that had previously been shared with the City; instead, they clarified two disputed provisions in the Lease, codifying Sterling's position that home plate signage revenues were not included within the definition of "scoreboard advertising revenues" pursuant to Section 16.2 of the Lease, and that national cable revenues were not "Pay Television Receipts" as defined in Section 8.1 of the Lease.

The draft report also inaccurately states that "a change in ownership assigned the lease to Sterling Mets, L.P." In fact, following the consolidation of the equity interests in the partnership formerly known as Sterling Doubleday Enterprises, L.P., the partnership

amended its partnership certificate in order to effect a name change to Sterling Mets, L.P. The Lease was never assigned.

Alleged Overstatement of Major League Baseball Deductions

Sterling objects to the statement that the claimed revenue sharing deduction "bears no relationship" to the amount paid pursuant to the Major League Baseball revenue sharing system. Sterling's deduction was in fact based on the portion of ticket revenues and "Pay Television" revenues shared with other Major League Baseball clubs, as permitted in the Lease. The dispute arises out of the Comptroller's contention that the deduction should be reduced by the Club's share of revenues earned by other clubs within their territories, which was never contemplated in the Lease and would represent a significant departure from the long-standing practice of the parties. This issue is addressed in further detail in my letter to you of October 10, 2002 regarding the same issue in connection with the 1996-2000 audit (attached).

Alleged Overstatement of Stadium Planning Cost Credits

The draft report identified credits totaling \$25,789 that predated the Lease amendment permitting such credits. However, those payments represent stadium planning costs that were incurred by the City during earlier stages of stadium planning, but paid by Sterling on behalf of the City. Sterling is therefore entitled to reimbursement of these amounts by the City.

Credit for Maintenance costs

The draft report correctly states that maintenance of Shea Stadium is the responsibility of the City. That is precisely the basis for Sterling's claim for reimbursement of its expenditures in performing maintenance on behalf of the City. In each of the cases, Sterling performed time-sensitive maintenance items after the City failed to do so in a timely fashion. The credit amount was supported by detailed documentation of each of the expenditures involved. As the City has failed to reimburse Sterling for these expenditures that Sterling incurred two years ago, Sterling had no choice but to recoup the expenditures in this manner.

Amounts Related to Prior Audits

As of this date, Sterling has made payment in full of all undisputed amounts due under prior rent audits. Any and all amounts still identified by the City as outstanding represent disputed items addressed in prior correspondence.

Please feel free to contact me if you have any questions regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. P. C.', written in a cursive style.

pc: Jeffrey S. Wilpon  
David C. Howard  
Leonard S. Labita

NEW YORK



NATIONAL LEAGUE BASEBALL CLUB

October 10, 2002

*David P. Cohen*  
Vice President and  
General Counsel

VIA FEDERAL EXPRESS

Greg Brooks  
Deputy Comptroller  
The City of New York  
Office of the Comptroller  
1 Centre Street  
New York, NY 10007-2341

Re: Audit Report for Sterling Doubleday Enterprises, L.P. ("Sterling")

Dear Mr. Brooks:

I am writing in response to your letter of September 27, 2002, soliciting our comments to the final draft report of the Comptroller's Office in connection with the above-referenced rent audit for 1996-2000.

Of the several issues raised in the audit report, only two remain in dispute: the calculation of advertising revenues (which pertains to the 1995 audit as well), and the application of deductions related to sharing of revenues with other Major League Baseball entities. We do not take issue with any of the other issues raised in the report, and will remit a check to the Parks Department to resolve those undisputed issues:

The following summarizes our position with respect to the two outstanding issues.

Advertising Revenue

The Comptroller contends that Sterling failed to report \$12,915,547 attributable to home plate advertising during 1996-2000 and \$409,840 from advertising located behind first and third base during 1998. If Sterling were to remit to the City 10% of the advertising revenues in question, the resulting additional rent payment would total \$1,332,539. Additionally, the Comptroller contends that Sterling should remit a payment of \$83,136, representing 10% of the home plate advertising revenue generated by Sterling in 1995.

Sterling has previously addressed this issue in response to the 1995 audit. As set forth in our letter to Robert D. Liwer of April 24, 1997, neither the letter nor the spirit of

the lease agreement entitles the City to share in the revenues from the signage in question, due to the fact that both signs are predominantly television advertising signs, not stadium advertising signs.

Contrary to the Comptroller's assertion at page 6 of the report, the agreement does not require Sterling to share 10% of all advertising revenues with the City. Instead, Section 16.2 of the agreement provides that Sterling shall share "scoreboard advertising revenue," which is defined to include only the advertising signs placed on the scoreboards and Diamond Vision Board at the Stadium. Moreover, Section 24.4 of the agreement provides that other than scoreboard advertising revenue and home cable rights fee revenue, "the City shall not be entitled to any part of any advertising revenues received by [Sterling] or any of its Concessionaires." As such, the express terms of the agreement do not require Sterling to share revenues from the home plate, first base or third base signage.<sup>1</sup>

Despite the agreement's narrow reference to scoreboard advertising, Sterling has shared with the City substantial revenues from other advertising signs at the Stadium. Since 1985, Sterling has added a number of signs, including advertising on the outfield fence, that are indistinguishable in character and purpose from the scoreboard signs. In such cases, Sterling has applied the 10% sharing arrangement, in recognition of the functional equivalency of those signs and the scoreboard signs. The rotating home plate, first base and third base signs, however, are of an entirely different character: All of them are positioned for optimal viewing by television viewers, not fans seated in the stadium. The signs are substantially smaller than typical stadium advertising, and (particularly with respect to the home plate signage) are visible to only a fraction of the people in the stands. The signs are sold based not on stadium attendance but on television ratings. In short, the revenue generated from these signs constitutes television advertising revenue, not scoreboard or even stadium advertising revenue<sup>2</sup>. As such, they fall within the category of "other advertising revenues" received by Sterling, which are expressly exempt from sharing under Section 24.4 of the agreement<sup>3</sup>.

Significantly, the home plate, first base and third base signs could all easily be replaced with advertisements electronically inserted in Sterling's game telecasts. Such advertising would be substantially equivalent to the current rotating signage – clearly visible to television viewers, but invisible to stadium patrons – but would undoubtedly be beyond the City's reach, as they would have no physical nexus to the Stadium whatsoever. To suggest that television advertising revenues must be shared with the City if they derive from signs affixed to the stadium structure, but are exempt if they are

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<sup>1</sup> Section 24.3 does require Sterling to obtain the City's consent before adding any additional signage, but the City does not contend that it withheld consent with respect to any of the signs at issue.

<sup>2</sup> In fact, the revenue from these signs is classified as broadcasting revenue in Sterling's internal books and records.

<sup>3</sup> Sterling did not remit 10% of its revenues from first and third base signage for the 1998 season (the year such signs were introduced), but did remit that amount for 1999 and 2000. Therefore, although the audit report only references the amount claimed to be due for 1998, the entire amount for the three-year period is in dispute.

superimposed by electronic means in precisely the same locations would be to place form over substance.

### Revenue Sharing Deductions

The Comptroller's focus on form over substance is equally apparent in the contention that Sterling overstated its deductions for the portions of gate and cable receipts shared with other Major League teams. The Comptroller contends that Sterling should have deducted \$19,645,398 for revenue sharing over the course of the audit period, rather than the \$47,411,806 that Sterling deducted, which would inflate the rent due by an additional \$1,834,338. However, the City's approach to this issue flies in the face of logic, and ignores the clear, long-standing and unchallenged past practice of the parties.

As in most sports leagues, individual baseball clubs are entitled to exploit certain revenue streams within their defined local territories, but are required to share some portion of those local revenues with the other teams in the league. Until 1996, this was accomplished in baseball through a series of individual payments from home clubs to visiting clubs. For example, for each of its home games in 1995, Sterling was obligated to pay 40 cents per paid admission to the visiting team, and, if the game was televised on cable, to remit to the visitor 25% of the resulting cable receipts. In recognition of this obligation, the agreement permits Sterling to deduct the portions of its ticket and cable revenues that it is required to remit to other clubs before it calculates the percentage rent to be paid to the City.

For each of its road games, Sterling received the same percentages of the home team's ticket and cable revenues. Because these revenues from road games obviously did not derive from Sterling's use of Shea Stadium, the City never contended that it should share in them.

In 1996, the Major League Clubs modified their revenue sharing system. The new system incorporated several substantive modifications, including the expansion of the types of revenues to be shared, and a shift away from sharing with particular visiting clubs and towards sharing with all clubs on an equal basis. The new system also included one wholly procedural change relating to the method of payment. Rather than sharing revenues through a series of club to club transactions, the new system called for all payments between clubs to be combined into a single net payment to or from each club. In essence, Major League Baseball's central office became a clearinghouse for the payments that had been made directly between individual clubs. As a result of that procedural change, the Comptroller now asserts, for the first time, that Sterling must share with the City the road revenues that it receives from other clubs through MLB.

The Comptroller contends that Sterling should be entitled to a deduction based only on its net revenue sharing payments. For example, although in 1999 Sterling shared more than \$19 million of its locally generated revenues, the Comptroller contends that

Sterling's deduction should be based on its "net" revenue sharing payment of \$10.8 million. The Comptroller's contention ignores the fact that the \$8 million paid to Sterling represents Sterling's share of revenues generated at other clubs' facilities. In other words, the Comptroller seeks to treat the \$8 million received by Sterling as a return of Sterling's own local revenues, when it was in fact a payment to Sterling of its share of other clubs' local revenues. The result of this mischaracterization would be for the City, in effect, to receive a share of Sterling's extraterritorial revenues<sup>4</sup>. Nothing in the lease permits the City to share in any such revenue streams.

The Comptroller's misunderstanding of the revenue sharing procedure is evident from Footnote 2 on page 8 of the audit report. There, the Comptroller states that Revenue Sharing "did not exist" prior to 1996. In fact, not only has revenue sharing existed throughout the term of the agreement, the fundamental elements of the revenue system remain unchanged. Sterling has always been required to pay to other clubs a portion of its home gate and cable receipts. Sterling has always received from other clubs a portion of their home gate and cable receipts. When the payment (of home receipts) and receipt (of road receipts) were consummated separately, the City permitted Sterling to deduct the full amount of its home revenue payments, and made no attempt to cause Sterling to share (or offset against its deduction) any portion of its road revenue receipts. Now that the payment and receipt are combined into a single transaction, and only one check is required rather than two, the City claims that Sterling's road receipts must be offset against the allowable deduction related to Sterling's home receipts. Again, such an argument would elevate form over function, and would be patently unfair to Sterling.

Even without the Comptroller's aggressive interpretation, the deduction for revenue sharing set forth in the agreement is far narrower than the current Major League Baseball revenue sharing framework. The agreement permits Sterling to deduct only the portion of its cable and gate receipts that it shares, and does not provide for any deduction with respect to sharing of revenues from advertising signage, restaurant and concession sales, parking, or suite revenues. This discrepancy was not intended, but results from the outdated nature of the agreement, which was entered into at a time when Sterling's revenue sharing obligations were limited to cable and gate. Despite the obvious unfairness of this provision, Sterling has never claimed any revenue sharing deduction for these other revenue sources. Since 1995, due to the extraordinary growth of the revenues generated by Sterling at the facility, combined with the unfair limitation of the allowable deduction, Sterling's total rent has grown from under \$2 million to nearly \$8 million despite substantial increases in Sterling's revenue sharing obligations. Against that backdrop, the City's effort to further reduce the deductibility of revenue sharing payments through an unprecedented interpretation of the agreement is particularly egregious.

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<sup>4</sup> It should be noted that a very small portion of the amount received by Sterling does represent a partial return of Sterling's contribution. The percentage returned varied from year to year based on the phase-in of the revenue sharing plan, but at full implementation, Sterling would have received back roughly 2.5% of the amount it contributed (or \$200,000 of the \$8 million of disputed deductions in 1999).



Conclusion

In light of the foregoing, Sterling recommends that the Comptroller revisit the conclusions embodied in the draft audit report with respect to the issues raised herein, and to make changes to such draft report to accommodate Sterling's objections as stated above.

Please feel free to contact me if you have any questions regarding the foregoing.

Sincerely,



pc: Jeffrey S. Wilpon  
David C. Howard  
Leonard S. Labita



City of New York  
Parks & Recreation

**ADDENDUM II**

(Page 1 of 3)

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Joanne G. Imohiosen  
Assistant Commissioner  
Revenue

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

May 21, 2003

**BY FAX AND MAIL**

Mr. Greg Brooks  
Deputy Comptroller  
The City of New York  
Office of the Comptroller  
Executive Offices  
1 Centre Street  
New York, NY 10007

**Re: Draft Audit Report on Sterling Mets, L.P. (New York Mets)  
January 1, 2001 through December 31, 2001 FN 03-115A, Dated May 6, 2003**

Dear Mr. Brooks:

This letter represents the Parks Department's (DPR), response to the Comptroller's Draft Audit Report on Sterling Mets, L.P. (Mets) dated May 6, 2003.

DPR has referred the additional fee items and other issues contained in the audit to the Law Department's Commercial and Real Estate Litigation Division (Law Department) for settlement. Previously, DPR had forwarded detailed documentation to the Law Department to initiate action against the Mets to recover the amounts owed under the Comptroller's January 16, 2003 audit report, FN02-125A covering the period April 1, 1996 through December 31, 2000.

Law Department Officials have met with the Mets to discuss the issues and moneys owed. To date the following items have been resolved:

Greg Brooks  
 May 21, 2003  
 Page 2

**Undisputed Amounts Payable under  
Audit Report FN02-125A Dated January 16, 2003**

• Underreported Concessions Receipts	\$108,248	
• Underreported Skybox Revenue	<u>8,522</u>	
Total Resolved Fees – Audit Report No. FN02-125A		\$116,770

**Undisputed Amounts Payable under Draft  
Audit Report FN03-115A Dated May 6, 2003**

• Underreported Skybox Revenue	\$ 20,439	
• Underreported Concession Receipts	4,779	
• Underreported Advertising	1,980	
• Overstated New Stadium Planning Cost Credits	<u>446,145</u>	
Total Resolved Fees – Audit Report No. FN03-115A		<u>\$473,343</u>

**TOTAL AMOUNT PAID BY METS (5/15/03) \$590,113**

The remaining items under negotiation by the Law Department with the Mets are as follows:

	<u>Outstanding Balances</u>	
<b><u>Audit Report FN02-125A Dated January 16, 2003</u></b>		
• Underreported Stadium Advertising	\$1,347,522	
• Unpaid Prior Audit Assessment – Stadium Adv.	<u>83,186</u>	
Total Underreported Stadium Advertising	\$1,430,708	
• Overstated Revenue-Sharing Deductions (1996-2000)	<u>\$1,834,338</u>	
Unpaid Balance		\$3,265,046
<b><u>Audit Report FN03-115A Dated May 6, 2003</u></b>		
• Overstated Revenue-Sharing Deductions (2001)	\$ 476,557	
• Unauthorized Reimbursement Credits	203,126	
• Unpaid Balance – New Stadium Planning Cost Credits	<u>25,789</u>	
Unpaid Balance		\$ 705,472
<b>TOTAL REMAINING UNPAID AUDIT BALANCES</b>		<b><u>\$3,970,518</u></b>

Greg Brooks  
May 21, 2003  
Page 3

DPR will keep the Comptroller's Office informed of any additional amounts recovered as they occur.

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

Sincerely,



Joanne Imohiosen

cc: Comm. Adrian Benepe  
David Stark  
Francisco Carlos  
Susan Kupferman, Mayor's Office of Operations