

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
Luna Park Associates, Inc.,
With Its License Agreement and
Its Payment of License Fees Due the
City
September 1, 1999, through August 31,
2001**

FL02-180A

April 7, 2003

To the Citizens of the City of New York

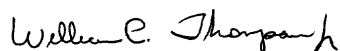
Ladies and Gentlemen:

Pursuant to Chapter 5, Section 93 of the New York City Charter, we have examined the compliance of Luna Park Associates, Inc. (Luna) with its license agreement with the New York City Department of Parks and Recreation (Parks). Under the terms of the agreement, Luna is to pay the City license fees to manage, maintain, and operate a restaurant facility in Union Square Park, Manhattan. The results of our audit, which are presented in this report, have been discussed with officials from Luna and Parks, 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 are complying with the terms of their agreements, properly reporting revenues, and paying 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 212-669-7842 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,



William C. Thompson, Jr.

WCT/GR

Report: FL02-180A
Filed: April 7, 2003

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

**Audit Report on the Compliance of
Luna Park Associates, Inc.,
With Its License Agreement and
Its Payment of License Fees Due the City
September 1, 1999, through August 31, 2001**

FL02-180A

Audit Report in Brief

The Comptroller's Office performed an audit of the license agreement between Luna Park Associates (Luna) and the Department of Parks and Recreation (Parks), to manage, maintain, and operate a restaurant facility in Union Square Park, Manhattan. The license requires that Luna pay the City the greater of a minimum annual lease fee ranging from \$25,000 to \$35,177, or a percentage of gross receipts that ranges from 3.5 percent to 6 percent from sales of all food and beverages. In addition, Luna is required to make \$150,000 in capital improvements; carry certain types and amounts of insurance coverage that names the City as an additional insured; remit a \$8,794 security deposit to the City; and pay all required taxes, fees, and utility charges related to the facility. For the two-year audit period—September 1, 1999, through August 31, 2001—Luna reported \$3,305,674, and paid the City \$198,341.

Audit Findings and Conclusions

The audit found that Luna generally complied with the terms of its license agreement with Parks. Specifically, Luna had adequate internal controls over the recording and reporting of its revenue, carried the proper types and amounts of insurance coverage, remitted the required security deposit to the City, and completed the required capital improvements. However, based on Luna's books and records, Luna underreported its gross receipts by \$190,582 in September 2000, and did not report a deposit for \$37,514 received in September 1999. As a result, Luna owed the City \$13,835 in additional license fees, of which Luna paid \$11,716 to Parks in July 2002. Moreover, Luna did not name the City as an additional insured on its automobile insurance policy.

Audit Recommendations

To address these issues the report recommended that Luna should:

- Pay the City the remaining \$2,251 in license fees.
- Ensure that all revenue is reported to Parks and that all appropriate fees are paid, in

accordance with its agreement.

- Name the City as an additional insured on its automobile insurance policy.

The report also recommends that Parks ensure that Luna complies with above recommendations.

Introduction

Background

On August 10, 1993, the City's Department of Parks and Recreation (Parks) granted Luna Park Associates, Inc. (Luna) an 8-year license—that was extended to September 30, 2003—to operate a restaurant facility in Union Square Park, Manhattan. The license requires that Luna pay the City the greater of the minimum annual lease fee ranging from \$25,000 to \$35,177, or a percentage of gross receipts that ranges from 3.5 percent to 6 percent from sales of all food and beverages. In addition, Luna is required to make \$150,000 in capital improvements; carry certain types and amounts of insurance coverage that names the City as an additional insured; remit a \$8,794 security deposit to the City; and pay all required taxes, fees, and utility charges related to the facility. For the two-year audit period—September 1, 1999, through August 31, 2001—Luna reported \$3,305,674, and paid the City \$198,341.

Objectives

Our audit objectives were to verify whether Luna:

- Maintained adequate internal controls over the recording and reporting of gross receipts;
- Properly reported its total gross receipts, and correctly calculated and paid its license fees due the City; and
- Complied with certain other non-revenue-related major requirements of its lease agreement (i.e., made the required capital improvements to the facility; carried the required liability insurance, remitted the appropriate security deposit, and paid its utility bills).

Scope and Methodology

This audit covered the period September 1, 1999, through August 31, 2001. To achieve our audit objectives, we reviewed Luna's license agreement, analyzed the reported gross receipts for significant fluctuations, and reviewed its payments to determine whether they were calculated accurately based on the revenue amounts reported to the City. We interviewed Luna's Controller and other key personnel and observed the processing of transactions to obtain an understanding of the operations and flow of documents from cash receipts at the point of sale to deposits in the bank.

To assess Luna's internal controls over its cash receipts at the restaurant, we conducted an unannounced observation on May 22, 2002. We observed the controls over the intake of cash at the cash registers. In addition, we performed tests of the financial records for the audit period to determine

whether internal controls over gross receipts were sound and operating as represented by management. Specifically, we traced daily transactions processed through the computerized point-of-sale system and reconciled these transactions with the daily sales reports. We then compared the amounts recorded on Luna's Statement of Gross Receipts that were submitted to Parks during the audit period to Luna's general ledger and to other supporting documentation to determine whether all revenue was recorded and was reported accurately. We also reviewed the company's bank deposit slips and bank statements for the audit period to determine whether all cash and checks received during the audit period were deposited.

We examined documents on file with the Comptroller's Office showing that the appropriate security deposit was remitted, and that Luna carried the proper types and amounts of insurance coverage required by the license. We also reviewed the company's utility bills to determine whether they were paid on time. We reviewed Luna's Federal Income Tax and New York State and Local Sales and Use Tax returns to determine whether Luna paid all applicable taxes. Finally, we verified that the company made \$150,000 in capital improvements and paid the design review fee to Parks as required by the license.

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

Discussion of Audit Results

The matters covered in this report were discussed with Luna and Parks during and at the conclusion of this audit. A preliminary draft report was sent to Luna and Parks on December 18, 2002, and was discussed at an exit conference held on January 23, 2003. On February 7, 2003, we submitted a draft report to Luna and Parks with a request for comments.

We received written responses from Parks on February 20, 2003, and from Luna on March 26, 2003 in which both entities agreed with the audit's findings and recommendations. The full texts of the comments from Luna and Parks are included as addenda to this report.

Findings

Luna had adequate controls over its recording and reporting of revenue. It generally complied with the terms of its license agreement with regard to carrying the proper types and amounts of insurance coverage, remitting the required security deposit to the City, and completing the required capital improvements. However, Luna underreported its gross receipts by \$230,582 for the audit period and owed the City \$13,835 in additional license fees. Moreover, Luna did not name the City as an additional insured on its auto insurance policy.

Underreported Gross Receipts

Luna underreported its gross receipts by \$190,582 in September 2000, and did not report a deposit for \$37,514 received in September 1999. As a result, Luna owed the City \$13,835 in additional license fees. It should be noted that in July 2002, Luna paid Parks \$11,584 in license fees related to the unreported gross receipts of September 2000. However, the remaining \$2,251 in license fees related to the unreported deposit has not been paid.

Contract Compliance

We verified that Luna remitted the required \$8,794 security deposit to the City, paid its design review fee to Parks, and completed more than \$150,000 in capital improvements to the facility. By reviewing its gas, electric, and telephone bills for calendar year 2001, we confirmed that Luna paid those bills on time. In addition, by reviewing the insurance certificates for the audit period, we verified that the company had the required insurance coverage (i.e., liability, fire, and workers' compensation) and confirmed that the proper coverage amounts were maintained. However, Luna did not name the City as an additional insured on its automobile insurance policy, as required by its license agreement.

Moreover, Luna had not paid for its water and sewer use during the audit period. Our review of the City Department of Environmental Protection's (DEP) Customer Information System indicated that Luna was never billed for its water and sewer use. When we notified DEP officials of this, they sent an inspector to assess water use at the facility. On June 26, 2002, DEP billed Luna \$11,716 for its water and sewer use. Luna paid the entire amount after it received the bill.

Recommendations

We recommend that Luna:

1. Pay the City \$2,251 in additional license fees owed.

Luna's Response: "On March 4, 2003, Luna Park submitted a check to the Parks Department for \$2,251."

2. Ensure that all revenue is reported to Parks and that all appropriate fees are paid, in accordance with its agreement.

Luna's Response: "We would like to assure the Comptroller's Office that Luna Park Associates, Inc. has made and will continue to make every effort to insure proper reporting of

gross revenue to the Parks Department, and will continue to comply with every aspect of our license agreement.”

3. Name the City as an additional insured on its automobile insurance policy.

Luna’s Response: “Our insurance broker has been notified of the need to name the City of New York as an additional insured on our auto policy. The amendment has been made and this is now in effect.”

We recommend that Parks:

4. Ensure that Luna complies with above recommendations.

Parks Response: Parks issued a Notice To Cure to Luna requiring that it implement the report’s recommendations.

Luna Park Associates, Inc.

29 Union Square West

New York, NY 10003

212-475-8464

March 26, 2003

Mr. Greg Brooks
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 Luna Park Associates, Inc.

Dear Mr. Brooks,

We are in receipt of your Letter dated February 7, 2003. In your letter you addressed the issues of underreporting as well as naming the City Of New York as additional insured on our auto policy.

On March 4, 2003, Luna Parks submitted a check to The Parks Department for \$2,251.00.

Our Insurance broker has been notified of the need to name the City Of New York as additional insured on our auto policy. The amendment has been made and this is now in effect

We would like to assure the Comptrollers Office that Luna Park Associates, Inc., has made and will continue to make every effort to insure proper reporting of Gross revenue to The Parks Department, and will continue to comply with every aspect of our license agreement

If there are any questions please feel free to call me at 212-243-7969 ext.112.

Thanking you for your time and patience.

Yours truly,

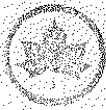
Eric Petterson

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www.nyc.gov/parks

CERTIFICATE OF LIABILITY INSURANCE						03/28/02	
J.A.A. & Associates Insurance Agency Inc. 951 McLean Avenue Yonkers, N.Y. 10704 (914) 237-3800 (914) 237-0856				Companies Affording Coverage			
				A Allstate Insurance Company			
				B			
				C			
				D			
Luna Park Associates Inc. 29 Union Park Square New York, NY 10003							
Co Ltr	TYPE OF INSURANCE	POLICY #	POLICY EFF. DATE	POLICY EXP. DATE	LIMITS		
	General Liability						
	Commercial General Liability						
	Claims Made						
	Owners & Contractors Protection						
	Automobile Liability						
A	Any Auto				Combined Single Limit	\$ 300,000	
	All Owned Autos				Bodily Injury (Per Person)	\$	
X	Scheduled Autos	637857870	09/22/2002	09/22/2003	Bodily Injury (Per Accident)	\$	
	Hired Autos				Property Damage	\$	
	Non-Owned Autos						
	Other						
DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES/SPECIAL ITEMS							
Certificate Holder:		Add'l Insured		Cancellation:			
The City of New York Department of Parks 830 5 th Ave New York, NY 10021				Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 15 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.			
				Authorized Representative:			
				JOSEPH A. LEASSA			



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

February 20, 2003 (212) 360-3404

joanne.imohiosen@parks.nyc.gov

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 Luna Park Associates, Inc.

September 1, 1999 to August 31, 2001, FL02-180A, Dated February 7, 2003

Dear Mr. Brooks:

This letter represents the Parks Department's (Parks), response to the recommendations contained in the subject audit of Luna Park Associates, Inc. (Luna).

DPR has issued the attached "Notice To Cure" (NTC) to Luna requesting payment under **Recommendation 1** in the amount of \$2,251 and Luna's compliance with **Recommendation's 2 and 3**. **Recommendation 4** of the Comptroller's audit states that, "Parks should ensure that Luna complies with the above recommendations." DPR has acted on this item by issuing the NTC mentioned above.

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

Sincerely,

Joanne Imohiosen

cc: David Stark
Francisco Carlos
Susan Kupferman, Mayor's Office of Operations



City of New York
Parks & Recreation

ADDENDUM II
Page 2 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

February 20, 2003

BY FAX AND MAIL

Mr. Eric Peterson
Luna Park Associates, Inc.
29 Union Square West
New York, NY 10003

Re: NOTICE TO CURE

Draft Audit Report On Luna Park Associates, Inc.
September 1, 1999 to August 31, 2001, FL02-180A, Dated February 7, 2003

Dear Mr. Peterson:

This letter addresses the findings and recommendations contained in the subject draft audit report on Luna Park Associates, Inc. (Luna). Generally, the audit report stated that Luna complied with the terms of its license agreement with the Parks Department (Parks). Luna had adequate record keeping procedures and controls over revenue generated at the restaurant facility. Also, the report disclosed that Luna carried the proper types and amounts of insurance coverage, remitted the required security deposit to the City, and completed the required capital improvements.

However, the auditors found that Luna underreported its gross receipts by \$193,068 in September 2000 and did not report a deposit for \$37,514 received in September 1999. Luna paid Parks \$11,584 for the license fees owed against the unreported gross receipts covering September 2000. Luna has not paid the remaining \$2,251 in license fees related to the unreported 1999 deposit. Also, Luna did not name the City as an additional insured on its automobile insurance policy.

The audit report recommended that Luna:

Recommendation I. Pay the City \$2,251 in additional license fees owed.

The amount owed represents 6% of the above stated 1999 unreported deposit of \$37,514. To resolve the audit assessment Luna is afforded fifteen (15) days from the date of this letter to

Eric Peterson
February 20, 2003
Page 2

remit a check for \$2,251, made payable to the CITY OF NEW YORK PARKS AND RECREATION, to this office.

Recommendation 2. Ensure that all revenue is reported to Parks and that all appropriate fees are paid, in accordance with its agreement.

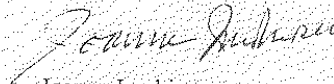
Luna should review its record keeping and reporting procedures and implement any necessary changes to ensure compliance with the provisions of its license agreement.

Recommendation 3. Name the City as an additional insured on its automobile insurance policy.

Luna should comply with this audit recommendation and submit documentation to Parks to verify that the City has been named as an additional party on its automobile policy. A copy of the insurance certificate providing this information should be forwarded to Michael Kaplan of my staff at this location, room 405.

Finally, we wish to thank Luna for its cooperation during the audit review and anticipate your prompt remittance to clear the amount owed.

Sincerely,



Joanne Imohiosen

cc: D. Stark
F. Carlos
M. Kaplan