

# AUDIT REPORT

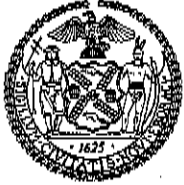


CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF MANAGEMENT AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office**

*MH07-128A*

**May 29, 2009**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

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

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of the Bronx County Public Administrator's Office (Bronx PA) with applicable federal, State, and City laws, rules, and regulations.

The Bronx PA is responsible for administering the estates of individuals in the county who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate. We audit public offices such as this as a means of ensuring that they follow applicable laws and guidelines fairly and consistently.

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written in a cursive style.

William C. Thompson, Jr.  
WCT/ec

**Report:** MH07-128A  
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*The City of New York  
Office of the Comptroller  
Bureau of Management Audit*

**Audit Report on the Financial and Operating Practices of  
the Bronx County Public Administrator's Office**

**MH07-128A**

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**AUDIT REPORT IN BRIEF**

The objective of this audit was to determine whether the Office of the Bronx County Public Administrator (Bronx PA) complied with Article 11 of the New York State Surrogate's Court Procedures Act (SCPA), the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators* (Administrative Board Guidelines), and other applicable federal, State, and City laws, rules, and regulations.

There are five Public Administrators in New York City, each of whom serves one of the City's five counties and reports to the county Surrogate's Court. Each Public Administrator is responsible for administering the estates of individuals in the county who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate.

As of June 28, 2007, the Bronx PA was administering 1,071 open estates with a total balance of approximately \$69.5 million. According to the City's Fiscal Year 2007 annual financial report, the Bronx PA collected \$431,950 in revenues and had expenditures totaling \$428,671, consisting of \$413,181 for Personal Service expenditures and \$15,490 for Other Than Personal Service expenditures.

**Audit Findings and Conclusions**

We concluded that the Bronx PA did not adequately comply with Article 11 of the SCPA, the Administrative Board Guidelines, and other applicable Federal, State, and City laws, rules, and regulations largely because of inefficient management of the office's operations. We identified inconsistent and inaccurate reporting of the status of estates, inadequate monitoring of the progress of estate administration, lack of supporting documentation in estate folders, miscalculation and incorrect payment of fees and commissions, unreported and underreported payments in 1099-reportable payments to the IRS, and inadequate controls over personal property. As a result, there is an increased risk that decedents' estates are not being properly monitored and that funds are not being adequately safeguarded and distributed.

These conditions could be improved—if not fully corrected—by using the CompuTrust computerized case management system to its fullest capacity and by establishing and adhering to a comprehensive, written manual of policies and procedures that addresses all aspects of administering the estates that are the responsibility of the Bronx PA.

Areas in which the Bronx PA complied with the applicable rules and regulations included accounting for and maintaining a separate file for each estate valued at more than \$500, hiring an independent CPA to conduct an annual audit, maintaining segregation of duties among employees, using two investigators for its residence searches, keeping personal property in a secure safe, and maintaining a mail log for all correspondence that comes into the office.

Subsequent to the completion of fieldwork, additional areas of concern were identified. Based on our review of these issues, we found incomplete and untimely submission of the Report of Open Estates to the New York State Comptroller’s Office, questionable investments of estate funds in auction-rate securities, and a significant number of open estates with negative balances.

### **Audit Recommendations**

Based on our findings, we make 15 recommendations, 9 of which are listed below. The Bronx PA should:

- Correctly use status codes in CompuTrust to designate estates as open, closed, reopened, and closed, enabling the office to correctly report closed estates for a given period.
- Use CompuTrust to monitor cases adequately, include a “tickler” function to inform the staff of any unusual delays in estate administration, and promptly take action to rectify the source of any delay.
- Develop a comprehensive policies and procedures manual.
- Issue 1099-MISC forms for the 24 individuals identified in the report as not having been correctly issued these forms for calendar year 2006.
- Ensure that investigators prepare a complete and detailed inventory list of all items retrieved from the decedent’s residence during the search or immediately upon returning to the office.
- Comply with the Administrative Board Guidelines and require that all bidders submit sealed bids for each lot of personal property being auctioned and maintain these bids in the files.
- Comply with Title 2 of the New York Codes, Rules and Regulations, §72.1, regarding the timeliness, completeness, and proper format of the Report of Open Estate.

- Immediately cease its practice of investing estate funds in auction-rate securities and refrain from doing so in the future.
- Consult with relevant City agencies, such as OMB, to determine how to pay the initial costs of administering estates that appear to have assets without borrowing the funds from the pooled estate trust account.

### **Bronx PA Response**

The previous Bronx Public Administrator generally agreed with the audit's 12 initial recommendations, but stated that the office lacked the resources necessary to implement two of them. The current Bronx Public Administrator generally agreed with the three additional recommendations in the "Subsequent Events" section of this report.

## INTRODUCTION

### Background

There are five Public Administrators in New York City, each of whom serves one of the City's five counties and reports to the county Surrogate's Court. According to Article 11 of the New York State Surrogate's Court Procedures Act (SCPA), which governs Public Administrators and their offices, a Public Administrator is "appointed by and may be removed by the judge or judges of the court . . . and shall continue in office until removed." Each Public Administrator is responsible for administering the estates of individuals in the county who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate.

The SCPA requires that the Public Administrator deposit all commissions and costs received in the City treasury; make all books, records, and documents available to the City Comptroller for examination; file monthly account information on estates that have been closed or finally settled; and have an annual audit of the office performed by an independent certified public accountant (CPA), the cost of which is to be funded by the City. As an estate's administrator, the Public Administrator makes funeral arrangements, collects debts, pays creditors, manages the decedents' assets, and searches for possible heirs. The Public Administrator is also responsible for filing tax returns on behalf of the decedents.

In addition to following SCPA provisions, Public Administrators must comply with requirements of the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators* (Administrative Board Guidelines) in their office operations. This publication contains guidelines for record-keeping, accounting, cash, property, and other asset management and sale, maintenance of suspense (imprest) accounts, payments of fees, and the initial inspection of a decedent's premises. Finally, the Public Administrators are also required to comply with the New York City Comptroller's Directive #1, Principles of Internal Control, and Directive #28, Reporting Requirements for Public Administrators.

Estates with gross values of \$20,000 or less are labeled as small estates. A Public Administrator must file an informatory accounting with the Surrogate's Court for estates with a gross value between \$500 and \$20,000. Estates with gross values over \$20,000 are considered large estates and require the Public Administrators to petition the court for Letters of Administration, to file a final accounting documenting all income and expenses associated with an estate, and to receive a decree from the Surrogate's Court Judge detailing how the estate is to be distributed.

If additional assets have been received after an estate is closed and final accountings have been submitted to the Surrogate's Court, the Public Administrator reopens an estate to process the additional assets. A final accounting covering the period of administration of those additional assets is prepared and filed with the Surrogate's Court indicating the transactions associated with the additional assets. To help administer the estates, the Bronx PA uses a computerized case management system called CompuTrust.



The Administrative Board Guidelines authorize the Public Administrator to charge each estate an administrative fee of up to one percent of the gross value of each estate and to maintain a suspense account. These fees are deposited in a separate bank account and are used to supplement the Public Administrator's budget. The Administrative Board Guidelines state that suspense-account funds are to be used to pay expenses "necessary for the proper functioning of the office's operations and for the administration of estates." (The funds can also be used as a loan to estates to pay expenses prior to the conversion of estate assets to cash.)

As of June 28, 2007, the Bronx PA was administering 1,071 open estates with a total balance of approximately \$69.5 million. According to the City's Fiscal Year 2007 annual financial report, the Bronx PA collected \$431,950 in revenues and had expenditures totaling \$428,671, consisting of \$413,181 for Personal Service expenditures and \$15,490 for Other Than Personal Service expenditures. As of June 28, 2007, the Bronx PA employed seven City employees, including the Public Administrator and Deputy Public Administrator. The Bronx PA also employed three part-time non-City employees who were paid from the suspense account.

### **Objective**

The objective of this audit was to determine whether the Bronx PA complied with Article 11 of the SCPA, the Administrative Board Guidelines, and other applicable federal, State, and City laws, rules, and regulations.

### **Scope and Methodology**

The scope of our audit was estates that were reported closed during Fiscal Year 2007 (July 1, 2006 through June 30, 2007).

To obtain an understanding of the procedures and regulations with which the Bronx PA must comply, we reviewed Article 11 of the SCPA, the Administrative Board Guidelines, Comptroller's Directive #1, Comptroller's Directive #28, and other applicable federal, State, and City laws, rules, and regulations. In addition, we interviewed the Bronx PA staff to gain an understanding of the office's practices relating to the handling of the estate account funds. To assess the Bronx PA's internal controls applicable to our audit objectives, we evaluated the information obtained in the above-mentioned interviews and reviewed the office operating procedures.

To determine the number of estates that were closed, opened, and reopened during Fiscal Year 2007, we obtained the 12 Closed Estates Reports that were used by the Bronx PA bookkeeper to report the number of closed estates to various governmental entities, and 13 Account Balances Reports used by the Bronx PA's CPA to calculate the number of closed and open estates.

To assess the Bronx PA's compliance with the Administrative Board Guidelines procedures for handling estate accounts, we selected a sample of 30 estates from the population

of 107 estates reported closed by the Bronx PA during Fiscal Year 2007. We stratified the 107 closed estates into two populations, 66 small estates with gross values of between \$1,333 and \$19,710 and 41 large estates with gross values of between \$20,442 and \$5.1 million. From the 66 small estates, we randomly selected a sample of 10 with gross values of between \$1,333 and \$8,528. Additionally, from the 41 large estates, we randomly selected 20 with gross values of between \$20,442 and \$5.1 million.

For our sampled 30 estates, we reviewed the information recorded in the CompuTrust software to determine whether each estate was accounted for separately, as required by the Administrative Board Guidelines.

To determine whether the Bronx PA maintained adequate controls over the administration of the estates, we reviewed the folders for the 30 randomly sampled estates for supporting documentation to show that:

- Letters of Administration were obtained from the Surrogate's Court, when applicable,
- The Bronx PA performed a search for beneficiaries of the decedent, if required,
- Inquiry letters regarding the decedent's assets were sent to the decedent's financial institutions and other institutions, such as nursing homes,
- The Bronx PA correctly filed with the Surrogate's Court informal final accountings for each of the 10 small estates in our sample, and
- The Bronx PA correctly filed with the Surrogate's Court the Final Decree for each of the 20 large estates in our sample.

To verify that all estate transactions, receipts, and disbursements were properly recorded and had supporting documentation, we traced each transaction listed in the Trial Balance Reports, which details all income and expense transactions made for individual estates, to the supporting documentation in the estate folders. In addition, we reviewed the cancelled checks for 540 disbursements that were made by the sampled estates between calendar years 2004 and 2007 to confirm that the information on the Trial Balance Reports matched the information on the cancelled checks, i.e., payee, date.

To determine whether the Bronx PA correctly charged the 10 small estates for legal fees, imprest fees, and New York City commissions, we recalculated the disbursements using the same percentages that the Bronx PA uses for small estates. With regard to the 20 large estates, we reviewed the distributions to determine whether the Bronx PA complied with the decrees approved by the Surrogate Court Judge. Two large estates did not have decrees on file. Therefore, we calculated the amounts using the above-mentioned percentages.

To determine whether the investigators followed the Administrative Board Guidelines when conducting investigations of decedents' residences, we reviewed the Investigator's Reports prepared for the 11 sampled estates that required residence searches. We reviewed the

Investigator's Reports to determine whether two Bronx PA investigators searched the decedents' residences and whether the searches were conducted within six months of the notice of the decedent's death as required. We also determined whether detailed inventory lists were prepared by the investigators identifying all items removed from the decedents' residences.

To assess Bronx PA controls over decedents' personal property stored at the Bronx PA, we reviewed the controls for collecting, recording, and securing items removed from decedents' residences. We ascertained whether the Bronx PA prepared inventory lists of decedents' personal property and whether the properties were securely stored. We determined whether the Bronx PA maintained records of appraisals of decedents' assets and the sale prices of decedents' properties sold.

To determine whether jewelry items secured at the Bronx PA were adequately accounted for and to verify their existence, we traced the items listed in CompuTrust for 10 randomly selected open estates with listed inventory to the items stored in the safe. We also randomly selected 10 bags of estate inventory from the safe and traced them to the handwritten inventory lists of all estates with inventory, as well as, to the CompuTrust detailed inventory listing for each estate. We randomly selected 10 estates that were currently open and had inventory and matched them against the list of estates that had inventory and noted whether the inventory items were marked as sold or still in the safe. If they were unsold, we verified that the items were still in the safe.

We randomly selected the month of February 2007 and determined the accuracy of the Bronx PA's Estate Disbursement Journal by reviewing that month's 233 canceled checks paid on behalf of estates. Additionally, to determine the accuracy of the Imprest Disbursement Journal, we reviewed the 43 checks written from the Bronx PA's imprest account during February 2007. We matched information from the estate and imprest checks i.e., payee, amount, date, estate information, to the entries on each Disbursement Journal.

To determine whether the Bronx PA filed the monthly closed estate reports with the Comptroller's Office, as required, we reviewed all the Bronx PA's reports received by the Comptroller's Office for Fiscal Year 2007. We also reviewed these reports to determine whether they followed the required format as described in Comptroller's Directive #28.

We determined whether the Bronx PA had procedures to identify and track reportable Internal Revenue Service (IRS) Form 1099-MISC payments and whether the Bronx PA correctly reported all calendar year 2006 Form 1099-MISC payments to the IRS.

We ascertained whether an annual audit of the Bronx PA was conducted by an independent CPA, in accordance with the SCPA, and that a copy was submitted to the City Comptroller's Office. We also determined whether the Bronx PA filed the required monthly, semi-annual, and annual reports with the Surrogate's Court, State Comptroller's Office and City Comptroller's Office.

To determine whether there were any recurring issues, we reviewed a previous audit of the Bronx PA entitled *Audit Report on the Financial and Operating Practices of the Bronx*

*County Public Administrator's Office* (MD99-098A, issued June 23, 1999) as well as the follow-up audit entitled *Follow-Up Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office* (MD04-062F, issued June 24, 2004).

The results of our tests of the adequacy of Bronx PA estate management practices relating to our sampled 30 estates, while not statistically projected to the population of estates, provided a reasonable basis to assess the adequacy of Bronx PA estate management practices.

### **Subsequent Events**

Subsequent to the completion of fieldwork, additional areas of concern were identified, specifically, whether the Report of Open Estates sent to the New York State Comptroller's Office was complete and submitted in a timely manner, whether all estate funds were properly invested, and issues regarding open estates with negative balances. We conducted additional audit fieldwork as follows.

To determine whether the Bronx PA had reported to the New York State Comptroller all large estates open as of December 31, 2007, as required, we randomly sampled 30 of the 364 large estates that appeared on the Bronx PA's Account Balances Report, but were not reported on the 2007 State Comptroller's Report of Open Estates. For the 30 sampled estates, we determined whether they should have been included on the Report of Open Estates. We also reviewed the report to determine whether it followed the required format as described in Title 2, §72.1, of the New York Codes, Rules and Regulations (2 NYCRR 72.1).

To determine whether all estate funds were properly invested, we requested from the Bronx PA a listing from CompuTrust that identified where all estate monies were currently invested. We then requested the Comptroller's General Counsel to review the SCPA, the Administrative Guidelines, and the listing of investments from the Bronx PA and to provide an opinion on the Bronx PA's investing of estate monies in auction-rate securities.

To determine the number and dollar value of open estates with negative balances, we obtained and reviewed the Bronx PA's November 21, 2008 Account Balances Report.

### **Independence Disclosure**

The above-noted subsequent issues were brought to the attention of senior management of the Office of the Comptroller who decided that the scope of this audit should be extended. The Comptroller's General Counsel provided legal assistance and specific report language regarding investing estate monies in auction-rate securities. None of the above individuals, however, were involved in conducting the related audit fieldwork that provided the evidential matter to support the audit findings.

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

## **Discussion of Audit Results**

The matters covered in this report were discussed with Bronx PA officials during and at the conclusion of this audit. A preliminary draft report was sent to Bronx PA officials and discussed at an exit conference held on May 15, 2008. On May 22, 2008, we submitted a draft report to Bronx PA officials with a request for comments. On June 2, 2008, we received a written response from the Bronx Public Administrator then in office. This previous Bronx Public Administrator generally agreed with the audit's original 12 recommendations, but stated that the office lacked the resources necessary to implement two recommendations regarding the use of CompuTrust to maintain a comprehensive and current inventory listing and the development of a comprehensive procedures manual. The comments of that previous Bronx Public Administrator will be included in the final version of this report.

Subsequent to the completion of fieldwork, additional areas of concern were identified, and a new Bronx Public Administrator was appointed. We initiated additional fieldwork, which was completed on December 31, 2008, and submitted a revised draft report on March 18, 2009, to the current Bronx PA officials with a request for comments on the subsequent findings and recommendations. On April 8, 2009, we received a written response from the current Bronx Public Administrator. The current Bronx Public Administrator generally agreed with the three additional recommendations found in the "Subsequent Events" section of this report.

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

## **FINDINGS AND RECOMMENDATIONS**

We concluded that the Bronx PA did not adequately comply with Article 11 of the SCPA, the Administrative Board Guidelines and other applicable Federal, State, and City laws, rules, and regulations largely because of inefficient management of the office's operations. Based on our observations, interviews, and reviews of estate folders, we identified inconsistent and inaccurate reporting of the status of estates, inadequate monitoring of the progress of estate administration, lack of supporting documentation in estate folders, miscalculation and incorrect payment of fees and commissions, unreported and underreported payments in 1099-reportable payments to the IRS, and inadequate controls over personal property. These conditions could be improved—if not fully corrected—by using CompuTrust to its fullest capacity and by establishing and adhering to a comprehensive written manual of policies and procedures that addresses all aspects of administering the estates that are the responsibility of the Bronx PA. The conditions that need to be improved are discussed in detail in the following sections of this report.

There were areas in which the Bronx PA complied with the applicable rules and regulations. These areas included accounting for and maintaining a separate file for each estate valued at more than \$500, hiring an independent CPA to conduct an annual audit, maintaining segregation of duties among employees, using two investigators for its residence searches, keeping personal property in a secure safe, and maintaining a mail log for all correspondence that comes into the office.

Subsequent to the completion of fieldwork, additional areas of concern were identified. Based on our additional work, we found incomplete and untimely submission of the Report of Open Estates to the New York State Comptroller's Office, questionable investments of estate funds in auction-rate securities, and a significant number of open estates with negative balances.

### **Underutilization of CompuTrust**

The Bronx PA is not using CompuTrust to its fullest capacity so that it can generate statistical information quickly and accurately for in-house use and to generate reports to other entities. In addition, it could be used to track the progress of the estates and to maintain an up-to-date inventory listing of private property held in the office. Instead, the Bronx PA is still relying on staff to prepare reports and track the progress of the estates manually. Not only does this prove to be labor intensive, but it creates an environment prone to error. The following conditions would be improved by fully using CompuTrust.

### **Inconsistent and Inaccurate Reporting of the Status of Estates**

According to SCPA §1109, the Public Administrator is required to file monthly reports to the Surrogate's Court, the Mayor, and the New York City Comptroller's Office stating the accounts that have been closed or finally settled. In its Closed Estate Reports submitted for Fiscal Year 2007, the Bronx PA reported a total of 107 estates closed. In a separate report submitted to the Surrogate's court for Fiscal Year 2007, the Bronx PA reported a total of 1,064 estates closed.

Both of these reports were manually prepared, one by the bookkeeper and the other by the Bronx PA's CPA. Both methods resulted in inaccurate reporting of closed estates to other entities.

According to the Bronx PA's bookkeeper, the criterion used for reporting closed estates in the Closed Estate Report is "estates that paid commissions to the City." This criterion is inadequate and results in underreporting closed estates as there are many estates that did not have enough funds to pay commissions but were still considered closed once their assets had been distributed.

The CPA used a different method to report the number of closed estates to the Surrogate's court. This method involved manually comparing the estate numbers on a printout of the Account Balances Report (generated by CompuTrust) for a given month with the estate numbers reported on a printout of the previous month's Account Balances Report. An estate account number that does not appear on the current month's report but that appeared in the previous month's report is considered closed. A new estate number that appears on the current month's report but was not on the previous month's report is considered an open estate. Based on this method, the CPA determined that 1,064 estates were closed during Fiscal Year 2007.

The auditors used the CPA's methodology and found that the CPA incorrectly included 139 estates in the closed estates for various reasons, including that some estates were counted closed more than once. In addition, we found 416 estate numbers that were not included on any of the Account Balances Reports used by the CPA. Based on a review of 20 of the 416 estates, we found that 9 estates were opened and closed in the same month and were, therefore, not included in the CPA's count of closed estates.

Also, the methods used by the bookkeeper and the CPA upon which to base their reports resulted in a variance of 957 closed estates. This condition could be corrected if the Bronx PA used status codes in CompuTrust to identify the current status of each estate. Instead, the Bronx PA relies on manual comparisons of hard-copy reports that use staff time inefficiently and result in inaccurate statistical information being reported to other entities.

### **Inadequate Monitoring of Estate Administration Subsequent to Signed Decrees**

According to the Administrative Board Guidelines, "the PA shall maintain a case management system to track the progress of each estate's administration. The system shall consist of a centralized tracking and recording system which reflects the status of each pending estate. All estate activity must be recorded promptly in the case management system. The system shall include a 'tickler' function, so that the PA may monitor unusual delays in the administration of any estate." We found that 3 of the 30 sampled estates included signed decrees that required additional actions to be taken before all the assets could be distributed. Based on our review of the estate folders, unnecessary delays occurred in administering the estates. These delays were caused by the lack of appropriate use of CompuTrust or the lack of a suitable manual system to track the progress of the each estate.

Our review of the estate folder for one of the estates, valued at approximately \$80,000, showed that all disbursements had been paid except for \$56,000 that was to be used to establish two special-needs trusts for the decedent's disabled beneficiaries. According to the amended decree, dated March 5, 2007, if no one stepped forward to establish these trusts within 90 days of the decree date, the Bronx PA would be responsible for their creation in July of 2007. When we reviewed the folder in October 2007, we found that the trusts had not been established. We brought this matter to the attention of the Bronx PA at a meeting on October 29, 2007. As of March 6, 2008, when we met and again brought this matter to the Bronx PA's attention, we learned that neither of these two trusts had yet been established.

In a second estate, valued at approximately \$441,933, our review of the estate folder showed that while most of the funds had been distributed, there was still \$5,000 left—five months after the decree date of May 10, 2007. At a meeting held on October 29, 2007 with the Bronx PA, he stated that the aforementioned funds were still being held in the estate because the staff became aware of approximately \$19,000 in additional funds belonging to this estate and planned to send letters to the financial institution holding the funds to collect them. On February 27, 2008, four months after our initial meeting with the Bronx PA, we followed up on this issue and were informed that the inquiry letters to the financial institution had still not been sent out.

In our review of the third estate, which was valued at approximately \$1.48 million, we found that although the distributees received the major part of the proceeds from the estate, approximately \$45,000 in interest earned remained in the estate account. These monies accrued between the time the Bronx PA submitted the decree and the time it was approved by the judge. The Bronx PA was aware of the additional funds in January 2007, when the decree was filed. However, as of March 6, 2008—15 months after the decree was filed—the Bronx PA had still not petitioned the Surrogate's Court to take the necessary action of listing the names of additional banks in the decree so that the funds could eventually be transferred to the distributees.

To better monitor estates and prevent unnecessary delays, the Bronx PA should fully use CompuTrust by adding a "tickler" function that would alert staff to any unusual delays in the process of administering the estates. Additionally, after learning of an unusual delay, the Bronx PA should promptly take action to solve the problem causing the delay.

### **Inadequate Inventory Listing of Personal Property**

The Bronx PA does not maintain a comprehensive and current inventory listing that identifies the entire population of personal property being held in its office on behalf of the estates. Instead, the Bronx PA maintains a handwritten list (with columns for estate number, estate names, appraisal, and bid amounts) prepared by the Property Clerk. This list is inadequate because it does not identify each individual item held in the safe on behalf of the estate, but rather identifies it as a "lot." In addition, the list has duplicate entries for the same lot of property sold, contains erroneous information, lacks estate numbers next to the corresponding estate name, and at times is illegible.



While CompuTrust has the capacity to generate a comprehensive inventory list, the Bronx PA staff is not entering all the necessary information to generate a complete and up-to-date list of inventory. Currently, a description of individual items for each estate is entered in CompuTrust under the estate personal property section. Information regarding the appraisal and sale amount of the individual items is not entered into CompuTrust. A computer-generated inventory list would include currently held as well as all sold items no longer on hand. In the absence of a comprehensive and current inventory list, the risk of the theft of property going undetected becomes greater.

### **Recommendations**

The Bronx PA should:

1. Correctly use status codes in CompuTrust to designate estates as open, closed, reopened, and closed, enabling the office to correctly report closed estates for a given period.

**Bronx PA Response:** The previous Bronx PA agreed stating, “As indicated in the exit conference the fiduciary trust service provider has discontinued support of the present system. In any event this office will attempt even under the present system to use the closed codes which this office has already attempted to implement on its own since September, 2007. When the new system is implemented this office will work with the service provider to establish a procedure that will allow us to use open, closed, reopened and codes to indicate that the reopened cases are now closed.”

2. Consult with other entities such as the Surrogate’s Court or other Public Administrators to obtain the correct definition of a “closed estate.”

**Bronx PA Response:** The previous Bronx PA agreed stating, “This office will explore with other Public Administrators who utilize the new fiduciary software system to determine on a global basis a definition of a ‘closed’ estate. Inasmuch as this is an administrative function, which is separate and apart from the records kept by the Surrogate’s Court, it does not appear that the Surrogate’s Court would be an entity to discuss the definition of a closed estate.”

3. Use CompuTrust to monitor cases adequately, include a “tickler” function to inform the staff of any unusual delays in estate administration, and promptly take action to solve the problem causing the delay.

**Bronx PA Response:** The previous Bronx PA agreed stating, “While the present system does have a comment section it does not appear that it has an automatic tickler system or that the present staff has the knowledge or resources to have the comment section act as an effective tickler system. However, this will be discussed with the fiduciary program service provider to include in the new system a daily ‘pop-up’ tickler system for various categories if possible.”

4. Use CompuTrust to maintain a comprehensive and current inventory listing.

***Bronx PA Response:*** The previous Bronx PA stated, “Even with a new fiduciary trust program without the necessary resources, i.e. a daily technical support employee to make the necessary inventory inputs, to properly monitor those inputs, and to develop a tickler system to help with the inventory listing, this office lacks the resources to implement recommendation number 4.”

### **Lack of Written Procedures**

Although the Bronx Public Administrator provided the audit team with memos that he issued regarding various office policies to address concerns during his tenure, the office lacks formal, written policies and procedures to address and establish standards comprehensively for all aspects of the agency’s administration of estates and guardianships, including the collection and distribution of assets, data entry, record-keeping, and reports to external entities.

Comptroller’s Directive #1 states: “Internal control activities . . . are, basically, the policies, procedures, techniques, and mechanisms used to enforce management’s direction. They must be an integral part of an agency’s planning, implementing, review and accountability for stewardship of its resources and are vital to its achievement of desired results.” The directive also requires that the objectives that management has set for various functions of the agency be written in manuals that are communicated to appropriate personnel.

Written policies and procedures, whether required by laws or regulations, are recognized as good operating practices necessary to accomplish the mission of the organization. Written policies and procedures provide an organization with assurance that every person involved in a process within the organization understands the mission of the organization, the tasks that are to be accomplished, and the acceptable methods to be used in performing those tasks. They also provide an effective mechanism for training and evaluating the performance of staff in their duties. By not maintaining comprehensive, written policies and procedures, the Bronx PA management has no assurance that policies are properly communicated and consistently followed. Also, there is no assurance that new personnel have adequate guidance in carrying out their assigned duties.

By not having formal written procedures, which include the collection and distribution of assets, correctly entering the appropriate and necessary data, maintaining adequate supporting documentation, and reporting required information to external entities, the following conditions have occurred.

### **Lack of Supporting Documentation in Estate Folders**

For each estate account it administers, the Bronx PA maintains documentation within at least one file folder. This documentation supports the actions taken by the Bronx PA to ensure that the estate has been properly administered—all assets have been collected and only

appropriate disbursements have been made. Although administration of each estate varies, in general, the estate folders should contain a Certificate of Death, inquiry letters in search of assets (if necessary), Investigation of Death Report (Report of Death), court accounting of the distribution of the estates, and any other legal and administrative documents necessary to administer and account for the estates. Large estates also require court-issued Letters of Administration and decrees.

Ten of the 30 sampled estate folders we reviewed lacked at least one of the above-mentioned documents. For example, four of the estate folders lacked the Certificate of Death. The folder for another estate, valued over \$30,000, lacked the Formal Accounting and Court Decree, which is required before assets are distributed.

In addition, the Bronx PA did not maintain documentation to back up all receipts and disbursements made for 16 of our 30 sampled estates.<sup>1</sup> These 16 estates lacked back-up documentation relating to receipts of assets, disbursement of funds, or both. Nine of the 16 estates lacked supporting documentation for the receipt of assets for a total of \$2.4 million, most of which involved one estate valued at approximately \$7.5 million that had no documentation to support the receipt of \$2 million from a sale of stocks. In another example, an estate valued at approximately \$442,000 had no documentation to support the receipt of \$2,000 for the sale of an automobile. When we brought these two examples to the Bronx Public Administrator's attention, he had no explanation for the lack of supporting documentation.

In addition, an estate valued at \$2,420 had an entry in CompuTrust for a receipt of \$5,123 for a life insurance payment. We could not find the supporting documentation in the folder for this receipt. When we brought this to the attention of the Bronx Public Administrator, he stated that this money was credited to the wrong estate (the one valued at \$2,420) when received. By the time this mistake was found, \$1,742 of the \$5,123 had been used to pay the expenses of the incorrect estate. The remaining balance of \$3,381 was then transferred to the correct estate. If the Bronx PA's staff had reviewed the file for the supporting documentation for the receipt (\$5,123) before payment was made incorrectly, they would not have wasted an estate asset. After the exit conference, the Bronx PA reimbursed the correct estate \$1,742 from its imprest fund account to resolve this mistake.

Nine of the 16 estates lacked back-up documentation relating to disbursements for a total of \$46,120. In one example, an estate valued at \$32,210 had no supporting documentation (other than the cancelled checks) for eight payments totaling \$1,350 that were made to a vendor for towing and storing an automobile. Moreover, there was no documentation showing what happened to the automobile. The Bronx PA's Property Clerk stated that he believed that the automobile may have been given to the vendor who was storing the automobile in exchange for storage fees. However, there was no written record of this transaction.

During our review, we noted that none of the invoices and supporting documentation for disbursements were marked "vouchered" or "paid." While there were no instances of duplicate payments, stamping invoices "vouchered" or "paid" is a good control and would reduce the risk of the possibility of duplicate payments.

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<sup>1</sup> We tested only those receipts and disbursements that we determined were material (\$100 and over).

The development of written policies for maintaining documentation in the file folders would ensure that all personnel working on the estate administration would know the types of documentation that belong in the folders.

### **Miscalculation and Incorrect Payment of Legal Fees, Imprest Fees, and Commissions to the City of New York**

For 10 of the 30 sampled estates, the Bronx PA had incorrectly paid a legal fee, an imprest fee, or commission to the City.<sup>2</sup> The Bronx PA failed to make payments in accordance with the SCPA and the Administrative Board Guidelines for five of the estates that were small. The five remaining estates were large estates for which the Bronx PA failed to make payments in accordance with the amount specified in the signed decrees or with the SCPA and the Administrative Board Guidelines.

According to the Administrative Board Guidelines, legal fees are paid on a sliding scale based upon the gross value of an estate, with the maximum legal fees being six percent. Additionally, the office receives one percent of the total value of the estate it administers as imprest fees. The City is paid a commission of five percent of the value of each estate. Of these three fees, legal fees are paid first, imprest fees are paid second, and commissions to the City are paid out last. All of these fees are contingent upon monies being in the account to cover them.

Based on our calculation, 10 estates (5 small estates and 5 large estates) had incorrectly paid one or more of the following fees:

- Five estates overpaid legal fees totaling \$2,856.
- Two estates overpaid imprest fees totaling \$756.
- One estate overpaid commissions to the City totaling \$122.
- Five estates underpaid commissions to the City totaling \$296.

According to the Public Administrator, the errors in the smaller estates occurred because of miscalculations made by the attorneys working on the estates. In the case of the large estates, the Public Administrator had no reason for the staff not honoring specified amounts in the decrees. In either case, the Bronx PA needs to establish written procedures that would require a secondary review of all calculations and payments before the checks are signed.

### **Unpaid Commissions Due the City**

The Bronx PA failed to pay commissions to the City for 15 of the 62 judgmentally selected estates that were closed in Fiscal Year 2007. As a result, the City did not receive \$4,128 that it was entitled to under the SCPA. The SCPA requires that commissions are paid to the City

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<sup>2</sup> We reported only those incorrect payments that we determined were material (\$20 and over).

according to a sliding scale based upon the gross value of an estate, with the maximum commission being five percent.

According to the Bronx PA, the Department of Social Services (DSS) had a claim against 9 of the 15 estates. The Bronx PA bypassed the paying of commissions to the City and instead paid the estate balance to DSS. This action was incorrect since the Bronx PA should have paid commissions to the City before any creditors to the estate were paid. The Bronx Public Administrator stated that he has changed the office policy to comply with Administrative Board Guidelines, and if there are enough funds, the office would pay commissions to the City before paying DSS.

For the remaining six estates, the Bronx Public Administrator could not state a reason that the office did not pay the commissions prior to sending the balance of the estate to the beneficiaries or to the New York City Department of Finance (DOF) as unclaimed funds. He stated that monies sent to DOF could be recouped for four of the estates, and the commissions to the City could then be paid. To date, of the estates whose funds were sent to DOF, the Bronx PA has recouped and paid \$1,134 in commissions to the City for two of the estates and is planning to recoup monies totaling \$927 for two other estates. At the exit conference, the Bronx Public Administrator provided documentation showing that the remaining \$927 has been recouped and commissions were paid for the remaining two estates.

#### **Form 1099-MISC Payments Either Not Reported or Underreported to the IRS**

The Bronx PA failed to issue 1099-MISC forms to 24 of the 62 individuals that provided services to the Bronx PA during calendar year 2006. These payments totaled \$165,014. Fifteen of the 24 individuals were paid for legal services. In addition, the Bronx PA underreported income on the 1099-MISC forms of five individuals, totaling \$2,257, and overreported income for one individual in the amount of \$700.

According to Comptroller's Directive #28, "if a Public Administrator is the payor, for purposes of information reporting, for payments to a service provider on behalf of an estate that it administers, the Public Administrator is required, by section 6041 of the Internal Service Revenue Code, to issue Form 1099-MISC to that service provider in its own name and taxpayer identification number (TIN), and must aggregate amounts paid to the service provider during the year on behalf of the estate."

This problem has been an ongoing one that dates back to calendar year 1998 when the Comptroller's Office issued an *Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office* as well as the follow-up audit issued in 2004, *Follow-Up Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office*, which both noted this problem. Both audits recommended that the Bronx PA develop written procedures. In the response of the previous Bronx Public Administrator to the audit report issued in Fiscal Year 2004, she stated that her office would prepare these written procedures.

By failing to issue 1099-MISC forms for all required individuals, the Bronx PA may be allowing individuals to understate their income to the government and to avoid paying taxes on the excluded amounts. In addition, the Bronx PA may be subject to penalties for failure to issue the 1099-MISC forms.

### **Recommendations**

The Bronx PA should:

5. Develop a comprehensive policies and procedures manual that:

- Lists all documentation required to be filed and maintained in the estate folders.
- Requires that all back-up documentation for receipts and disbursements be maintained in estate folders.
- Requires all paid invoices to be marked or stamped “vouchered” or “paid” to prevent duplicate payments.
- Requires a secondary review of all calculations and payments before the checks are signed.
- Requires adherence to the specified order of distribution of monies from the estates.
- Describes how to identify, track, and report all 1099-MISC income for all individuals who provided services to the Bronx PA and who were paid more than the limit specified by the IRS.

***Bronx PA Response:*** The previous Bronx PA stated, “This office lacks the resource to develop a comprehensive policy and procedures manual. However, during my tenure in office I have developed and addressed procedures when it became apparent that such procedure was necessary. . . . In any event even without a comprehensive manual, this office will in the future insure that all backup documentation, receipts and disbursements be maintained in the estate folder; that a list of the documentation to be filed and maintained in the estate folders be developed; and that all paid invoices be marked, stamped and vouchered. . . . While all efforts are made for a secondary review of payments made pursuant to decrees, this office lacks the resources to maintain a secondary review of all calculations and payments before the checks are issued. However a procedure has recently been implemented: that before close-out checks are written in a small estate at the time the informatory return is prepared the office bookkeeper will compute the close-out computations and an attorney will review and initial these calculations if correct and if not, will provide the appropriate guidance; that before final checks are written out pursuant to a court degree in large estates the bookkeeper will prepare a draft pay-out and then the Public Administrator or the Deputy

Public Administrator will review these computations. This office has retained the services of an independent CPA to issue the 1099-Misc forms for the 2007 tax year. In future calendar years this office is in the process of retaining the services of an independent CPA to identify, track and report all 1099-Misc forms.”

**Auditor Comment:** We believe that the Bronx PA should reevaluate the feasibility of implementing this recommendation since the investment of resources in this endeavor would provide many benefits to both current and future employees. As stated in the report, if the Bronx PA management does not maintain a comprehensive, written policies and procedures manual, it has no assurance that policies are properly communicated and consistently followed. Also, there is no assurance that new personnel have adequate guidance in carrying out their assigned duties.

6. Issue 1099-MISC forms for the 24 individuals identified in the report as not having been correctly issued these forms for calendar year 2006.

**Bronx PA Response:** The previous Bronx PA agreed stating, “While I was not in office for the entire 2006 calendar year, all efforts will be made to issue 1099-Misc forms for the individuals identified in this report. Letters have already been written to these individuals to provide their social security or tax identification numbers. Although these letters have been mailed a number of months ago, many of the addressees have failed to supply this information. More time will be needed to obtain the necessary tax indicia to comply with recommendation number 6.”

## **Inadequate Controls over Estate Personal Property**

### **Detailed Lists of Personal Property Are Not Prepared By Investigators during Residence Searches**

The Bronx PA does not always comply with the Administrative Board Guidelines procedures for searches of decedents’ residences. According to the Administrative Board Guidelines, “During all searches for personal property at the residence of a decedent . . . the investigators will thoroughly search each residence and . . . make a complete and detailed inventory of its contents.” As a result, the very real risk that items at decedents’ residences may be lost or stolen is increased.

We found that the investigators generally prepare an Investigator’s Report of Furniture and Personal Effects (Investigator’s Report) and a Decedent’s Property Clerk Report during their searches, however, they do not prepare a detailed inventory list of personal property retrieved during residence searches, such as, jewelry. The Investigator’s Report inventories the furniture left in the apartment. The Decedent’s Property Clerk Report has a section entitled “Items Removed to the Office”, but only broad descriptions such as “coins (various)” or “jewelry” are noted.

According to the Property Clerk, during the search, the investigators place all items that appear to have value, such as, jewelry and coins, or personal documents that may be helpful in searching for assets and beneficiaries (letters, bank books, bank statement, address books, etc.) in a bag. The bag is brought back to the Bronx PA's office and its contents are examined by the Public Administrator or his deputy. The bag is then taken to the Property Clerk, who removes the items from the bag and separates the property (e.g. jewelry) from the personal documents. The personal documents are placed in the estate folders. A detailed description for each item of value is entered into CompuTrust within the inventory section of the decedent's file. The items are then placed in a clear plastic bag, marked with the decedent's estate number, and placed in the safe.

Although the Bronx PA considers each estate's detailed list in CompuTrust as its record of inventory, these lists are not in compliance with the Administrative Board Guidelines since the investigators do not prepare the lists as required, but use general, non-itemized descriptions. As a result, there is no assurance that all items retrieved during the residence searches are properly accounted for and included on the decedent's CompuTrust inventory list.

### **Decedent Residence Searches Can Be Improved**

Although the Bronx PA complies with the Administrative Board Guidelines by photographing and also video taping residence searches, the quality and contents of the videotapes could be improved to make them more useful in documenting the complete search and in showing those items taken back to the Bronx PA's office by the investigators.

According to the Administrative Board Guidelines, "the PA shall take all steps necessary to assure that all personal property belonging to a person dying within the PA's county is collected and credited to the decedent's estate. It is the duty of the PA to supervise and oversee the conduct of those who search for and collect personal property."

During our review of nine videotaped residence searches, we found the following:

- The video camera was placed in a stationary position and was recording while neither one of the investigators was seen on camera because they were searching another part of the room. Therefore, the entire search was not being captured.
- Portions of the video recordings were inaudible, pixilated, and as a result, unusable for documenting those portions of the search.
- None of the videotaped searches showed the completion of the search, which should include the investigators' exit from the residence.

The investigators who perform the residence searches are not employees of the Bronx PA but are independent contractors hired by the Bronx PA. The Bronx PA has no written agreements with the investigators stating what is required of them in performing the residence searches, including specific requirements for the video taping. Without these agreements, there are no clear instructions of how and what to video tape during the search and what would be



considered an acceptable video tape. In addition, according to the Bronx Public Administrator, the video tapes are not reviewed by the staff.

To ensure full compliance with the Administrative Board Guidelines regarding the searches of decedents' residences and to guard against theft, the Bronx PA should require investigators to fully document their efforts, thereby ensuring that all property is accounted for and secured. The investigators should attempt to capture the complete search on video tape, clearly showing all items being removed and the investigators exiting the residence and sealing the door.

### **No Sealed Bids for the Sale of Estate Personal Property**

The Bronx PA is not in compliance with the Administrative Board Guidelines that state, "the PA shall solicit, or direct one or more of his/her employees to solicit, at least three sealed bids for each sale. . . . The PA shall ensure that information regarding the bid amounts and the identity of bidders is not disclosed during the bidding process."

According to the Property Clerk, in December 2007, personal property from 311 estates, with a total appraisal value of \$129,703, was put up for sale. The personal property for each estate was sold as a lot rather than item by item. The personal property for 254 estates was sold for \$138,671. When we requested the sealed bids from each of the bidders, we were told that there were no sealed bids. Instead, the Property Clerk sat down with each of the three bidders at separate times and recorded the bids for each estate on separate inventory lists, one for each bidder. This procedure is counter to the Administrative Board Guidelines and does not give assurance that information was not inappropriately shared with one of the bidders or that one bidder may have been favored over another.

### **Recommendations**

The Bronx PA should:

7. Ensure that investigators prepare a complete and detailed inventory list of all items retrieved from the decedent's residence during the search or immediately upon returning to the office.

**Bronx PA Response:** The previous Bronx PA agreed stating, "This office will comply with recommendation No. 7. The property clerk has been instructed to work with the investigators to insure that the investigators compare and complete a detailed inventory list of all items retrieved from a decedent's residence."

8. Prepare written agreements with the investigators that would include what is expected to be on the video tape as well as the quality of the video tape.

**Bronx PA Response:** The previous Bronx PA agreed stating, "After receipt of the preliminary draft, written agreements were entered into with the field investigators

establishing the procedures to be used while they are video taping their search of the decedent's residence.”

9. Establish a procedure that would require a spot check of the video tapes of residence searches.

***Bronx PA Response:*** The previous Bronx PA agreed stating, “This office will on a monthly basis randomly spot check video tapes of residence searches.”

10. Comply with the Administrative Board Guidelines and require that all bidders submit sealed bids for each lot of personal property being auctioned and maintain these bids in the files.

***Bronx PA Response:*** The previous Bronx PA agreed stating, “This office will comply with all administrative board guidelines including the use of sealed bids, the definition of which was discussed in our exit conference. In any event, to the best of my knowledge, all the bids in the jewelry sale mentioned in this report were given and recorded outside the view of the other bidders so to that extent all bid were sealed i.e., kept confidential and not disclosed during the bidding process.”

***Auditor Comment:*** As stated in the report, the property clerk received each bid verbally. Therefore, the bids could not be considered sealed and confidential.

## **Other Matter**

### **Noncompliance with Reporting Requirements**

#### **New York City Comptroller's Directives Not Adhered To**

The New York City Comptroller's directives, which establish Citywide policies on a variety of accounting and internal control issues, are issued in accordance with the Comptroller's mandated responsibilities under New York City Charter, §93. The Bronx PA is not submitting its monthly Closed Estate Reports in the format prescribed by the Comptroller in Directive # 28 and is not submitting the annual Financial Integrity Statement or Agency Evaluation of Internal Controls checklist as required by Directive # 1.

Appendix A to Comptroller's Directive #28, “Reporting Requirements for Public Administrators,” specifies the format that is to be used for monthly Closed Estates Reports. By not submitting the reports in the proper format, the Bronx PA is not reporting all pertinent information regarding the administration of its estates. Additionally, the reports are not being submitted to the person specified in Directive #28 as the recipient.

Comptroller's Directive #1, “Principles of Internal Control,” outlines the principles of a sound and effective financial control system that should be adopted by City agency management

and staff. Completing the checklist accompanying the Financial Integrity Statement would enable the Bronx PA to conduct a review of its internal control structure.

The Bronx PA has been contacted by both the Comptroller's Office and the Mayor's Office of Operations regarding its noncompliance with Directives #1 and #28. However, the Bronx PA remains in noncompliance with regard to both directives.

### **Recommendations**

The Bronx PA should:

11. Report all closed estates (including those estates that did not pay commissions to the City) on the monthly Closed Estate Report both in the format and to the proper recipient, as specified in Comptroller's Directive #28.

**Bronx PA Response:** The previous Bronx PA agreed to put forth best efforts to implement this recommendation stating, "While this office lacks the resources to report all closed estates in the format specified in the Comptroller's policy as directed in No. 28, best effort will be made to comply in the format specified. This office will send all reports to the proper recipients specified in Comptroller's Directive No. 28 in the future, if not already sent to the proper recipient."

12. Submit the annual Financial Integrity Statement and accompanying checklist to the proper recipient, as specified in Comptroller's Directive #1.

**Bronx PA Response:** The previous Bronx PA agreed to put forth best efforts to implement this recommendation stating, "Also due to the limited resources, the best efforts of this office will be made to submit the statement and check list specified in Comptroller's Directive No. 1."

### **Subsequent Events**

#### **Noncompliance with Title 2 of the New York Codes, Rules and Regulations Regarding the Report of Open Estates**

The Bronx PA was not in compliance with Title 2 of the New York Codes, Rules and Regulations, §72.1, regarding the Report of Open Estates administered by Public Administrators of the counties within the City of New York. Specifically, the Bronx PA submitted the calendar year 2007 Report of Open Estates five months late to the New York State Comptroller (State Comptroller). In addition, the actual submission was incomplete and did not conform to the required format. According to Title 2 of the New York Codes, Rules and Regulations, §72.1:

Whenever the estate of a decedent is being administered by a public administrator pursuant to article 11 of the Surrogate's Court Procedure Act, and such estate has

not been fully distributed nor a final accounting filed with petition for settlement with the appropriate Surrogate's Court, the public administrator shall annually in the month of January file a Report of Open Estates with the office of the State Comptroller, covering every open estate in respect to which permanent letters of administration were issued to such public administrator on or before the preceding December 31<sup>st</sup>. The Report of Open Estates shall be submitted on a form prescribed by the State Comptroller.

The Bronx PA did not submit the Report of Open Estates in the month of January, as required. Instead, the report was submitted on July 18, 2008, more than five months late. In addition, we found that 8 (27%) of the 30 sampled open large estates were omitted from the 2007 Report of Open Estates. These estates were large estates (valued at \$20,000 and above) whose funds were not fully distributed and whose final accountings were not filed with the Bronx Surrogate's Court by December 31, 2007.

Moreover, the Report of Open Estates was not prepared in the format prescribed by the State Comptroller.<sup>3</sup> According to the instructions, the entire report should be sorted by the date letters of administration were issued, beginning with the oldest estate. However the Bronx PA's report did not follow this format. Instead, the report is a compilation of reports submitted by individual lawyers who were assigned to oversee these open estates. These individual reports did not conform to the correct format, and in some cases lacked information required by the State Comptroller.

In addition, the Open Estate Report lacked the required Summary page that includes (1) the number of open estates as of the December 31 of the calendar year prior to the year being reported, (2) the number of estates opened during the calendar year being reported, (3) the number of estates closed during the calendar year being reported, (4) the net increase or decrease in estates, and (5) the number of estates open as of the close of business December 31 of the calendar year being reported.

### **Recommendation**

13. The Bronx PA should comply with Title 2 of the New York Codes, Rules and Regulations, §72.1, regarding the timeliness, completeness, and format of the Open Estate Report.

***Bronx PA Response:*** The current Bronx PA agreed stating, "The Office of the Bronx County Public Administrator has an ongoing endeavor to comply with Title 2 of the NYCRR. The Public Administrator will adopt the recommendations of the Comptroller's Office to the extent that our limited resources permit."

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<sup>3</sup> The *Office of the New York State Comptroller Instructions to Form AC2983-NYC*

## **Questionable Investing of Estate Funds in Auction-rate Securities**

Our review of the Bronx PA's records indicates that as of March 31, 2008, the Bronx PA had invested approximately \$21 million of estate funds in auction-rate securities. Because those securities became illiquid for a significant period of time during 2008, the Bronx PA was unable to satisfy the Final Decree of Judicial Settlement of at least one estate, and was confronted with the prospect of not being able to satisfy additional estates.

Section 1110 of the Surrogate's Court Procedure Act ("SCPA") provides, in pertinent part, that the City is responsible for the Public Administrators' faithful execution of their duties. As a result of the Bronx PA's inability to satisfy the Final Decree issued with respect to a certain estate, the legatees of that estate filed notices of claim with the Comptroller's Office, seeking payment from the City in the amounts the Bronx PA owed them under the Final Decree. Those claims were promptly settled by the Comptroller's Office.

According to the Comptroller's General Counsel, nothing in the SCPA or the guidelines governing the operations of Public Administrators authorizes Public Administrators to invest estate monies in auction-rate securities. Rather, the SCPA and guidelines require that the public administrators deposit estate monies in their possession into insured accounts at certain banks, trust companies or savings and loan associations, or purchase U.S. Treasury Bills.

Section 1107(2) of the SCPA provides, in pertinent part, as follows:

The public administrators shall deposit to their respective credit all moneys by them severally collected and received within 5 days after receipt in demand, time, thrift or other accounts in one or more banks or trust companies designated by the mayor, comptroller and commissioner of finance for the deposit of moneys of the city of New York or in such accounts in savings banks or savings and loan associations located in their respective counties.

Moreover, Section II of the Report and Guidelines of the Administrative Board for the Offices of the Public Administrators (the "Guidelines") explicitly provides that each Public Administrator shall maintain procedures to insure that no funds held for an estate in a particular bank exceed the amount insured by the FDIC, and that if funds held for an estate in a particular bank exceed the FDIC insured amount, the Public Administrator must: (i) open separate accounts in different banks so that no funds held for an estate in a particular bank exceed the FDIC insured amount, (ii) invest such additional sums in U.S. Treasury Bills so that no funds held for an estate in a particular bank will exceed the FDIC insured amount, or (iii) collateralize such sums with approved government securities, pursuant to a written security agreement between the Public Administrator and the bank.

On August 4, 2008, we met with Bronx PA officials to discuss the matter. They informed us that: (i) in their opinion, the investments in auction-rate securities were not improper, (ii) at the time of purchase, they believed the auction-rate securities were safe vehicles for investing the estate funds, (iii) the investments were tax free, and (iv) the brokerage firm had represented that the investments were in Money Market accounts and cash equivalents. They

further stated that they do not believe that the SCPA or the Guidelines restricted them from investing in a vehicle that appears to be safe.

In a letter dated January 15, 2009, the Bronx Deputy Public Administrator notified the New York City Law Department that the auction-rate securities purchased by the Bronx PA with estate monies had been redeemed and that the Bronx PA had recovered all principal and interest due to the relevant estates. The Bronx PA also reimbursed the City for the amounts the City paid to settle the aforementioned claims filed by the legatees of one estate. On February 24, 2009, the Bronx PA provided us with backup documentation confirming the redemption of the auction-rate securities identified in this report.

The Public Administrators are legally obliged to safeguard all estate funds and promptly pay legatees upon the issuance of final decrees resolving estates. The Bronx PA's investment of estate monies in auction-rate securities is not authorized under the SCPA or the Guidelines, and exposed the City to liability for claims based on the Bronx PA's inability to comply with a final decree and promptly pay legatees. The ultimate redemption of the auction-rate securities does not in any way excuse or justify the Bronx PA's improper actions in jeopardizing the timely distribution of estate funds and creating potential liability for the City.

### **Recommendation**

14. The Bronx PA should immediately cease its practice of investing estate funds in auction-rate securities and refrain from doing so in the future.

***Bronx PA Response:*** The current Bronx PA agreed stating, "The Bronx Public Administrator no longer invests in Auction Rate Securities."

### **Open Estates with Negative Balances**

Subsequent to the exit conference conducted on May 15, 2008, it was brought to our attention that some of the open estates had negative balances recorded in CompuTrust. Upon further review of the Bronx PA's November 21, 2008 Account Balances Report, we noted that 249 of the 1,041 open estates had negative balances recorded in their accounts. These negative balances ranged from \$3 to \$25,532 for a total of \$223,660. Table I illustrates a breakdown of the negative balances of these estates.

**Table I**

Open Estates with Negative Balances  
As of November 21, 2008

Dollar Range	Number of Estates	Value of Estates
\$10,000 and Above	5	\$ 81,038
\$1,000 to \$9,999	34	\$ 99,359
\$100 to \$999	98	\$ 37,507
Below \$100	112	\$ 5,756
<b>Total</b>	<b>249</b>	<b>\$223,660</b>

According to the Deputy Bronx Public Administrator, when an estate is first opened, the office may need to expend funds to cover various expenses required for collecting, protecting, and liquidating the assets belonging to the estate. These expenditures occur before the Bronx PA has collected any funds on behalf of the estate. As a result, the Bronx PA uses money from the pooled estate trust account to cover the initial costs. Once the assets are liquidated, the funds are collected and the expended amount is deposited in the pooled estate trust account. The estate, in essence, has repaid the monies borrowed, and the estate balance is no longer recorded as a negative.

According to the Deputy Bronx Public Administrator, in most instances, the assets of the estate are liquidated, and the initial money expended is repaid. However, in some instances, the assets could not be liquidated for various reasons. As examples, the asset initially thought to belong to the decedent does not—after further research—in fact belong to the estate, or the asset was worth less than the initial appraisal. In these instances, there are insufficient funds to cover the initial amount spent by the Bronx PA on behalf of the estate. The Bronx PA does not always have sufficient money in its imprest fund to cover all of these initial expenditures. Furthermore, these estates cannot be closed until the funds have been repaid to the pooled estate trust account.

We believe that the Bronx PA needs to look into this problem and resolve it. While most of the estates will eventually repay the borrowed funds to the pooled estate trust account, we question whether the Bronx PA should be using this account, which holds money that belongs to estates, to fund the initial expenditures of another estate.

**Recommendation**

15. The Bronx PA should consult with relevant City agencies, such as OMB, to determine how to pay the initial costs of administering estates that appear to have assets without borrowing the funds from the pooled estate trust account.

**Bronx PA Response:** The current Bronx PA agreed stating, “The Public Administrator will consult with the Office of Management and Budget and the NYC Department of Finance regarding this item.”

PUBLIC ADMINISTRATOR



BRONX COUNTY

ROOM 336  
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ESTATE OF:

FILE NO:

**JOHN RANIOLO**  
PUBLIC ADMINISTRATOR

**STEVEN L. ALFASI**  
DEPUTY PUBLIC ADMINISTRATOR

June 2, 2008

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

RE: Draft report MH07 -128A

Dear Mr Graham:

Enclosed please find the response of the Office of the Public Administrator of Bronx County to the Audit report on the Financial and Operating Practices of Bronx County Public Administrator's Office # MH07-128A dated May 22, 2008, received from the City of New York, Office of the Comptroller, Bureau of Management Audit, William C. Thompson, JR., Comptroller.

If you have any questions please call our office at (718) 293-7660.  
I would like to compliment your audit team on the professional and efficient manner in which this audit was conducted.

Yours truly,

John Raniolo  
Public Administrator  
Bronx County



## RESPONSE TO AUDIT

This is the response of the Office of the Public Administrator of Bronx County to the Audit report on the Financial and Operating Practices of Bronx County Public Administrator's Office # MH07-128A dated May 22, 2008, received from the City of New York, Office of the Comptroller, Bureau of Management Audit, William C. Thompson, JR., Comptroller.

### Recommendation No. 1

As indicated in the beginning of your audit report many of the issues discussed in this report are matters that existed prior to the commencement of my tenure in office. During my first few months in office I noticed the need to improve the efficiency of this office. First and foremost to improve the administrative functions of this office was the need to retain the services of additional persons to provide the resources to run all of the functions of this office on a daily basis. It appears that just prior to my tenure in office there had been a loss in the services of at least two to three persons. I commenced a dialogue with the Office of Management and Budget of the City of New York to obtain what I perceived to be the minimum necessary resources. At the time however, I did not have a full grasp of the full needs of this office due to the short period of time that I was in office. In any event, I made proposals of my minimum needs which were: to replace the position apparently lost as part of the reduction in the aftermath the World Trade Center tragedy, to somewhat upgrade the fiduciary trust program and to add a position whose function would be to provide daily technical assistance in the implementation, transition and daily support of the fiduciary trust system, as well as

internal computer issues. The results of my proposals and communications were: the grant of the necessary funds to implement a totally new version of the fiduciary trust program and one "non-technical" office assistant. The position of the daily technical assistant was not funded. Accordingly, there has been an inability to implement this new system because the fiduciary trust service provider itself lacks the technical support capable of transitioning the old system into the new system but also due to the lack of an "on- staff" technical employee to assist in the transition and implementation. Moreover, based upon discussions with some of the new system users, constant monitoring would be needed for the new system to become an effective tool of this office. While this is a lengthy response to recommendation number 1, I thought it was necessary under the circumstances especially since imprest funds are insufficient to provide a source to otherwise obtain these services. As indicated in the exit conference the fiduciary trust service provider has discontinued support of the present system. In any event this office will attempt even under the present system to use the closed codes which this office has already attempted to implement on its own since September, 2007. When the new system is implemented this office will work with the service provider to establish a procedure that will allow us to use open, closed, reopened and codes to indicate that the reopened cases are now closed. This office will investigate whether once a closed code is entered that no activity can occur in an estate without the authorizations of two persons. This office will also endeavor to work with the CPA firm that reconciles the records of this office so that the report of closed cases will be correct in all aspects.

Recommendation No. 2

This office will explore with other Public Administrators who utilize the new fiduciary software system to determine on a global basis a definition of a "closed" estate. Inasmuch as this is an administrative function, which is separate and apart from the records kept by the Surrogate's Court, it does not appear that the Surrogate's Court would be an entity to discuss the definition of a closed estate.

Recommendation No. 3.

While the present system does have a comment section it does not appear that it has an automatic tickler system or that the present staff has the knowledge or resources to have the comment section act as an effective tickler system. However, this will be discussed with the fiduciary program service provider to include in the new system a daily "pop-up" tickler system for various categories if possible.

Recommendation No. 4

Even with a new fiduciary trust program without the necessary resources, i.e. a daily technical support employee to make the necessary inventory inputs, to properly monitor those inputs, and to develop a tickler system to help with this inventory listing, this office lacks the resources to implement recommendation number 4.

Recommendation No. 5

This office lacks the resources to develop a comprehensive policy and procedures manual. However, during my tenure in office I have developed and addressed procedures when it became apparent that such procedure was necessary. However, even with a full comprehensive manual without sufficient resources, it would be an impossibility, not only to comply, but also to monitor compliance with such a comprehensive manual. In any event even without a comprehensive manual, this office

will in the future insure that all backup documentation, receipts and disbursements be maintained in the estate folder; that a list of the documentation to be filed and maintained in the estate folders be developed; and that all paid invoices be marked, stamped and vouchered. This office also relies upon counsel to provide guidance as to the specified order of distribution of money inasmuch as that is a legal issue and not a pure administrative function. While all efforts are made for a secondary review of payments made pursuant to decrees, this office lacks the resources to maintain a secondary review of all calculations and payments before the checks are issued. However a procedure has recently been implemented: that before close-out checks are written in a small estate at the time the informatory return is prepared the office bookkeeper will compute the close-out computations and an attorney will review and initial these calculations if correct and if not, will provide the appropriate guidance; that before the final checks are written out pursuant to a court decree in large estates the bookkeeper will prepare a draft pay-out and then the Public Administrator or the Deputy Public Administrator will review these computations. This office has retained the services of an independent CPA to issue the 1099-Misc forms for the 2007 tax year. In future calendar years this office is in the process of retaining the services of an independent CPA to identify, track and report all 1099-Misc forms. The independent CPA will file the forms after it audits the preliminary determination of 1099-MISC for both the trust and suspense accounts jointly prepared by the office bookkeeper and in-house CPA.

Recommendation No. 6

While I was not in office for the entire 2006 calendar year, all efforts will be made

to issue 1099-Misc forms for the individuals identified in this report. Letters have already been written to these individuals to provide their social security or tax identification numbers. Although these letters have been mailed a number of months ago, many of the addressees have failed to supply this information. More time will be needed to obtain the necessary tax indicia to comply with recommendation number 6.

Recommendation No.7.

This office will comply with recommendation No. 7. The property clerk has been instructed to work with the investigators to insure that the investigators compare and complete a detailed inventory list of all items retrieved from a decedent's residence.

Recommendation No. 8.

After receipt of the preliminary draft, written agreements were entered into with the field investigators establishing the procedures to be used while they are video taping their search of the decedent's residence.

Recommendation No. 9.

This office will on a monthly basis randomly spot check video tapes of residence searches.

Recommendation No. 10.

This office will comply with all administrative board guidelines including the use of sealed bids, the definition of which was discussed in our exit conference. In any event, to the best of my knowledge, all the bids in the jewelry sale mentioned in this report were given and recorded outside the view of the other bidders so to that extent all bids were sealed i.e., kept confidential and not disclosed during the bidding process.

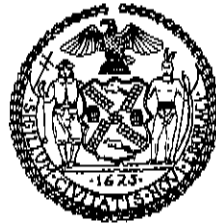
Recommendation No. 11.

While this office lacks the resources to report all closed estates in the format specified in the Comptroller's policy as directed in No. 28, best efforts will be made to comply in the format specified. This office will send all reports to the proper recipients specified in Comptroller's Directive No. 28 in the future, if not already sent to the proper recipient.

Recommendation No. 12

Also due to the limited resources, the best efforts of this office will be made to submit the statement and check list specified in Comptroller's Directive No. 1.

PUBLIC ADMINISTRATOR



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ESTATE OF:

FILE NO:

BONNIE GOULD  
PUBLIC ADMINISTRATOR

STEVEN L. ALFASI  
DEPUTY PUBLIC ADMINISTRATOR

April 8, 2009

BY MESSENGER

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

RE: Response to Revised Draft Report dated March 18, 2009 - Audit Report on the Financial and Operating Procedures of Bronx County Public Administrator's Office - MH07-128 A

Dear Deputy Comptroller Graham:

Enclosed is the response of the Office of the Public Administrator of Bronx County to your letter dated March 18, 2009 and the above-mentioned draft report. It is my understanding that Commissioner Raniolo's response dated June 2, 2008 will be included as Addendum 1 to the Final Report and my response will be included as Addendum 2 to the Final Report.

The Public Administrator of Bronx County appreciates the opportunity to respond to the audit report of the New York City Office of the Comptroller.

If you have any questions regarding this response, please contact me.

Very truly yours,

Bonnie Gould

enc.  
cc: Steven Alfasi, Deputy Public Administrator

**RESPONSE OF THE PUBLIC ADMINISTRATOR OF BRONX COUNTY  
TO "SUBSEQUENT EVENTS"  
IN THE AUDIT REPORT ON THE FINANCIAL AND OPERATING PROCEDURES  
OF THE BRONX COUNTY PUBLIC ADMINISTRATOR'S OFFICE  
DATED MARCH 18, 2009**

Commencing June 25, 2007 and continuing through May 15, 2008, the Office of the Comptroller of the City of New York ("Comptroller's Office") conducted an audit of the Bronx County Public Administrator's Office for the fiscal year 2007.<sup>1</sup>

At the conclusion of the audit, the Comptroller's Office issued a report of findings entitled "Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office" dated May 22, 2008 ("May 2008 Report"). John Raniolo, the then Public Administrator of Bronx County, prepared and submitted a comprehensive response to the May 2008 Report.

Prior to releasing the May 2008 Report, the Comptroller's Office issued an amended 25 page report entitled "Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office" on March 18, 2009 ("March 2009 Report"). The only distinction between the May 2008 Report and the March 2009 Report, is that the March 2009 Report includes three items not addressed in the earlier Report.

With the exception of a single informational paragraph on page 3 of the March 2009 Report, pages 1 through 21 of the May 2008 Report are identical to the March 2009 Report. The three additional items are addressed in pages 21 through 25 of the March 2009 Report under the section entitled "Subsequent Events."

Commissioner Raniolo's response dated June 2, 2008 is set forth as Addendum 1. This response will address those matters not previously addressed by Commissioner Raniolo, sp., the three following items set forth under "Subsequent Events."

Item/Recommendation 13 - Noncompliance with Title 2 of the NYCRR regarding Report of Open Estates

**Response of Bronx County Public Administrator**

The Office of the Bronx County Public Administrator has an ongoing endeavor to comply with Title 2 of the NYCRR. The Public Administrator will adopt the recommendations of the Comptroller's Office to the extent that our limited resources permit.

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<sup>1</sup> Fiscal year 2007 encompasses the period from July 1, 2006 through June 30, 2007.



Item/Recommendation 14 - Investing of Estate Funds in Auction Rate Securities

**Response of Bronx County Public Administrator**

As acknowledged by the Comptroller in the March 2009 Report, all Auction Rate Securities previously purchased by the Bronx Public Administrator have been fully redeemed together with interest. The Public Administrator has recovered all principal and interest and the relevant estates have been credited. All monies advanced by the City Comptroller have been repaid with interest.

The Bronx Public Administrator no longer invests in Auction Rate Securities.

Item/Recommendation 15 - Open Estates with Negative Balances

**Response of Bronx County Public Administrator**

The Administrative guidelines and SCPA mandate that the Public Administrator safeguard the estates of the decedent. As a result, by necessity, the Public Administrator must often expend funds before the assets of the decedent are collected, to be repaid at the time of collection of assets, or to remain a negative if no assets are marshaled.

A non-inclusive list of these expenditures include the cost of a locksmith to gain entrance to the residence of a decedent, the cost of obtaining death certificates from the Department of Health, filing fees to obtain Letters of Administration, towing and storage charges for motor vehicles, title search costs, appraisal fees, and insurance costs where necessary to insure real property.

Absent adequate funding for this category of expenditures, fulfilling the duties and responsibilities required as a fiduciary can necessarily result in funds being advanced from the common trust.

The Public Administrator will consult with the Office of Management and Budget and the NYC Department of Finance regarding this item.