

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 York Avenue Tennis, LLC, with Certain Provisions of Its License Agreement and Payment of Fees Due the City

FM06-125A

June 7, 2007



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of York Avenue Tennis, LLC, with certain provisions of its agreement with the New York City Department of Parks and Recreation.

Under the provisions of the agreement, York Avenue Tennis is required to pay the City fees based on reported gross receipts derived from the operation of an indoor tennis facility. We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials from York and the Parks Department, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

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

William C. Thompson, Jr.

WCT/fh

Report: FM06-125A
Filed: June 7, 2007

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

**Audit Report on the Compliance of
York Avenue Tennis, LLC, with Certain Provisions of Its
License Agreement and Payment of Fees Due the City**

FM06-125A

AUDIT REPORT IN BRIEF

The audit determined whether the York Avenue Tennis, LLC, (York) accurately reported its total gross receipts, properly calculated the license fees due the City, paid its license fees on time; and complied with certain major non-revenue terms of its license agreement (i.e., carried the proper types and amounts of insurance, maintained the proper security deposit; and paid for its utilities).

On August 13, 1997, the City's Department of Parks and Recreation (Parks) awarded York Avenue Tennis, LLC, a 10-year license agreement that expires on April 29, 2007. The license agreement requires York, located under the 59th Street Bridge in Manhattan, to provide the public with an indoor tennis facility and a refurbished clubhouse. York is required to pay the City minimum annual fees of \$315,000 in the first year, escalating annually to \$488,668 in the tenth year, or 25 percent of gross receipts derived from the operation of the license agreement, whichever is greater. A late charge of 2 percent per month is applied to license fees that are not paid on time. The agreement states that gross receipts shall include all funds received by the licensee from its tennis operation, without any deductions, and all funds received from the sale of food, wares, merchandise, or services of any kind resulting directly or indirectly from the operation of the license. The agreement was amended on July 21, 2004, to permit York to deduct professional fees paid to tennis instructors functioning as independent contractors from the gross receipts derived from its operations.

York is also required to carry Workers' Compensation insurance; carry a \$1 million employer liability and general liability insurance policy that names the City as an additional insured; maintain a \$122,167 security deposit with the City; and pay all required utility charges. For the period May 1, 2004, to April 30, 2006, York reported revenues totaling \$5,566,035 and paid the City \$1,391,509 in license fees.

Audit Findings and Conclusions

York generally adhered to the provisions of its license agreement with the City. York recorded its revenue fairly in its books and records, accurately calculated and paid its minimum annual fee payments on time, maintained the required property and liability insurance that named the City as an additional insured party, contributed the required \$122,167 as security deposit, and paid the required charges for utilities and water and sewer use. York had an adequate system of internal controls over its revenue and recording functions. However, York made a non-allowable deduction from gross revenue on its reported gross revenue submitted to the City for operating years 2005 and 2006.

Specifically, on the gross receipts statements that York submitted to Parks, York improperly deducted from the revenue reported \$149,728 in “professional fees” paid to employees who were not functioning as independent contractors—those individuals who give instruction in the rules, methods and techniques of the game of tennis. These deductions totaled \$76,579 for the 2005 season and \$73,149 for the 2006 season. Consequently, York owes the City \$37,432 in additional fees (\$19,145 for 2005 and \$18,287 for 2006), plus \$11,465 for late charges.

Audit Recommendations

We recommend that York Avenue Tennis, LLC:

1. Pay the City \$48,897 in additional license fees and late charges.
2. Deduct from gross revenue professional fees paid only to those individuals receiving 1099 tax statements.
3. Annually provide Parks with a schedule detailing the names and the amounts paid to each tennis instructor functioning as an independent consultant. The total amount reported on the schedule should equal the amount of professional fees deducted from gross revenue.
4. Immediately cease deducting any payment from gross revenue made directly or indirectly to any director, officer, member, partner, affiliated party, or employee who has any interest in York Avenue Tennis, LLC.

We recommend that Parks should:

5. Require York to cease deducting the portion of gross receipts it derived from tennis services provided at other locations and the portion of professional fees paid to its Director, affiliated third-parties, and its employees. Should York fail or refuse to implement such corrective action, Parks should consider exercising its option to terminate the agreement.

6. Ensure that York pays the City \$48,897 in additional license fees and late charges.
7. Use the recommended schedule, to be provided by York, to verify the amount of professional fees deducted from gross revenue.
8. Ensure that York complies with the recommendations made in this report.

INTRODUCTION

Background

On August 13, 1997, the City's Department of Parks and Recreation (Parks) awarded York Avenue Tennis, LLC (York) a 10-year license agreement that expires on April 29, 2007. The license agreement requires York, located under the 59th Street Bridge in Manhattan, to provide the public with an indoor tennis facility and a refurbished clubhouse. York is required to pay the City minimum annual fees of \$315,000 in the first year, escalating annually to \$488,668 in the tenth year, or 25 percent of gross receipts derived from the operation of the license agreement, whichever is greater.

Minimum annual fees are paid in six equal installments and are payable to the City on the first day of October through March of each operating year. In addition, any additional fees resulting from gross receipts and submission of a verified Statement of Gross Receipts become due 30 days after the end of each indoor tennis season. A late charge of 2 percent per month is applied to license fees that are not paid on time. The agreement states that gross receipts shall include all funds received by the licensee from its tennis operation, without any deductions, and all funds received from the sale of food, wares, merchandise, or services of any kind resulting directly or indirectly from the operation of the license. The agreement was amended on July 21, 2004, to permit York to deduct professional fees paid to tennis instructors functioning as independent contractors from the gross receipts derived from its operations.

York is also required to carry Workers' Compensation insurance; carry a \$1 million employer liability and general liability insurance policy that names the City as an additional insured; maintain a \$122,167 security deposit with the City; and pay all required utility charges. For the period May 1, 2004, to April 30, 2006, York reported revenues totaling \$5,566,035 and paid the City \$1,391,509 in license fees

Objectives

Our audit objectives were to determine whether York Avenue Tennis, LLC:

- accurately reported its total gross receipts, properly calculated the license fees due the City, and paid its license fees on time; and
- complied with certain major non-revenue terms of its license agreement (i.e., carried the proper types and amounts of insurance, maintained the proper security deposit; and paid for its utilities).

Scope and Methodology

The scope period of the audit is from May 1, 2004, through April 30, 2006. To achieve our audit objectives, we reviewed and abstracted the license agreement of August 13, 1997, and the amendment dated July 21, 2004. We also reviewed gross receipts reports, insurance

certificates, and other relative documents on file with Parks. We analyzed Parks's Concessionaire Ledger for the amounts reported and paid the City, and determined whether those amounts were paid on time.

We evaluated York's internal controls over its operational activities and revenue functions by interviewing York's Director, Manager, Assistant Manager, and front desk clerk. To assess its controls over revenue, we conducted a preliminary observation of the facility on April 3, 2006, and participated in a tennis lesson on April 17, 2006, to obtain an understanding of the services offered. We performed walk-throughs of York's tennis facility on April 20 and 21, 2006, and observed its computerized point-of-sale register system, check-in procedures, scheduling of activities, payment routines, and close-out process. We documented our understanding of York's operations through written narratives, flowcharts, and a diagram of the facility.

To determine whether York accurately reported its gross receipts to the City, we met with York's accountant on May 12, 2006. At this meeting, the accountant explained how gross receipts are reported to Parks and provided copies of various documents (e.g., tax statements, banking and financial statements, etc.). We performed an analytical review of York's gross receipts statements from May 2001 through April 2006, and of Parks's annual schedule of reconciliation of monthly gross receipts reported by York from operating years 2001 through 2005 to determine any significant fluctuations in revenue. We traced the receipts reported by York for operating year 2005 to its books and records including the sales journal report, department sales report, monthly revenue report, and cash flow report for accuracy. We requested supporting documentation of York's credit card sales to complete our gross receipts analysis. In addition, we traced York's receipts data from the trial balance, income statement, and federal tax returns for consistency.

To obtain an understanding of York's computerized system, we conducted a walk-through with York's director on April 24, 2006. The director authorized our IT auditor to download copies of the Microbiz processed data.¹ Using this data, we evaluated the reliability and integrity of the sales receipts by performing tests of controls. We judgmentally selected the month of October 2005 (the month with the highest gross receipts during operating year 2006 season) to test the sales transactions. These transactions were traced from the sales journal report to the receipt book and court sheets; then the totals were compared to the monthly revenue report for accuracy and integrity. In addition, we reviewed the invoice numbers in the Microbiz-generated sales journal report to ensure that they were automatically and sequentially numbered. The results of our test, while not projectable to all sales receipts for the year, provided us assurance that the sales transactions reported were reliable.

To determine whether York appropriately deducted professional fees (those payments made to tennis instructors functioning as independent contractors) from gross receipts, we reviewed the itemized category reports and correspondence submitted to York's accountant. We generated a list of names of those whose services were deducted from York's gross receipts and obtained a list of responsibilities for those individuals. We also summarized the rates in all the

¹ Microbiz is a point-of-sale computer system integrated with a cash drawer.

tennis instructors' contracts and compared them to the rates they were paid for operating years 2005 and 2006. To determine whether professional fees were appropriately deducted from gross receipts, we reviewed W-2 and 1099 tax statements.²

Finally, we determined whether York complied with certain major non-revenue requirements of its license agreement, such as whether it carried the proper types and amounts of insurance naming the City as an additional insured; maintained the proper security deposit; and paid its utility charges.

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

Discussion of Audit Results

The matters covered in this report were discussed with York and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to York and Parks officials and discussed at an exit conference held on January 30, 2007. On February 28, 2007, we submitted a draft report to these officials with a request for comments. Written responses were received from York on March 21, 2007, and from Parks on March 27, 2007.

York officials responded that they agree with all of the report's recommendations and paid the City \$48,897 in additional fees and interest on March 15, 2007. Parks officials responded that they also agree with the report's recommendations and that they received a check for the full audit assessment in the amount of \$48,897.

The full texts of the responses are included as addenda to this report.

² Employers must complete a Form W-2 for each employee to whom they pay a salary, wage, or other compensation as part of the employment relationship. Generally, an employer must withhold federal income taxes and pay social security and Medicare taxes, and unemployment taxes on wages paid to an employee. Usually, an employer does not have to withhold or pay taxes on payments to independent contractors and is required to provide an independent contractor with a Form 1099 indicating all money paid to that independent contractor was paid on an untaxed basis. It is then the responsibility of the individual to pay the appropriate taxes.

FINDINGS

York generally adhered to the provisions of its license agreement with the City. York recorded its revenue fairly in its books and records, accurately calculated and paid its minimum annual fee payments on time, maintained the required property and liability insurance that named the City as an additional insured party, contributed the required \$122,167 as security deposit, and paid the required charges for utilities and water and sewer use. York had an adequate system of internal controls over its revenue and recording functions. However, York made a non-allowable deduction from gross revenue on its reported gross revenue submitted to the City for operating years 2005 and 2006. As a result, York owes the City a total of \$48,897 in additional license fees and calculated late charges.

\$149,728 in Non-Allowable Deduction

On the gross receipts statements that York submitted to Parks, York improperly deducted from the revenue reported \$149,728 in “professional fees” it paid to six employees who were not functioning as independent contractors. The deduction totaled \$76,579 for the 2005 season and \$73,149 for the 2006 season. Consequently, York owes the City \$37,432 in additional fees—\$19,145 for 2005 and \$18,287 for 2006. According to the first amendment to the license agreement, Article II, §2.1 (g)(iii), states, “Gross receipts shall include only Licensee’s net receipts in connection with all services provided by tennis instructors functioning as independent contractors.” The agreement further defines the duties of a tennis instructor as those who “give instruction in the rules, methods and techniques of the game of tennis.”

Our review, however, found that five of the six individuals received a W-2 tax statement, indicating that York paid the employment taxes on behalf of each employee. An independent contractor is paid on an untaxed basis and is therefore required to file and pay appropriate taxes. Further, York could not provide employment contracts indicating whether the duties and responsibilities for three of these five individuals included providing instruction. Even though York provided employment contracts for two of the five individuals, their job responsibilities did not include giving instruction. It should also be noted that York’s court sheets, which indicate the name of the individual providing instruction to a particular customer, did not include the names of any of these five individuals.

For the remaining individual, we found that York’s Director of Tennis did not comply with the payment terms of the agreement by improperly deducting \$25,200 each year in professional fees paid to himself through a company known as Bridge Tennis. These payments were inappropriate because the Director of Tennis is the owner of Bridge Tennis and a partner of York Avenue Tennis, LLC. York’s license agreement clearly prohibits employment practices of this nature. Exhibit A, Article XL, of the agreement, states:

“Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the services herein provided.

Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it.”

Consequently, York’s practice of deducting professional fees paid to its Director, through an affiliated third-party, and to its employees, who are not functioning as independent contractors, violates the terms of the agreement and results in reduced fees payable to the City. It should also be noted that we could not confirm whether York’s Director of Tennis actually provided tennis instruction. In fact, our review of the court sheets did not reveal one instance where the Director of Tennis’ name was listed as providing instruction to a particular customer.

Late Charges of \$11,465 Due the City

Exhibit A, Article XXXV, of York’s agreement with the City requires that York pay the City late charges in accordance with the following:

“In the event that payment of license fees, percentage fees or other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of 2% per month (computed on a thirty day month) from the date it was due and payable on the sums so overdue shall become immediately due and payable. . . . If the annual late fees and all arrears (including prior 2% charges) are not paid in full by the 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment.”

Based on the additional fees owed by York for its non-allowable deduction totaling, \$149,728, we calculated that York owes the City \$11,465 in late charges. (See Appendix for details.)

RECOMMENDATIONS

We recommend that York Avenue Tennis, LLC:

1. Pay the City \$48,897 in additional license fees and late charges.
2. Deduct from gross revenue professional fees paid only to those individuals receiving 1099 tax statements.
3. Annually provide Parks with a schedule detailing the names and the amounts paid to each tennis instructor functioning as an independent consultant. The total amount reported on the schedule should equal the amount of professional fees deducted from gross revenue.
4. Immediately cease deducting any payment from gross revenue made directly or indirectly to any director, officer, member, partner, affiliated party, or employee who has any interest in York Avenue Tennis, LLC.

York Response: “We have agreed to your recommendation to pay the City \$48,897. On March 15, 2007 we hand delivered to Parks a check for \$37,432 in additional fees plus \$11,465 interest. . . . York also agrees to the Comptroller’s other three recommendations.”

We recommend that Parks should:

5. Require York to cease deducting the portion of gross receipts it derived from tennis services provided at other locations and the portion of professional fees paid to its Director, affiliated third-parties, and its employees. Should York fail or refuse to implement such corrective action, Parks should consider exercising its option to terminate the agreement.
6. Ensure that York pays the City \$48,897 in additional license fees and late charges.
7. Use the recommended schedule, to be provided by York, to verify the amount of professional fees deducted from gross revenue.
8. Ensure that York complies with the recommendations made in this report.

Parks Response: Parks stated that it has received a check for the full audit assessment in the amount of \$48,897 and has instructed York to comply with all audit recommendations.

APPENDIX

York Avenue Tennis, LLC.
Schedule of Late Charges

Due Date	License Fees Due	Accumulated Balance Due	Period		Rate	Late Charge
			From	To		
5/29/2005	\$ 19,145.00	\$19,145.00	6/1/2005	6/30/2005	2.00%	\$382.90
		19,527.90	7/1/2005	7/31/2005	2.00%	390.56
		19,918.46	8/1/2005	8/31/2005	2.00%	398.37
		20,316.83	9/1/2005	9/30/2005	2.00%	406.34
		20,723.16	10/1/2005	10/31/2005	2.00%	414.46
		21,137.63	11/1/2005	11/30/2005	2.00%	422.75
		21,560.38	12/1/2005	12/31/2005	2.00%	431.21
		21,991.59	1/1/2006	1/31/2006	2.00%	439.83
		22,431.42	2/1/2006	2/28/2006	2.00%	448.63
		22,880.05	3/1/2006	3/31/2006	2.00%	457.60
		23,337.65	4/1/2006	4/30/2006	2.00%	466.75
		23,804.40	5/1/2006	5/31/2006	2.00%	476.09
5/29/2006	18,287.00	42,567.49	6/1/2006	6/30/2006	2.00%	851.35
		43,418.84	7/1/2006	7/31/2006	2.00%	868.38
		44,287.22	8/1/2006	8/31/2006	2.00%	885.74
		45,172.96	9/1/2006	9/30/2006	2.00%	903.46
		46,076.42	10/1/2006	10/31/2006	2.00%	921.53
		46,997.95	11/1/2006	11/30/2006	2.00%	939.96
		47,937.91	12/1/2006	12/31/2006	2.00%	958.76

Total Late Charges Due**\$11,464.66**

Anthony Scolnick
York Avenue Tennis, LLC
488 East 60th St.
New York, NY 10022

John Graham, Deputy Comptroller
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007-2341

RE: Audit Report on the Compliance of York Avenue
Tennis, LLC with Certain Provisions of Its License
Agreement and Payment of Fees Due the City
FM06-125A

March 15, 2007

Dear Mr. Graham,

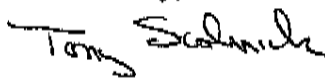
It was a pleasure working with your auditors over the past year. They always were courteous and professional in their approach. I also want to thank your office for listening to our reasoning at the exit conference and making revisions in the audit report.

In regard to York improperly deducting "professional fees" from employees performing fully or partially as tennis pros we have agreed to your recommendation to pay the City \$48,897. On March 15, 2007 we hand delivered to Parks a check for \$37,432 in additional fees plus \$11,465 interest. While we have accepted the audit findings regarding the employees we wish to clarify why these deductions were taken. Our treatment of the deductions that were taken were predicated on our understanding that under the terms of the contract we could deduct fees paid to the instructional staff regardless of whether they were paid as independent contractors and issued 1099's or employees issued W'2s.

In going forward we will follow your recommendation to "Deduct from gross revenue Professional fees paid only to those individuals receiving 1099 tax statements."

York Avenue also agrees to the Comptroller's other three recommendations.

Yours truly,



Tony Scolnick

c: Russell Stern



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

ADDENDUM II
Page 1 of 4

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

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

March 23, 2007

BY FAX AND MAIL

Mr. John Graham
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 York Avenue Tennis, LLC
May 1, 2004 to April 30, 2006, FM06-125A, Dated March 7, 2007**

Dear Mr. Graham:

This letter represents the Parks Department's (DPR), response to the recommendations contained in the subject audit of York Avenue Tennis, LLC (York).

DPR agrees with the recommendations contained in the audit report (see enclosed letter to York).

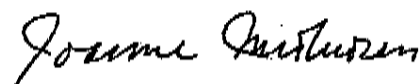
Regarding **Recommendation 1**, DPR has received a check for the full audit assessment in the amount of \$48,897.

For **Recommendations 6,7,8 and 9** DPR has instructed York to comply with all audit recommendations.

John Graham
March 23, 2007
Page 2

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

Sincerely,



Joanne Imohiosen

cc: Comm. Adrian Benepe
Laura Goebel
Alessandro Olivieri
Walter Roberts
Jeffrey Kay, Mayor's Office of Operations



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

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

March 23, 2007

BY FAX AND MAIL

Mr. Russell N. Stern, President
York Avenue Tennis, LLC
185 Great Neck Road
Great Neck, NY 11022

**Re: Draft Audit Report On York Avenue Tennis, LLC
May 1, 2004 to April 30, 2006, FM06-125A, Dated March 7, 2007**

Dear Mr. Stern:

This letter addresses the findings and recommendations contained in the subject draft audit of York Avenue Tennis, LLC (York). York generally adhered to the provisions of its license agreement. York recorded its revenue fairly in its books and records, its corresponding license fees were accurately calculated and paid on time, it maintained the required property and liability insurance that named the City as an additional insured party, contributed the required \$122,167 as security deposit, and paid the required charges for utilities and water and sewer use. Also, the audit disclosed that York had an adequate system of internal controls over its revenue collection and recording functions. However, the auditors found that York made non-allowable deductions from gross revenue for operating years 2005 and 2006.

The audit report recommends that York:

Recommendation 1. Pay the City \$48,897 for additional license fees and late charges owed.

The audit disclosed that York improperly deducted from the revenue reported to Parks \$149,728 in "professional fees" paid to employees who were not functioning as independent contractors. These deductions totaled \$76,579 for the 2005 season and \$73,149 for the 2006 season. As a result, York owed the City \$37,432 in additional percentage fees (\$19,145 for 2005 and \$18,287 for 2006) and was assessed late charges of \$11,465. The total audit amount payable was \$48,897.

Russell N. Stern
March 23, 2007
Page 2

York has submitted the payment in the amount of \$48,897 to resolve this audit finding.

Recommendation 2. Report all gross revenues to the City, including revenues for tennis services provided at locations other than the licensed premises.

Recommendation 3. Deduct from gross revenue professional fees paid only to those individuals receiving 1099 tax statements.

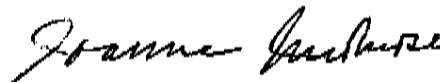
Recommendation 4. Provide Parks with an annual schedule detailing the names and the amounts paid to each tennis instructor functioning as an independent consultant. The total amount reported on the schedule should equal the amount of professional fees deducted from gross revenue.

Recommendation 5. Immediately cease deducting from gross revenue any payment made directly or indirectly to any director, officer, member, partner, affiliated party or employee who has interest in York Avenue Tennis, LLC.

York agreed to comply with all above audit findings in its March 15, 2007 letter to John Graham, Deputy Comptroller.

Finally, we wish to thank York for its cooperation during the audit review and anticipate that York will take the necessary action to implement above noted record keeping and reporting recommendations.

Sincerely,



Joanne Imohiosen

cc: R. Lieberman
L. Goebel
W. Roberts
A. Scolnick (York)