

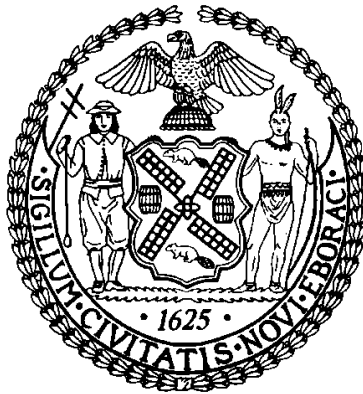
CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT

John C. Liu
COMPTROLLER

Audit Report on the Compliance of
Lakeside Restaurant Corporation
With Its License Agreement

FM09-130A

January 29, 2010





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

JOHN C. LIU
COMPTROLLER

To the Residents of the City of New York:

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 Lakeside Restaurant Corporation (Lakeside) with its license agreement with the Department of Parks and Recreation (Parks). We audit private concerns that conduct business on City property as a means of ensuring that they comply with their agreements.

The license agreement requires Lakeside to operate, renovate, and maintain the restaurant (known as the Lake Club), snack bar, and row boat rental in Staten Island and to pay the City fees based on reported gross receipts. The audit found that Lakeside has significant internal control weaknesses over the collecting, recording, and reporting of revenue. Although the auditors could not be assured that Lakeside accurately reported all of its gross receipts or that it paid the appropriate fees to the City, they conservatively calculated that Lakeside underreported revenues by at least \$87,494 resulting in \$8,041 in additional fees and related late charges. In addition, Lakeside did not comply with certain non-revenue terms of the agreement such as maintained the premises in a sanitary condition, employed "off-the-books" employees, and violated the New York State Labor Law.

The audit recommended that Lakeside remit to the City the additional \$8,041 in license fees and late charges, strengthen its internal controls, maintain the premises in a sanitary condition, cease employing "off-the-books" employees, and comply with the New York State Labor Law.

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

If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or call my office at 212-669-3747.

Sincerely,

A handwritten signature in black ink, appearing to read "JCL", written over the printed name "John C. Liu".

John C. Liu

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

**Audit Report on the Compliance of
Lakeside Restaurant Corporation
With Its License Agreement**

FM09-130A

AUDIT REPORT IN BRIEF

This audit determined whether Lakeside Restaurant Corporation (Lakeside) accurately reported its gross receipts, properly calculated the license fees due, paid its license fees on time, and complied with certain major non-revenue terms of the license agreement.

On March 25, 2002, the City of New York, through the Department of Parks and Recreation (Parks), entered into a 10-year license agreement with Lake Restaurant Development, Ltd. for the renovation and operation of a restaurant (known as the Lake Club), snack bar, and row boat rental in Staten Island, New York. Subsequently, on January 18, 2005, Lake Restaurant Development, Ltd. assigned its agreement to a new operator, Lakeside. The agreement requires Lakeside to operate, renovate, and maintain the existing structure of the restaurant, snack bar, and row boat rental.

Under the agreement, for operating year 2009, Lakeside was required to pay the higher of either a minimum annual fee of \$64,245 plus an additional 8 percent of gross receipts over \$500,000 or the total annual fee paid in the previous year. In addition, Lakeside is required to maintain the required security deposit with the City, maintain certain types and amounts of insurance coverage, submit monthly statements of gross receipts and annual income and expense statements, and pay all utility charges.

For operating year 2009, Lakeside reported \$1,304,314 in gross receipts and paid \$130,209 in license fees and late charges to the City.

Audit Findings and Conclusions

Lakeside maintained the required property and liability insurance that named the City as an additional insured party and maintained the required security deposit. However, because of significant internal control weaknesses and deficiencies over the collecting, recording, and reporting of revenue, we could not be assured that Lakeside accurately reported all of its gross receipts from its banquet, restaurant, snack bar, and boat rental operations or that it paid the

appropriate fees to the City. Although the internal control weaknesses were so extensive as to raise red flags concerning the potential for fraud, we were able to conservatively calculate that Lakeside underreported revenues by at least \$87,494, resulting in \$8,041 in additional fees and related late charges due the City.

Lakeside also did not maintain the premises in a sanitary condition, had unpaid water and sewer charges totaling \$3,973 (which were subsequently paid), did not pay its fees on time, and failed to submit timely annual income and expense statements to Parks. Furthermore, Lakeside employed “off-the-books” employees, violated the New York State Labor Law, and did not accurately report wait staff gratuities to the Internal Revenue Service.

Audit Recommendations

We make 17 recommendations—14 to Lakeside concerning the operation of the Lake Club and 3 to Parks concerning the oversight of this concession. The following are some of the recommendations.

Lakeside should:

- Immediately remit the \$8,041 in additional license fees and late charges.
- Take immediate action to strengthen its internal controls.
- Ensure that the proceeds generated from the banquet, snack bar, and boat rental operations, the sales of gift certificates, and all special events are accurately reported to Parks.
- Cease employing “off-the-books” employees, report all employees on its payroll records, and comply with all laws governing unemployment insurance, workers’ compensation, social security, tax withholding, temporary disability insurance, minimum wage, and overtime.
- Distribute all gratuities to its wait staff in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor.

Parks should:

- Issue a Notice-to-Cure to Lakeside requiring that it pay the \$8,041 in additional license fees and late charges assessed in this audit report and mandating that Lakeside’s management:
 - Establish and implement an adequate system of internal controls over the banquet, restaurant, snack bar, and boat rental operations,

- Cease employing “off-the-books” employees and report all employees on its payroll records,
- Distribute all gratuities in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor, and
- Accurately report the wait staff gratuities to the Internal Revenue Service.
- Calculate the total amount of banquet gratuities that were distributed to Lakeside’s owners prior to operating year 2009 and assess Lakeside for the additional license fees and late charges owed.

INTRODUCTION

Background

On March 25, 2002, Parks entered into a 10-year license agreement with Lake Restaurant Development, Ltd. for the renovation and operation of a restaurant (known as the Lake Club), snack bar, and row boat rental in Staten Island, New York. Subsequently, on January 18, 2005, Lake Restaurant Development, Ltd. assigned its agreement to a new operator, Lakeside. The agreement requires Lakeside to operate, renovate, and maintain the existing structure of the restaurant, snack bar, and row boat rental.

Under the agreement, for operating year 2009 (May 1, 2008 to April 30, 2009), Lakeside was required to pay the higher of either a minimum annual fee of \$64,245 plus an additional eight percent of gross receipts over \$500,000 or the total annual fee paid in the previous year. On or before the first day of each month, Lakeside is required to pay one-twelfth of the minimum annual fee. If the percentage fee becomes applicable, the fee is due on the 20th day of each succeeding month. In the event that 100 percent of the total fees due for the prior year become applicable, then Lakeside is required to pay the balance due Parks within 60 days of the closing of the operating year. A two percent late charge is applied if fees are 10 days overdue. If the late fees are not paid in full by the 10th day of the next month, then an additional charge of two percent of the total of such fees and arrears are to be charged each month.

In addition, Lakeside is required to maintain the required security deposit with the City, maintain certain types and amounts of insurance coverage, submit monthly statements of gross receipts and annual income and expense statements, and pay all utility charges.

For operating year 2009, Lakeside reported \$1,304,314 in gross receipts and paid \$130,209 in license fees and late charges to the City (see Table I, below).

Table I

Schedule of Reported Gross Receipts
May 1, 2008, to April 30, 2009

Restaurant Gross Receipts	\$783,936
Banquet Gross Receipts	503,011
Boat Rental Gross Receipts	14,060
Snack Bar Gross Receipts	<u>3,307</u>
Reported Gross Receipts	<u>\$1,304,314</u>
Minimum Fees Paid	\$64,245
Additional Fees Paid (8% of gross receipts in excess of \$500,000)	64,345
Late Fees Paid	<u>1,619</u>
Total Fees Paid	<u>\$130,209</u>

Objectives

The audit's objectives were to determine whether Lakeside:

- accurately reported its 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 the license agreement (i.e., maintaining the required security deposit, carrying the required insurance, submitting the required reports, and paying for all utility charges).

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives, except for our inability to obtain all documentation and determine the population for the banquet operation. We therefore could not determine whether Lakeside accurately reported all of its banquet revenue. This issue is more fully disclosed in the subsequent paragraph. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

We could not determine the number of banquet events that had taken place at the Lake Club during operating year 2009 because of Lakeside's lax internal controls. During the audit, we requested Lakeside to provide all documents to support the banquet gross receipts amounts reported to Parks. However, certain critical documents (i.e., banquet contracts and invoices) were not provided for at least 40 (20.5 percent) of the 194 identified banquet events for which some documentation was provided. Without all of the supporting documents, we were unable to determine whether all banquet revenues were reported to Parks.

The scope of this audit was operating year 2009 (May 1, 2008, to April 30, 2009). To achieve our audit objectives, we reviewed and abstracted the license agreement between Parks and Lakeside. We also reviewed Parks correspondence, revenue reports, and other relevant documents. We analyzed the Parks concessionaire ledger for the amounts reported and paid to the City during our scope period, and determined whether payments were received on time. We also determined whether Lakeside submitted monthly gross receipts reports and annual income and expense statements to Parks in a timely manner.

To obtain an understanding of Lakeside's operations and internal controls over its gross receipts, we:

- interviewed Lakeside's owners and Certified Public Accountant (CPA);

- reviewed the manual for use of the restaurant’s computerized point-of-sale system (POSitouch);
- conducted a walk-through of the restaurant, banquet, snack bar, and boat rental operations;
- observed Lakeside’s processing of simulated transactions through its computerized point-of-sale (POS) system;
- conducted an unannounced observation of its banquet reservation process in March 2009;
- conducted three unannounced observations of its restaurant operation in April 2009;
- conducted an unannounced observation of a special event called “Psychic Night” in April 2009; and
- documented our understanding of the operations through written narratives, memoranda, and flow charts.

Lakeside uses the POSitouch point-of-sale computer system to manage its restaurant operation and record the proceeds collected from the restaurant, banquet, snack bar, and boat rental. To determine the accuracy, completeness, and reliability of the reports generated from POSitouch, we judgmentally selected the month of April 2009 (the month in which auditors conducted four unannounced observations) and compared the information noted from the nine guest checks obtained during the observations to the daily payment detail reports and analyzed the results. In addition, we examined all available guest checks, sales journal reports, daily cash-out reports, Check Listing by Check # Reports, and the Manager Activity Report to determine whether guest checks were sequentially numbered, without gaps, and distributed in consecutive order. We then traced all guest checks from the restaurant for April 2009 to the daily cash out reports and the daily and monthly sales journal reports.

To determine whether Lakeside accurately reported the gross receipts generated from the banquet operation, we reviewed the 2008 and 2009 banquet event calendars and the 2007, 2008, and 2009 banquet logs, and compared the information to determine whether all banquet reservations recorded in the banquet event calendars matched the banquet logs.¹ We also determined whether banquet contracts were sequentially numbered. We then traced the banquet reservations to the banquet contracts for operating year 2009 to determine whether all banquets had written contracts. We also traced the banquet revenue from the actual contracts and invoices to the party deposit slips generated by POSitouch to ascertain whether all banquet revenue was properly recorded in Lakeside’s POS system. Since Lakeside did not maintain complete and accurate records of its banquet revenue, we judgmentally contacted five banquet clients for

¹ The banquet log is a sequential listing of all banquet events based on contract number. It contains information, such as the date the party was booked, name of the party, contract number, initial deposit amount, form of payment, and the date of the party.

whom we could not determine the total amount paid due to the lack of banquet files to determine whether the banquets gross receipts were properly recorded in the POS system.

To determine whether monies collected were properly deposited, we traced the restaurant net cash proceeds from the daily cash out reports to the deposit slips and then to the bank statements. We also traced the credit card sales from the Credit Card Batch reports to the credit card statements and finally to the bank statements.

To determine whether Lakeside accurately reported its gross receipts to Parks, we traced the gross receipts amounts recorded on the daily logs from the snack bar and boat rental operation to the monthly statements submitted to Parks.

To determine the accuracy of the income and expense statement that Lakeside submitted to Parks for operating year 2009, we traced the information to Lakeside's general ledger.

To determine whether gratuities were fully distributed to Lakeside's employees in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor, we attempted to trace the gratuities reported on Lakeside's monthly gross receipts statement to the amount recorded on the general ledger to payroll records for April 2009. In doing so, we discovered that not all of Lakeside's employees were listed on the payroll register.

Finally, we ascertained whether Lakeside complied with certain non-revenue terms of its agreement (i.e., posted the required security deposit with the City, properly maintained insurance coverage, and paid all utility charges). We contacted the Comptroller's Bureau of Accountancy to determine whether the amount of a required security deposit posted with the City met the requirements of the agreement. In addition, we obtained Lakeside's insurance policies and contacted the insurance broker to determine whether Lakeside maintained proper insurance coverage. We reviewed Lakeside's July 2009 (current period at time of review) electric and gas bills to determine whether Lakeside properly paid for all utility charges. We also reviewed Lakeside's water and sewer bills by accessing the Department of Environmental Protection's Customer Information System account records to determine whether Lakeside was properly billed and paid for its water and sewer use.

Discussion of Audit Results

The matters covered in this report were discussed with Lakeside and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference on November 12, 2009. On December 23, 2009, we submitted a draft report to Lakeside and Parks officials with a request for comments. We received written responses from Lakeside and Parks on January 8, 2010. Both Lakeside and Parks officials agreed with the report's findings and recommendations.

The full texts of the responses received from Lakeside and Parks are included as addenda to this report.

FINDINGS

Lakeside maintained the required property and liability insurance that named the City as an additional insured party and maintained the required security deposit. However, because of significant internal control weaknesses and deficiencies over the collecting, recording, and reporting of revenue, we could not be assured that Lakeside accurately reported all of its gross receipts from its banquet, restaurant, snack bar, and boat rental operations or that it paid the appropriate fees to the City. Although the internal control weaknesses were so extensive as to raise red flags concerning the potential for fraud, we were able to conservatively calculate that Lakeside underreported revenues by at least \$87,494 resulting in \$8,041 in additional fees and related late charges due the City.

Lakeside also did not maintain the premises in a sanitary condition, had unpaid water and sewer charges totaling \$3,973 (which were subsequently paid), did not pay its fees on time, and failed to submit timely annual income and expense statements to Parks. Furthermore, Lakeside employed “off-the-books” employees, violated the New York State Labor Law, and did not accurately report wait staff gratuities to the Internal Revenue Service.

Significant Internal Control Weaknesses Over the Operation of the Lake Club

Our review of Lakeside’s operations revealed significant weaknesses in the internal controls over its operations. Lakeside does not maintain an adequate system of internal controls for banquets, restaurant, snack bar and boat rental operations to ensure that all gross receipts are properly recorded and accurately reported to the City. The limited records Lakeside maintained were insufficient to determine the full extent to which gross receipts were underreported and City fees underpaid. Taken as a whole, these weaknesses compromise the reliability of Lakeside’s reported gross receipts.

According to §4.7(a) of the license agreement, Lakeside must: “Maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom.”

Adequate control systems are necessary for properly tracing receipts from the point of sale to recording them in an organization’s books and records. Lakeside’s internal controls, however, were inadequate in significant and pervasive respects, as described by the following deficiencies.

Inadequate Controls over Banquet Operation

Lakeside did not maintain all of its banquet documents (i.e., banquet contracts and invoices) for the events that took place during operating year 2009, did not use pre-numbered banquet contracts or invoices, and circumvented its procedures for recording revenue derived from its banquet operation. Therefore, we could not ascertain whether all banquet revenue was

reported. Based on our review of the limited documentation available (i.e., 2008 and 2009 banquet event calendars, 2007, 2008, and 2009 banquet logs, banquet contracts, invoices, and party deposit slips generated by POSitouch), we determined that for operating year 2009, at least 194 events had taken place at the Lake Club. Of these 194 events, we indentified 56 events (29 percent) that had at least one irregularity. Table II, below, shows a total of 86 with different types of irregularities we found. (Some events have up to three irregularities.)

Table II

Banquet Event Irregularities

Types of Irregularities	Number of Irregularities
Events with no banquet contract	33
Events recorded on banquet event calendar but not on banquet log	22
Events recorded on banquet log but not on banquet event calendar	5
Event proceeds not accurately recorded in the point-of-sale system	11
Events recorded in banquet log with booking date (date event was reserved) after party date	8
Events in banquet log with booking dates not in sequential date order	5
Different events with the same contract number	1
Same event with two different contract numbers	1
Total Number of Irregularities	86

In addition, we were unable to trace 19 banquet payments, totaling \$12,872, that were recorded in POSitouch to the banquet contracts due to a lack of banquet information on the party deposit receipts. Based on the documents provided, we were able to determine that the majority of the banquet gross receipts were recorded in POSitouch and reported to Parks. However, we were unable to ascertain that Lakeside had only 194 events during operating year 2009. Furthermore, based on the information provided by the five banquet clients that we contacted, we determined that Lakeside did not record all of its banquet revenue in POSitouch. For example, one client paid approximately \$8,000, by both cash and credit card, for an event. However, we were able to find only two credit card payments, totaling \$1,640, made for this party. It appears that Lakeside did not record all of its cash payments in POSitouch and may have used the unreported gross receipts to pay its “off-the-books” employees, which will be discussed later in this report.

Without the proper internal controls in place, Parks cannot be assured that all revenues from Lakeside’s banquet operation are being properly recorded and accurately reported.

Inadequate Controls over Restaurant Operation

Lakeside does not have adequate internal control procedures over its restaurant operation to ensure that all gross receipts are properly recorded and reported to the City. Moreover, Lakeside may have circumvented its procedures for recording revenue derived from its restaurant operation. As part of our initial testing of the restaurant revenue, on April 12, April 17, and April 18, 2009, we sent three teams of two auditors (one team each day) to order beverages at the bar, dine as customers at the restaurant, and observe Lakeside's restaurant operation. The auditors either obtained the actual guest checks, wrote down the guest check information, or took pictures of the guest checks.

During the April 17, 2009 observation, our auditors ordered beverages at the bar and received guest check number F-100 for \$13. Subsequently, our auditors ordered a second round of the same beverages and received a similar guest check numbered F-100a, also for \$13. After we compared the guest check information with the POSitouch daily sales journal reports, daily cash-out reports, Check Listing by Check # Reports, and the Manager Activity Report, we found that guest check number F-100a was not included in the point-of-sale reports. The next guest check number to be automatically generated by the POSitouch system should have been guest check number F-101. However, POSitouch assigns a letter to the end of a guest check number every time a copy of that same guest check is reprinted. Therefore, since our auditors ordered the same beverages again, they instead received guest check number F-100a, which is a reprint of check F-100 and not a new sales transaction.

During the April 18, 2009 observation, our auditors again ordered beverages from the bar, but this time did not receive a guest check. However, they gave the bartender \$20 in cash as payment for the beverages and received \$5 in change, signifying that the restaurant's guest check total was \$15. Our review of the POSitouch daily sales journal reports, daily cash-out reports, Check Listing by Check # Reports, and the Manager Activity Report found no guest check entry for \$15.

These results indicate that not all bar transactions are being recorded or processed through the POSitouch system and are, therefore, not being reported to Parks. As a result, we could not determine whether all gross receipts were accurately recorded and reported to Parks and the appropriate license fees paid to the City.

In addition, Lakeside does not maintain any records to indicate the number of gift certificates issued and the amounts still outstanding.² Most of the gift certificates are not pre-numbered, which would reduce the risk of unauthorized transactions, ensure that all documents are accounted for, and assist in identifying missing records. Consequently, we could not ascertain the number of gift certificates sold or the corresponding fees and revenue collected.

² Lakeside has at least four types of gift certificates: regular gift certificates that have a face value paid for by the customers, complimentary gift certificates that do not have a face value, gift certificates issued through a radio station promotion for which customers pay half of the face value, and gift certificates issued through Restaurant.com where customers can purchase gift certificates at a discounted rate. Only the gift certificates issued through third parties (radio station and Restaurant.com) were pre-numbered.

Our review identified other internal control weaknesses within Lakeside’s restaurant operation. Lakeside does not maintain a point-of-sale system capable of reporting a complete sequence of guest checks. According to the manufacturer of POSitouch, the system does not guarantee sequentially numbered guest checks. Based on our review of the sampled period of April 2009, we determined that 9 of the 716 guest checks were absent from the POSitouch system and its respective hardcopy reports. According to §4.7(a) of the agreement, Lakeside is required to “keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom.” Because our test of the system indicated that not all guest checks were being reported, we concluded that we were unable to rely on the completeness of data.

Consequently, due to the deficiency of Lakeside’s internal controls, Parks cannot be assured that all revenues from Lakeside’s restaurant operation are being accurately reported.

Inadequate Controls over Snack Bar And Boat Rental Operations

Lakeside does not record its individual snack bar and boat rental transactions on a cash register or computerized POS system. Instead, the cash collected is maintained in a cash box, and the aggregate total of each day’s receipts is manually recorded in a log.³ The daily cash proceeds are then recorded in POSitouch as one transaction. This is in violation of §9.6 of the license agreement, which states that “Licensee shall record all transactions involved in the operation of this License on cash registers.” A cash register, POS system, or other device to record Lakeside’s snack bar and boat rental sales is a basic business tool that ensures all sales are recorded when the transactions take place.

In addition, Lakeside’s owners informed us that snack bar sales are recorded on a pad, which is discarded daily, and that boat rental agreements, which every boat rental customer is required to fill out, are discarded at the end of each season.⁴ This is in violation of §4.7(b) of the license agreement, which states that “Licensee shall maintain each year’s records, books of account and data for a minimum of six years.”

Lakeside Did Not Accurately Report Its Gross Receipts to Parks

Lakeside underreported its banquet, snack bar, and boat rental revenue, did not accurately report its proceeds generated from the sale of gift certificates, and did not report the gross receipts generated by other businesses operating in the restaurant. As a result, Lakeside underreported to Parks gross receipts totaling at least \$87,494, as shown in Table III, and owes

³ The snack bar and boat rental log is a listing of all snack bar and boat rental income based on the days of operation. The snack bar and boat rental log provided contained information such as the date, boat rental sales, snack bar sales, and the total sales for the day. The snack bar and boat rental log also indicates the weather if the operation was closed.

⁴ The snack bar and boat rental operations are generally open from Memorial Day to Labor Day.

an additional \$8,041 in license fees and late charges—\$7,000 in additional license fees and \$1,041 in late charges. (See Appendix I for the calculation of the late charges.)

Table III

Underreported Gross Receipts

Category	Amount
Improper Deduction from Gross Receipts	\$63,325
Banquet Revenue	22,025
Snack Bar & Boat Rental Revenue	230
Complimentary Gift Certificates	1,164
Special Event Revenue	750
Total Underreported Gross Receipts	\$87,494

Improper Deduction of \$63,325 from Gross Receipts

Lakeside improperly deducted from its banquet revenue \$63,325 in banquet gratuities that were not distributed to its wait staff or reported to Parks. Of the \$90,596 in total banquet gratuities collected, we found that only 30 percent (\$27,272) was distributed to Lakeside’s wait staff. The remaining \$63,325 was distributed to Lakeside’s owners, who allegedly worked at each event as maitre d’s. The license agreement clearly does not allow for this type of deduction from gross receipts. According to §2.1(1)(iv) of the license agreement, Lakeside should exclude from its gross receipts only gratuities that were disbursed to its employees and staff. Therefore, the \$63,325 distributed to Lakeside’s owners should be reported as gross receipts to Parks.

Furthermore, because Lakeside did not fully distribute the banquet gratuities to its wait staff, Lakeside is therefore responsible for paying \$7,587 (8.375 percent) in additional sales tax, plus any interest and penalties that may be assessed, for the entire \$90,596 in banquet gratuities.

Underreported \$22,025 in Banquet Revenue

Lakeside did not report \$22,025 in banquet revenue derived from its banquet operation. Our review of Lakeside’s books and records disclosed that:

- Lakeside underreported at least \$15,000 in banquet revenue in POSitouch based on the information provided by the five banquet patrons that we contacted.
- 11 banquet (installment) payments totaling \$1,997 were not recorded in the POSitouch system.
- One banquet payment totaling \$647 was incorrectly recorded as gift certificate sale.
- Lakeside improperly deducted \$3,058 in banquet revenue because it used a fixed percentage to estimate the amount of sales tax and banquet gratuities without calculating the actual amounts collected from the customers.
- Lakeside incorrectly applied eight restaurant guest check payments totaling \$2,384 as a deposit towards a banquet event.
- Overstated its banquet revenue by \$1,061.

As a result, Lakeside underreported at least \$22,025 in banquet revenue to Parks.

Underreported Snack Bar and Boat Rental Revenue

Lakeside did not report all of the revenue derived from its snack bar and boat rental operation. Following a comparison of the log and the monthly gross receipts amounts reported to Parks, we determined that Lakeside underreported its snack bar and boat rental gross receipts for August 2008 by at least \$230.

Problems with Gift Certificates

Lakeside does not accurately report the proceeds from gift certificates to Parks. §2.1(1)(i) of the license agreement requires Lakeside to report gift certificate proceeds when the gift certificates are sold. Instead, Lakeside did not report the gross receipts from its gift certificates to Parks until they were redeemed. Since Lakeside has no way of reconciling the gift certificates issued, it cannot account for any outstanding gift certificates. Furthermore, any gift certificates that have expired or are unused will not be reported to Parks. The lack of this documentation precluded us from determining the accurate amounts that should be reported to Parks.

Lakeside does not always record the value of the complimentary meals covered by complimentary gift certificates in POSitouch. For instance, when a customer uses a complimentary gift certificate as the form of payment, Lakeside voids the ordered items from the guest check instead of applying the gift certificate as a payment. From the limited documents available, we estimated that Lakeside underreported at least \$1,164 in complimentary meals during operating year 2009.⁵

Unreported Revenue from Unauthorized Operators

Lakeside did not report any of the revenue earned by other operators who operated on the premises. §2.1(1)(iii) of the license agreement states that “gross receipts shall also include all sales made by any other operator or operators using the Licensed Premises.”

On April 28, 2009, two auditors attended a special event called Psychic Night at the restaurant. During the event, our auditors paid \$108 for food and beverages (including tax and gratuities) and \$60 for two tarot card readings. However, Lakeside reported the revenue for only the food and beverages and not for the tarot card reading. According to Lakeside’s operators, Lakeside received no money from the psychic for use of the facility and therefore did not report any of the revenue that was paid directly to the psychic. However, Lakeside should report the revenue derived from other operators that use the restaurant to generate income, as required by the license agreement. Therefore, we calculated that Lakeside failed to report at least \$750 to Parks (\$30 per person x 25 people who attended the event).

⁵ We estimated the value of the complimentary gift certificates based on either the voided transactions in the POSitouch system, the dollar amount handwritten on the actual gift certificate, or by the lowest price listed on the prix fixe menus.

Similar to the Psychic Night, Lakeside allowed a disc jockey to hold a function at the restaurant on October 28, 2008, to attract potential clients. It should also be noted that the disc jockey is on Lakeside's preferred vendor list. However, we could not determine whether any revenue was derived from the October 28, 2008 function or whether any commissions were paid to Lakeside for this preferential listing.

None of the operators had an agreement with Lakeside or were approved by Parks to operate at the restaurant. Consequently, Parks is not aware of these unauthorized operators or of any other operators using the facility and has no assurance that the revenue generated from these operators or any other operator was included in Lakeside's calculation of gross receipts, nor that the City is receiving all of its associated fees.

Unacceptable Recordkeeping Practices

Lakeside did not exercise basic accounting practices or due diligence when maintaining its books and records. To determine the accuracy of the general ledger, we attempted to trace the gross receipts amounts for the banquet, restaurant, snack bar, and boat rental operations to the general ledger. However, we were unable to trace any of the sales amounts to the general ledger because Lakeside records in the general ledger the monthly amounts deposited to its bank accounts instead of the actual monthly sales amounts, and then makes an adjusting journal entry at the end of the operating year to match to the amount reported to Parks. In addition, no one is reconciling the bank accounts to the general ledger to ensure that cash is being accurately recorded in the general ledger.

Generally Accepted Accounting Principles (GAAP) prefer the use of the accrual basis of accounting to record transactions because it accurately reflects the results of an operation. However, GAAP allows the use of either the accrual or cash basis of accounting as long as the chosen method is applied in a consistent manner. Lakeside chose to use the cash basis of accounting to record its transactions in the general ledger. However, Lakeside simultaneously applied both accounting methods, a clear violation of GAAP. For instance, Lakeside recognized the gift certificate revenue when the certificates were redeemed, a practice in the accrual basis of accounting. It also included in the general ledger a "Sales Tax Payable" account and several "Loan Payable" accounts that are used only in the accrual basis of accounting. However, the general ledger's lack of a "Gift Certificates Payable" account and the reporting of banquet deposits when they are collected are both consistent with the cash basis method of accounting. By applying inconsistent accounting methods, an organization can materially misstate its financial position.

Lakeside Is Not in Compliance with Other Provisions of Its License Agreement

Lakeside did not maintain the premises in a sanitary condition, had unpaid water and sewer charges, did not pay its minimum annual fees or its percentage fees on time, and failed to submit timely annual income and expense statements to Parks.

Unsanitary Conditions

Lakeside has not maintained the premises in a sanitary condition. During our inspection on September 28, 2009, we observed unsanitary conditions in the restaurant's basement conducive to vermin as well as unsanitary conditions in the walk-in freezer, which is a violation of §11.1 of the license agreement. We subsequently notified the Department of Health and Mental Hygiene (DOHMH) and Parks about the poor conditions and asked DOHMH to take appropriate action. (See Comptroller letter and photographs in Appendix II.) Subsequently, on October 15, 2009, a DOHMH inspector observed a number of sanitary violations, including conditions conducive to the existence of pests and several violations involving improper facility maintenance. (See DOHMH's response letter dated November 9, 2009 in Appendix III.) Maintaining an unsanitary environment may create a potential hazard to Lakeside's employees and patrons.

Lakeside Owed \$3,973 in Water and Sewer Charges

According to the New York City Department of Environmental Protection's Customer Information System, Lakeside has continuously owed outstanding water and sewer charges. As of November 12, 2009, Lakeside owed the City \$3,973 in unpaid water and sewer charges, which were paid in three installments, the last payment being received on January 6, 2010. According to §7.1 of Lakeside's license agreement:

Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operations at the Licensed Premises. . . . Utilities, as described in this Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, water and sewer charges.

Therefore, Lakeside should ensure that all utility charges are paid, as required by the license agreement.

Minimum Annual Fees and Percentage Fees Were Paid Late

Lakeside did not pay its operating year 2009 minimum annual fee of \$64,245 on time for 9 out of 12 months. In addition, Lakeside did not pay its percentage fee of \$64,345 (which went into effect in August 2008) on time for 8 out of 9 months. Consequently, Parks notified Lakeside of its delinquency and assessed \$1,619 in late fees, which Lakeside paid to Parks. Section 4.3 of Lakeside's license agreement states that:

Late charges shall be assessed on any payment that is overdue for more than ten days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees due and payable as provided in this license, a late charge of 2% per month on the sums so overdue (computed on a thirty day month) from the date when they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of

Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand.

Therefore, Lakeside is in violation of its agreement and, as a result, the City is not receiving its fees on time.

Annual Income and Expense Statements Are Submitted Late

Lakeside did not submit its annual income and expense statements to Parks for operating years 2007, 2008, and 2009 in a timely manner. According to §4.6 of the license agreement, Lakeside is required to submit an annual income and expense statement within 30 days after the end of each operating year. Since Lakeside's operating year ends on April 30, Lakeside is required to submit an income and expense statement on or before May 30.

The income and expense statement for operating year 2007 was received on June 22, 2007—23 days after its due date, the income and expense statement for operating year 2008 was received on June 19, 2008—20 days after its due date, and the income and expense statement for operating year 2009 was received on June 17, 2009—18 days after its due date.

Other Issues

Lakeside Employed "Off-the-Books" Employees

Lakeside employed at least 10 "off-the-books" employees to work at the Lake Club. On May 18, 2009, Lakeside's owners provided us with an employee list containing 25 employee names. However, upon reviewing the employee list, we determined that one of the servers listed on the restaurant guest checks that we received during our unannounced observations did not appear on the list.⁶ We informed Lakeside's owners of the omission and asked them to provide us with a complete list of all employees.

On May 26, 2009, Lakeside's owners provided us with a second employee list that contained 10 additional names. We then attempted to trace the names of Lakeside's 35 employees to the payroll registers provided to determine whether all employees are properly paid. However, we were unable to find the name of the 10 additional employees or any kitchen staff on the payroll register. When we brought this matter to the attention of Lakeside's owners, they told us to speak to their CPA, who informed us that the 10 employees work "off-the-books."

"Off-the-books" employees can be deprived of numerous protections to which they are legally entitled. Moreover, businesses can use "off-the-books" employees to avoid complying with laws governing unemployment insurance, workers' compensation, social security, tax withholding, temporary disability insurance, minimum wage, and overtime.

⁶ The guest checks generated by the POSitouch system contain server names.

Lakeside Violated New York State Labor Law Section 196-d

Lakeside did not properly distribute gratuities to its wait staff. Based on the April 2009 payroll records provided, Lakeside's two owners received \$12,600 (88 percent) of the \$14,275 in banquet gratuities disbursed. According to Lakeside's CPA, the owners worked as the maitre d's for the banquet events. However, we found that the owners received a fixed amount of gratuities every week despite the number of events that may have taken place during the week. Lakeside is in violation of Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor. According to a New York State Department of Labor opinion dated March 26, 1999,

If the employer's agents lead the patron who purchases a banquet or other special function to believe that the contract price includes a fixed percentage as a gratuity, then that percentage of the contract price must be paid in its entirety to the waiter, busboys and "similar employees" who work at that function, even if the contract makes no reference to such a gratuity.

Further, a New York State Court of Appeals decision dated February 14, 2008, states:

We hold that the statutory language of Labor Law §196-d can include mandatory charges when it is shown that employers represented or allow its customers to believe that the charges were in fact gratuities for its employees. An employer can not be allowed to retain these monies.

Lakeside's violation of New York State Labor Law also puts it in noncompliance with its license agreement with Parks. Section 20.1 of Lakeside's license agreement states that:

Licensee shall comply with and cause its employees and agents to comply with all laws, rules, regulations and orders now or hereafter prescribed by Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

Lakeside Did Not Accurately Report Wait Staff Gratuities to the Internal Revenue Service

Lakeside did not accurately report the wait staff gratuities from the restaurant operation to the Internal Revenue Service (IRS). The IRS requires restaurant operators to report a minimum of eight percent of their gross receipts as gratuities, excluding receipts for carry-out and receipts with a service charge added of 10 percent or more. Based on the payroll records provided, Lakeside reported \$41,231 of its wait staff gratuities to the IRS, which is approximately five percent of its restaurant gross receipts. In addition, the POSitouch payout records provided showed that Lakeside paid \$87,215 in cash to its wait staff for the credit card gratuities that were collected. Therefore, at a minimum, Lakeside should report \$87,215, plus the estimated amount of cash gratuities to the IRS.

RECOMMENDATIONS

Lakeside should:

1. Immediately remit the \$8,041 in additional license fees and late charges.

Lakeside Response: “The Lakeside Restaurant Corporation agrees to pay \$8,041.00 in additional license fees and late charges.”

Parks Response: “The Report indicates that Lakeside underreported revenue from sales related to its banquet, snack bar, boat rental, gift certificates and special events. Additionally, the report states that Lakeside improperly deducted \$63,325 in banquet gratuities that were not distributed to wait staff or reported to Parks. In total, the audit states that Lakeside underreported \$87,494 in gross receipts and owes Parks \$8,041 (\$7,000 in additional license fees and \$1,041 in late charges). . . . Payment to Parks for the full amount due has been requested from Lakeside in our NTC.”

2. Take immediate action to strengthen its internal controls, including but not limited to the following:

- Ensuring that all revenue from all operations (i.e., banquet, restaurant, snack bar, and boat rental) is accurately recorded in a point-of-sale system that is capable of accounting for all guest checks.
- Using banquet reservation software that can record and track all banquet reservations and payments, and issue sequential banquet contracts and invoices.
- Maintaining complete and accurate banquet records (i.e., banquet calendars, logs, and files).
- Pre-numbering all gift certificates and accounting for the outstanding gift certificates.
- Installing a cash register or computerized point-of-sale system in the snack bar to record all snack bar and boat rental transactions.
- Maintaining for at least six years the required source documents to support the gross receipts reported to the City.

Lakeside Response: “Lakeside has already taken immediate action to strengthen its internal controls to ensure that all revenues are accurately recorded in its point of sale system and ultimately to Parks.

* Banquet contracts are now pre numbered and sequential. In addition, the contract log is now on an Excel spreadsheet to ensure transparency of information regarding the

recording of each catered event. This information will also include cancellations and date changes for easy cross referencing.

* Gift Certificates are now pre numbered and sequential. In addition, we have implemented a certificate log on an Excel spreadsheet indicating date of sale, dollar amount, the date of sale and date of redemption.

* We have consulted with Posi Touch's technicians regarding the process of recording the sale of Gift Certificates, our system now includes them on the day it was sold. They are therefore included in our monthly gross receipts.

* We will install a cash register at our snack bar to record all boat rentals and snack bar transactions. This will take place at the beginning of the boat rental season."

Parks Response: "Parks has required Lakeside to take immediate action to comply with each matter covered in Recommendation 2. In particular, we have required Lakeside to electronically record the time, date, amount and item(s) sold for each sales transaction on the licensed premises, and to ensure that each customer guest check issued from their POS system is sequentially pre-numbered without gaps in the numbering. Further, we are requiring Lakeside to select a banquet reservation software system to help ensure that irregularities between event contracts, banquet calendars and sales amounts are minimized and to sequentially pre-number event contracts. Furthermore, the Department will schedule a follow-up audit to assess and monitor the implementation of these additional internal control measures."

3. Ensure that all transactions, including but not limited to the gross receipts from its restaurant, banquet, snack bar, and boat rental operations, are accurately recorded in the general ledger.
4. Ensure that the proceeds generated from the banquet, snack bar, the sales of gift certificates, and boat rental operations, and all special events are accurately reported to Parks.
5. Include all revenue generated by any other operators using the facility as gross receipts and pay all associated license fees.

Lakeside Response to Recommendation Numbers 3, 4, and 5: "We are in consultation with our CPA to ensure that all gross receipts are accurately recorded in the general ledger, and that all proceeds are properly reported to Parks."

Parks Response to Recommendation Numbers 3, 4, and 5: "Parks has required Lakeside to comply with Recommendations 3–5. Specifically, each sales transaction on the licensed premises must be clearly recorded in its general ledger and accurately reported to Parks via its gross receipts statements. This includes any and all revenue generated by another operator using the facility."

6. Amend its New York State sales tax filings to include the banquet gratuities as taxable sales and pay the additional sales tax plus interest and penalties for all the periods (including prior operating years) that banquet gratuities were not fully distributed to the wait staff.

Lakeside Response: “We are under the advisement of our CPA and attorney regarding tax-filing amendments for the audit period as well as periods beyond the scope of the audit. We will be in close contact with Parks as we begin to rectify any accounting errors.”

Parks Response: “Parks has required Lakeside to amend its NYS sales tax filings to include banquet gratuities not remitted to wait staff as taxable sales and pay the additional sales tax plus interest and penalties for all periods in which banquet gratuities were not fully distributed to wait staff.”

7. Consistently apply one accounting method in preparing its books and records.

Lakeside Response: “Lakeside also agrees to use one standardized and consistent accounting method when preparing our books and records.”

Parks Response: “The Report noted that Lakeside simultaneously used both cash and accrual accounting, a practice that could cause material misstatements of its finances. Parks has directed Lakeside to select one method of accounting to prepare its books and records. In addition, as a separate matter, Parks has notified Lakeside that gift certificate sales and event deposits should be reported to Parks on a cash basis.”

8. Maintain the facility in a sanitary condition.

Lakeside Response: “Lakeside will continue to operate a safe and sanitary facility. Every effort and expense is made in this regard. Please note: Health Department inspections held on 11-16-09 and then 12-3-09 both resulted in passing grades.”

Parks Response: “Parks has required Lakeside to ensure that it is in compliance with DOHMH rules and regulations at all times.”

9. Immediately pay the \$1,468 in outstanding water and sewer charges related to the licensed premises.

Lakeside Response: “As of Jan 6, 2010, all outstanding water and sewer charges have been paid in full.”

Parks Response: “Parks has directed Lakeside to pay the amount due to DEP immediately and to provide us with documentation to confirm payment.”

10. Pay its minimum annual fees and any applicable percentage fees on time.

Lakeside Response: “Lakeside will make every attempt to pay its fees on time.”

11. Submit annual income and expense statements to Parks within 30 days after the end of each operating year.

Lakeside Response: “Our CPA will submit the annual income and expense statements in a timeframe acceptable to Parks.”

Parks Response to Recommendation Numbers 10 and 11: “Parks has directed Lakeside to comply with its license and submit minimum annual fees and its annual income and expense statements on time. Moreover, we also note that Lakeside has paid all late charges incurred due to its late payments of minimum annual fees.”

12. Cease employing “off-the-books” employees, report all employees on its payroll records, and comply with all laws governing unemployment insurance, workers’ compensation, social security, tax withholding, temporary disability insurance, minimum wage, and overtime.

Lakeside Response: “Lakeside no longer employs ‘Off the Books’ employees.”

Parks Response: “The Report disclosed that Lakeside employed at least 10 ‘off-the-books’ employees to work at the Lake Club during the audit. This practice is illegal and unacceptable to Parks. Lakeside has assured us that all of its employees are documented and that its employee records are in compliance with all state labor law requirements. Further, Parks has reiterated to Lakeside in our NTC that they must comply with Recommendation 12.”

13. Distribute all gratuities to its wait staff in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor.

Lakeside Response: “We are under the advisement of our CPA as well as labor experts at our payroll computing company regarding the collection and distribution of gratuities. Some key changes have already been made regarding banquet contract language as well as NYS Labor Law compliance. We will continue to consult with Parks regarding these issues.”

14. Accurately report the wait staff gratuities to the Internal Revenue Service.

Lakeside Response: “We are in the process of developing a system to ensure that all wait staff gratuities are being reported accurately to the IRS.”

Parks Response to Recommendation Numbers 13 and 14: “Parks has required Lakeside to comply with Recommendations 13 and 14 and distribute all gratuities to its wait staff in accordance with Labor Law Section 196-d Division of Labor Standards, New York State Department of Labor. In addition, we have required Lakeside to accurately report wait staff gratuities to the IRS.”

We recommend that Parks should:

15. Issue a Notice-to-Cure to Lakeside requiring that it pay \$8,041 in additional license fees and late charges as assessed in this audit report and mandating that Lakeside’s management:
 - Establish and implement an adequate system of internal controls over the banquet, restaurant, snack bar, and boat rental operations,
 - Cease employing “off-the-books” employees and report all employees on its payroll records,
 - Distribute all gratuities in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor, and
 - Accurately report the wait staff gratuities to the Internal Revenue Service.

Parks Response: “Parks has complied with Recommendation 15 and issued a NTC to Lakeside that addresses all of the matters listed in this Recommendation.”

16. Calculate the total amount of banquet gratuities that were distributed to Lakeside’s owners prior to operating year 2009 and assess Lakeside for the additional license fees and late charges owed.

17. Ensure that Lakeside complies with all of the recommendations in this report.

Parks Response to Recommendation Numbers 16 and 17: “Parks will perform a follow-up review with Lakeside in 2010. The review will ensure that Lakeside has complied with the Recommendations in this Report. Parks will also calculate the total amount of banquet gratuities distributed to Lakeside’s owners prior to operating year 2009 and assess Lakeside for the additional fees owned.”

Late Charges Due for Unreported Revenue

Period Ended	Due Date	Underreported Gross Receipts	Additional License Fees Owed (8%)	Accumulated Balance Due	Period		Late Charge (2% per month)
					From	To	
04/30/09	05/30/09	\$87,494	\$7,000	\$7,000	06/01/09	06/30/09	\$ 140
				7,140	07/01/09	07/31/09	143
				7,282	08/01/09	08/31/09	146
				7,428	09/01/09	09/30/09	149
				7,577	10/01/09	10/31/09	152
				7,728	11/01/09	11/30/09	155
				7,883	12/01/09	12/31/09	158
Total				\$8,041			\$1,041



John Graham
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AUDITS, ACCOUNTANCY & CONTRACTS

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WILLIAM C. THOMPSON, JR.
COMPTROLLER

October 8, 2009

The Honorable Thomas A. Farley, M.D., M.P.H.
Commissioner
Department of Health and Mental Hygiene
125 Worth Street
New York, NY 10013

Dear Commissioner Farley:

I am writing to alert you to unsanitary conditions observed at the Lake Club Restaurant in Staten Island. My office is conducting an audit of the license agreement between the Department of Parks and Recreation and Lakeside Restaurant Corporation—d/b/a the Lake Club. Under the agreement, Lakeside Restaurant Corporation is required to operate, renovate, maintain, and manage the restaurant. As part of the audit, my staff visited the premises on September 28, 2009, and found conditions that may pose a threat to the health of the patrons. I am particularly concerned because the facility may not be vermin proof and patrons dining at the restaurant may be exposed to unhealthy and unsanitary conditions.

Auditors found conditions conducive to vermin existing in the restaurant's basement as well as unsanitary conditions in the walk-in freezer (see attached photographs). These conditions are repulsive, and their presence may be indicative of poor sanitation and other problems we may not have detected. I request that you send a health inspector to this facility to document any violations of the health code. The address of the facility is 1150 Clove Road, Staten Island, New York 10301.

Please inform me of the specific actions your office will take to remedy the situation. If you have any questions regarding this matter, please don't hesitate to contact Michael M. Morgese, Assistant Director for Financial Audits, at (212) 669-8197.

Yours truly,

A handwritten signature in black ink, appearing to read "John Graham".

John Graham

Enc.

c: Sara Packman, Assistant Commissioner, DOHMH
Elizabeth W. Smith, Assistant Commissioner for Revenue and Marketing
Jeffrey Kay, Director, Mayor's Office of Operations
George Davis, III, Mayor's Office of Operations

Conditions observed at the Lake Club Restaurant on September 28, 2009



Glue trap with roaches placed on top of the entrance of the furnace room in the basement.



Glue trap with roaches found on top of some pipes near the basement ceiling.

Conditions observed at the Lake Club Restaurant on September 28, 2009



Unsanitary conditions observed in the walk-in freezer outside the restaurant.

THE LAKE CLUB

1150 Clove Road
Staten Island NY 10301
Phone (718) 442-3600
Fax (718) 442-7157
WWW.Lake-Club.com

John Graham
The City of New York
Office of The Comptroller
Bureau of Audits
1 Centre Street
New York NY 10007-2341


Audit Report on the Compliance of
Lakeside Restaurant Corporation

Dear Mr. Graham,

Attached is a copy of our responses to the above captioned **draft** report. We have addressed the recommendations presented by your office and request that these responses be included in your final report.

If you have any questions, please feel free to contact us at the Lake Club. We can be reached at 718-442-3600.

Sincerely,


Eugene Lucarini


Patrick Fazio

Lakeside Restaurant Corporation

Agency Implementation Plan
FM09-130a

The following is in direct response to the specific recommendations made in the draft report dated December 23, 2009 by the City of New York Office of the Comptroller, Bureau of Audits.

1) The Lakeside Restaurant Corporation agrees to pay \$8,041.00 in additional license fees and late charges.

2) Lakeside has already taken immediate action to strengthen its internal controls to ensure that all revenues are accurately recorded in its point of sale system and ultimately to Parks.

* Banquet contracts are now pre numbered and sequential. In addition, the contract log is now on an Excel spreadsheet to ensure transparency of information regarding the recording of each catered event. This information will also include cancellations and date changes for easy cross referencing.

* Gift Certificates are now pre numbered and sequential. In addition, we have implemented a certificate log on an Excel spreadsheet indicating date of sale, dollar amount, the date of sale and date of redemption.

* We have consulted with Posi Touch's technicians regarding the process of recording the sale of Gift Certificates, Our system now includes them on the day it was sold. They are therefore included in our monthly gross receipts.

* We will install a cash register at our snack bar to record all boat rentals and snack bar transactions. This will take at the beginning of the boat rental season.

3, 4, 5, 7) We are in consultation with our CPA to ensure that all gross receipts are accurately recorded in the general ledger, and that all proceeds are properly reported to Parks. Furthermore, Lakeside also agrees to use one standardized and consistent accounting method when preparing our books and records.

6) We are under the advisement of our CPA and attorney regarding tax-filing amendments for the audit period as well as periods beyond the scope of the audit. We will be in close contact with Parks as we begin to rectify any accounting errors.

8) Lakeside will continue to operate a safe and sanitary facility. Every effort and expense is made in this regard. Please note: Health Department inspections held on 11-16-09 and then 12-3-09 both resulted in passing grades.

9) As of Jan 6, 2010, all outstanding water and sewer charges have been paid in full.

10, 11) Lakeside will make every attempt to pay its fees on time. Our CPA will submit the annual income and expense statements in a timeframe acceptable to Parks.

12) Lakeside no longer employs "Off the Books" employees.

13,14) We are under the advisement of our CPA as well as labor experts at our payroll computing company regarding the collection and distribution of gratuities. Some key changes have already been made regarding banquet contract language as well as NYS Labor Law compliance. We will continue to consult with Parks regarding these issues.

We are in the process of developing a system to ensure that all wait staff gratuities are being reported accurately to the IRS.

Please accept this as Lakeside Restaurant Corporations response to the audit recommendations and add it to the final report.



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10065

Elizabeth W. Smith
Assistant Commissioner
Revenue and Marketing

January 8, 2010

(212) 360-1366/betsy.smith@parks.nyc.gov

Mr. John C. Liu
New York City Comptroller
The City of New York / Office of the Comptroller
1 Centre Street
New York, NY 10007

Re: **Comptroller's Draft Audit Report on the Compliance of Lakeside Restaurant Corporation, May 1, 2008 to April 30, 2009, Audit No. FM09-130A, Dated December 23, 2009**

Dear Mr. Liu:

This letter represents the Parks Department's ("Parks") response to the Recommendations contained in the New York City Comptroller's Draft Audit Report ("Report") on the compliance of Lakeside Restaurant Corporation ("Lakeside") with its License Agreement ("License"). While the report indicated that Lakeside maintained the required liability insurance and provided its required security deposit to the City, the Report also states that Lakeside had significant internal control weaknesses over the collection, recording and reporting of its revenue. Parks has issued a Notice to Cure ("NTC") to Lakeside requiring it to implement the fourteen (14) Recommendations directed to Lakeside in the Report. These Recommendations include:

Recommendation 1 - Immediately remit the \$8,041 in additional license fees and late charges.

The Report indicates that Lakeside underreported revenue from sales related to its banquet, snack bar, boat rental, gift certificates and special events. Additionally, the report states that Lakeside improperly deducted \$63,325 in banquet gratuities that were not distributed to wait staff or reported to Parks. In total, the audit states that Lakeside underreported \$87,494 in gross receipts and owes Parks \$8,041 (\$7,000 in additional license fees and \$1,041 in late charges). The specific amounts underreported are listed below. Payment to Parks for the full amount due has been requested from Lakeside in our NTC.

Category	Amount Underreported
Improper Deduction from Gross Receipts	\$63,325
Banquet Revenue	22,025
Snack Bar and Boat Rental Revenue	230
Complimentary Gift Certificates	1,164
Special Event Revenue	750
Total Underreported Gross Receipts:	\$87,494



Recommendation 2 - Take immediate action to strengthen its internal controls, including but not limited to the following:

- Ensuring that all revenue from all operations (i.e. banquet, restaurant, snack bar and boat rental) is accurately recorded in a point-of-sale system that is capable of accounting for all guest checks.
- Using banquet reservation software that can record and track all banquet reservations and payments, and issue sequential banquet contracts and invoices.
- Maintaining complete and accurate banquet records (i.e., banquet calendars, logs, and files).
- Pre-numbering all gift certificates and accounting for the outstanding gift certificates.
- Installing a cash register or computerized point-of-sale system in the snack bar to record all snack bar and boat rental transactions.
- Maintaining for at least six years the required source documents to support the gross receipts reported to the City.

Parks has required Lakeside to take immediate action to comply with each matter covered in Recommendation 2. In particular, we have required Lakeside to electronically record the time, date, amount and item(s) sold for each sales transaction on the licensed premises, and to ensure that each customer guest check issued from their POS system is sequentially pre-numbered without gaps in the numbering. Further, we are requiring Lakeside to select a banquet reservation software system to help ensure that irregularities between event contracts, banquet calendars and sales amounts are minimized and to sequentially pre-number event contracts. Furthermore, the Department will schedule a follow-up audit to assess and monitor the implementation of these additional internal control measures.

Recommendation 3 - Ensure that all transactions, including but not limited to the gross receipts from its restaurant, banquet, snack bar, and boat rental operations, are accurately recorded in the general ledger.

Recommendation 4 - Ensure that the proceeds generated from the banquet, snack bar, the sales of gift certificates, and boat rental operations, and all special events are accurately reported to Parks.

Recommendation 5 - Include all revenue generated by any other operators using the facility as gross receipts and pay all associated license fees.

Parks has required Lakeside to comply with Recommendations 3 - 5. Specifically, each sales transaction on the licensed premises must be clearly recorded in its general ledger and accurately reported to Parks via its gross receipts statements. This includes any and all revenue generated by another operator using the facility.

Recommendation 6 - Amend its New York State sales tax filings to include the banquet gratuities as taxable sales and pay the additional sales tax plus interest and penalties for all the periods (including prior operating years) that banquet gratuities were not fully distributed to the wait staff.

Parks has required Lakeside to amend its NYS sales tax filings to include banquet gratuities not remitted to wait staff as taxable sales and pay the additional sales tax plus interest and penalties for all periods in which banquet gratuities were not fully distributed to wait staff.

Recommendation 7 - Consistently apply one accounting method in preparing its books and records.

The Report noted that Lakeside simultaneously used both cash and accrual accounting, a practice that could cause material misstatements of its finances. Parks has directed Lakeside to select one method of accounting to prepare its books and records. In addition, as a separate matter, Parks has notified Lakeside that gift certificate sales and event deposits should be reported to Parks on a cash basis.

Recommendation 8 - Maintain the facility in a sanitary condition.

Parks has required Lakeside to ensure that it is in compliance with DOHMH rules and regulations at all times.

Recommendation 9 - Immediately pay the \$1,468 in outstanding water and sewer charges related to the licensed premises.

Parks has directed Lakeside to pay the amount due to DEP immediately and to provide us with documentation to confirm payment.

Recommendation 10 - Pay its minimum annual fees and any applicable percentage fees on time.

Recommendation 11 - Submit annual income and expense statements to Parks within 30 days after the end of each operating year.

Parks has directed Lakeside to comply with its license and submit minimum annual fees and its annual income and expense statements on time. Moreover, we also note that Lakeside has paid all late charges incurred due to its late payments of minimum annual fees.

Recommendation 12 - Cease employing "off-the-books" employees, report all employees on its payroll records, and comply with all laws governing unemployment insurance, workers' compensation, social security, tax withholding, temporary disability insurance, minimum wage and overtime.

The Report disclosed that Lakeside employed at least 10 "off-the-books" employees to work at the Lake Club during the audit. This practice is illegal and unacceptable to Parks. Lakeside has assured us that all of its employees are documented and that its employee records are in compliance with all state labor law requirements. Further, Parks has reiterated to Lakeside in our NTC that they must comply with Recommendation 12.

Recommendation 13 - Distribute all gratuities to its wait staff in accordance with Labor Law Section 196-d, Division of Labor Standards, New York state Department of Labor.

Recommendation 14 - Accurately report the wait staff gratuities to the Internal Revenue Service.

Parks has required Lakeside to comply with Recommendations 13 and 14 and distribute all gratuities to its wait staff in accordance with Labor Law Section 196-d Division of Labor Standards, New York State Department of Labor. In addition, we have required Lakeside to accurately report wait staff gratuities to the IRS.

The Report also included the following three Recommendations to Parks. Specifically:

Recommendation 15 - Issue a Notice to Cure to Lakeside requiring that it pay \$8,401 in additional license fees and late charges as assessed in this audit report and mandating that Lakeside's management:

- Establish and implement an adequate system of internal controls over the banquet, restaurant, snack bar and boat rental operations.
- Cease employing "off-the-books" employees and report all employees on its payroll records.
- Distribute all gratuities in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor.
- Accurately report the wait staff gratuities to the Internal Revenue Service.

Parks has complied with Recommendation 15 and issued a NTC to Lakeside that addresses all of the matters listed in this Recommendation.

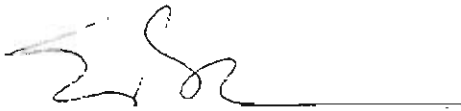
Recommendation 16 - Calculate the total amount of banquet gratuities that were distributed to Lakeside's owners prior to operating year 2009 and assess Lakeside for the additional license fees and late charges owed.

Recommendation 17 - Ensure that Lakeside complies with all of the Recommendations in the Report.

Parks will perform a follow-up review with Lakeside in 2010. The review will ensure that Lakeside has complied with the Recommendations in this Report. Parks will also calculate the total amount of banquet gratuities distributed to Lakeside's owners prior to operating year 2009 and assess Lakeside for the additional fees owed.

Finally, we wish to thank the Comptroller's Office for its work in performing this audit.

Sincerely,



Elizabeth W. Smith

cc: Faige Hornung, Jeffrey Kay, George Davis, Robert Garafola, Alessandro Olivieri, Melissa Auerbach, June Lee, Walter Roberts