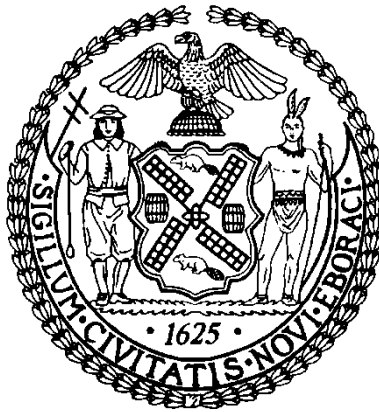


CITY OF NEW YORK OFFICE OF THE COMPTROLLER

**John C. Liu
COMPTROLLER**

MANAGEMENT AUDIT

**Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Department of Citywide
Administrative Services' Monitoring of Lease
Agreements with Dircksen & Talleyrand, Inc.,
for the Land Use Associated with
the River Café**

MH11-115A

September 27, 2011



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

John C. Liu
COMPTROLLER

September 27, 2011

To the Residents of the City of New York:

My office has audited the effectiveness of the Department of Citywide Administrative Services (DCAS) in monitoring the key provisions of its lease agreements with Dircksen & Talleyrand, Inc., for the use of land associated with the River Café. We audit entities such as DCAS as a means of ensuring that they are providing the necessary oversight of private concerns that conduct business on City property.

The audit found that DCAS is adequately monitoring the key provisions of the lease agreements. Payments under all four agreements are current and up to date, and DCAS is adequately monitoring the inspections and repairs needed at the River Café site. However, the audit found minor calculation errors and a failure by DCAS to collect a portion of a security deposit.

The audit made three recommendations, including that DCAS continue to ensure that periodic inspections of the River Café site are conducted and ensure that all necessary repairs are performed on a timely basis; determine how much money was overpaid by Dircksen & Talleyrand and credit them for the appropriate amount; and collect the additional money that is due for the security deposit for the long-term lease agreement.

The results of the audit have been discussed with DCAS officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,



John C. Liu

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***The City of New York
Office of the Comptroller
Management Audit***

**Audit Report on the Department of
Citywide Administrative Services' Monitoring
of Lease Agreements with Dircksen & Talleyrand, Inc,
for Land Use Associated with the River Café**

MH11-115A

AUDIT REPORT IN BRIEF

Our audit objective was to determine whether the Department of Citywide Administrative Services (DCAS) effectively monitors the key provisions of its lease agreements with Dircksen & Talleyrand, Inc. (Lessee) for the use of land associated with the River Café. DCAS, as part of its role to oversee the City's commercial real estate portfolio, including leases of City-owned property for private use, is monitoring the four agreements associated with the River Café. During Calendar Year 2010, DCAS collected \$104,106 from the Lessee with regard to the four agreements.

Audit Findings and Conclusions

Overall, we found that DCAS is adequately monitoring the key provisions of the lease agreements. We found that the payments under all four agreements are current and up to date, and DCAS is adequately monitoring the inspections and repairs needed at the River Café site. However, we found minor calculation errors and a failure by DCAS to collect a portion of a security deposit.

Audit Recommendations

The audit made three recommendations. DCAS should:

- Continue to ensure that periodic inspections of the River Café site are conducted and ensure that all necessary repairs are performed on a timely basis.
- Determine how much money was overpaid by Dircksen & Talleyrand and credit them for the appropriate amount.
- Collect the additional \$575 that is due for the security deposit for the long-term lease agreement.

Agency Response

In their response, DCAS officials stated that they agreed with and have implemented all three of the audit's recommendations.

INTRODUCTION

Background

The Department of Citywide Administrative Services (DCAS), as part of its role to oversee the City's commercial real estate portfolio, including leases of City-owned property for private use, is monitoring the following four agreements with Dircksen & Talleyrand, Inc. for the use of the land associated with the River Café:

- (1) An initial 30-year lease agreement was signed on November 21, 1974 (with two 10-year renewal terms) for the land situated in Brooklyn, along the East River, at the foot of the Brooklyn Bridge, where the River Café was to be built.¹ According to its terms, the Lessee's annual rent is \$15,000 (\$1,250 monthly) for the initial 30-year term of the lease; \$20,000 (\$1,666.67 monthly) for each year of the first 10-year renewal term; and \$25,000 (\$2,083.33 monthly) for each year of the second 10-year renewal term. However, it furthers stipulates that if the rent is less than 15 percent of the assessed value of the commercially used portion of the property plus any real estate taxes applicable to improvements thereon, the Lessee shall pay the rent derived from use of the aforementioned formula.²
- (2) An occupancy permit for a 3,900 square feet parking area was executed in 2006. This permit was modified in June 2010, where 2,620 square feet was surrendered, reducing the area covered by the permit to 1,280 square feet for use for parking by the River Café. The lease payments were correspondingly reduced from \$1,544 to \$510 a month as of July 2010.
- (3) A lease agreement signed in December 2008 for 1,400 square feet of storage space. Monthly payments currently total \$1,370.
- (4) A yearly license permit signed in June 2010 for 1,500 square feet of additional storage space for \$860 a month.

During Calendar Year 2010, DCAS collected \$104,106 from the Lessee with regard to the four agreements. The breakdown of the total calendar year payments for these agreements is illustrated in Table I.

¹ This long-term lease agreement was initiated in 1974 between the then-existing New York City Department of Ports and Terminals of the Economic Development Administration and Dircksen & Talleyrand, Inc. In 1992, DCAS became responsible for monitoring the agreement.

² The real estate taxes and assessed values are determined by the Department of Finance (DOF). Improvements refer to all structures attached to the leased premises, including the barge and restaurant. This audit did not evaluate DOF's calculations of real estate taxes or assessed values.

Table I
Payments Collected on Lease Agreements Associated with the River Café
for Calendar Year 2010

Agreement	Annual Payments
(1) 1974 Land Use Lease	\$69,294
(2) 2010 Occupancy Permit	\$12,352
(3) 2008 Storage Lease	\$16,440
(4) 2010 Storage License Permit	\$6,020
Total	\$104,106

Objective

Our audit objective was to determine whether DCAS effectively monitors the key provisions of its lease agreements with Dircksen & Talleyrand, Inc. for the use of land associated with the River Café. The key provisions we reviewed were, where applicable, rent payments, security deposits, utility and sewer charges, repair and maintenance, and insurance.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The evidential support for our review of the repair and maintenance aspects of our audit objectives includes third-party engineering underwater inspection reports. We relied on these and other such documentation. We did not employ our own independent engineers to conduct similar assessments which would have provided a greater level of assurance. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope period of this audit was July 2007 to December 2010. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DCAS officials during and at the conclusion of this audit. A preliminary draft report was sent to DCAS officials and discussed at an exit conference held on July 25, 2011. On August 16, 2011, we submitted this draft report to DCAS officials with a request for comments. We received a written response from DCAS officials on September 2, 2011. In their response, DCAS officials stated that they agreed with and have implemented all three of the audit's recommendations.

The full text of the DCAS response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Overall, we found that DCAS is adequately monitoring the key provisions of the lease agreements. We found that:

- The monthly rent payments for all four agreements are current;
- Water and sewer payments are up to date;
- Required insurance coverage is up to date; and
- DCAS is adequately monitoring the inspections and repairs needed at the River Café site.

However, due to calculation errors and inadequate supervisory oversight, DCAS has incorrectly overbilled the Lessee for the monthly payments pertaining to the long-term lease agreement. In addition, DCAS has failed to collect a portion of the security deposit that is due for the long-term lease agreement.

These matters are discussed in greater detail below.

DCAS is Adequately Monitoring Key Provisions of Its Lease Agreements

We found that DCAS is adequately monitoring the key provisions of the lease agreements. Due to additional lease agreements and term renegotiations that DCAS has entered into with the Lessee over the years, rent payments have increased, totaling \$104,106 (or average monthly payments of \$8,676) in 2010. Overall, DCAS has increased the rent payments it collects from the Lessee for the land associated with the River Café by \$84,106 in 2010.

We also found that water and sewer charges and the required insurance coverage have been paid. While we found minor discrepancies with the rent calculations for one of the agreements and the failure to collect the full deposit that was owed, the rent payments made by the Lessee for lease amounts billed by DCAS have been promptly paid.

DCAS is Monitoring the Maintenance and Repairs Efforts by the Lessee at the River Café Site

We found that DCAS is properly monitoring and ensuring that inspections and recommended repairs are performed. In 2003, DCAS contracted a consulting engineering firm to perform an underwater condition survey and assessment of the River Café relieving platform. The survey found that the platform was in poor condition and the timber bulkheads were in serious condition with almost complete failure of previous repairs. The survey report that was issued made a number of recommendations to remedy the conditions it found. The report categorized the repair conditions it identified as *red-flag* (which required immediate repair work), and *short-* and *long-term* conditions. The “red-flag” conditions were addressed

immediately in order to restore the support capacity of the restaurant structure loads. In addition, DCAS ensured that all short-term repairs that the report recommended were done. Long-term repairs—which are less urgent and pose no immediate or imminent hazard—are still outstanding and consist of repairing future damage to the concrete deck. DCAS and the Lessee have been in continuous discussions over how to address these long-term repairs.

As a result of that survey and subsequent engineer inspections, DCAS has continued to monitor the conditions of the leased property to ensure that maintenance, repairs, and periodic follow-up assessment inspections are performed and that the recommendations made in those reports are implemented by the Lessee. For example, from July 2005 through June 2011, there have been 12 inspections by engineering firms to survey and assess the conditions of the premises and to follow up on recommended repairs. DCAS' Engineering and Contract Services Unit has reviewed all these reports to ensure that recommended repairs have been completed. These reports found that immediate repairs have been completed and that the conditions of premises were fair. DCAS has therefore concluded that public safety is not at risk. However, the recommended long-term repairs to rehabilitate the deck or replace the entire platform remain outstanding.

Minor Errors

Due to minor errors made by DCAS in its calculation of the monthly rent owed by the Lessee under the main lease agreement, DCAS overbilled the Lessee by \$2,619. We also found that a credit was incorrectly given to Dircksen & Talleyrand in April 2009 for approximately \$532. Finally, DCAS has failed to collect \$575 in additional security that was due when the original lease agreement was renewed in 2005. DCAS therefore owes Dircksen & Talleyrand a net amount of \$1,512. The details of these issues follow.

Minor Errors in Calculating Payments for the Long-Term Lease Agreement

Two transposition errors of numerical digits led DCAS to overcharging the Lessee by \$2,619 for the audit period of July 2007 to December 2010. One error was the result of the omission of a fractional digit in the percentage value attributable to commercial improvements subject to commercial property taxes, which is used to calculate the monthly rent payment due on the long-term lease. Instead of using 65.4749 percent in the calculation, DCAS used 65.749 percent. We found that this error has been ongoing since 1992 when the responsibility of monitoring the River Café's lease agreement was transferred to DCAS. The other error was also the result of incorrectly omitting a digit from the tax rate applied to the calculation to determine the applicable real estate taxes for Fiscal Year 2008. According to the Department of Finance, the tax rate established by the City Council for Fiscal Year 2008 was 10.059 percent; however, DCAS used a 10.590 percent tax rate.

We also found that a credit was incorrectly given to Dircksen & Talleyrand in April 2009 for approximately \$532. In January 2010, the Lessee used the credit to lower that month's rent payment. The net difference for these errors from July 2007 to December 2010 was an overpayment of \$2,087 combined. This is less than 1 percent of the \$213,897 received in total rent payments from Lessee for the three-and-a-half year period. When we discussed these issues

with DCAS, an official stated that the River Café long-term lease account billing statement for June 2011 will reflect adjustments to reconcile the account balance based on these items.

DCAS Did Not Collect the Total Amount of a Security Deposit

In addition, DCAS had failed to collect \$575 in additional security deposit that was due when the original lease agreement was renewed in 2005. We reviewed the security deposits received by DCAS for all four agreements and found that while DCAS received the correct amounts stipulated in the three short-term agreements, DCAS only received \$6,925 of the \$7,500 required by the long-term lease agreement. DCAS has not yet received the remaining \$575 that was due in 2005 at the time of the first renewal period. We asked DCAS officials why this amount has not yet been collected, and they stated that the River Café will be billed accordingly.

Recommendations

DCAS should:

1. Continue to ensure that periodic inspections of the River Café site are conducted and ensure that all necessary repairs are performed on a timely basis.

DCAS Response: “DCAS will continue to do so.”

2. Determine how much money was overpaid by Dircksen & Talleyrand for the long-term lease agreement based on the incorrect rent calculations and incorrect credit. DCAS should then credit Dircksen & Talleyrand for the appropriate amount.

DCAS Response: “DCAS determined that a net credit in the amount of \$2,619 for the audit period was due to Dircksen & Talleyrand. This amount was applied as a credit to the long-term lease account as of May 17, 2011. Dircksen & Talleyrand was advised of the credited amount by letter dated June 1, 2011.”

3. Collect the additional \$575 that is due for the security deposit for the long-term lease agreement.

DCAS Response: “DCAS received \$575 for the additional security deposit from Dircksen & Talleyrand on June 29, 2011.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The evidential support for our review of the repair and maintenance aspects of our audit objectives includes third-party engineering underwater inspection reports. We relied on these and other such documentation. We did not employ our own independent engineers to conduct similar assessments which would have provided a greater level of assurance. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope period of this audit was July 2007 to December 2010.

We reviewed the terms of the initial long-term lease agreement between Dircksen & Talleyrand and the City of New York signed in 1974 as well as the three short-term agreements to identify which agreements have provisions regarding rent payments, security deposits, utility and sewer charges, repair and maintenance, and insurance. We also reviewed key provisions of the City Charter and the Administrative Code.

To gain an understanding of the control functions and the roles of individuals responsible for monitoring the various agreements between the City and the Lessee, we met with DCAS officials and employees responsible for monitoring the leases associated with the River Café.

To determine whether rent calculations were accurate and were within the provisions of the initial long-term lease agreement, we verified whether DCAS was using the alternative rent payment calculation stipulated in the lease and reviewed the assessed values and property tax rates used by DCAS in its calculations by retrieving from the DOF website the final assessment roll and property tax rates for each year pertaining to Block 25, Lot 1, corresponding to the River Café property and compared them to the values used in DCAS' calculation. We then mathematically verified the calculations used. We also reviewed the appraisals conducted for the three short-term agreements to determine if the monthly rent payments were in alignment with the appraisals performed. To determine that the rent payments received by DCAS were timely and complete, we reviewed the canceled checks for rent payments for Calendar Years 2008 through 2010 and matched them to the required monthly rent payments listed on the monthly Statement of Accounts.

We reviewed available inspection surveys/reports performed on the River Café, including related correspondence, to determine if DCAS is adequately monitoring the repairs and maintenance of the property on which the River Café is situated to ensure that it is properly maintained. We also met with and interviewed DCAS inspectors and other officials to evaluate their oversight procedures of the inspection process.

We reviewed DEP printouts regarding water and sewer charges for the River Café to

determine whether the Lessee was current with its payment. We requested and reviewed any insurance policies regarding the River Café to ensure the amount of insurance is in compliance with the agreements. In addition, we requested and reviewed documentation showing that security deposits were collected by DCAS, where applicable.



August 30, 2011

Edna Wells Handy
Commissioner

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RE: Monitoring of Lease Agreements with
Dircksen & Talleyrand, Inc. for Land
Use Associated with the River Café
(MH11-115A)

Dear Ms. Kim:

Thank you for providing a draft of the referenced Audit Report. We have reviewed the Report and find it to be a fair and accurate assessment of DCAS' monitoring of the lease agreements with Dircksen & Talleyrand, Inc. for the River Café.

Regarding the specific recommendations, we would like to provide you with updated information for inclusion in the final Audit Report, as follows:

1. Comptroller Recommendation: DCAS should continue to ensure that periodic inspections of the River Café site are conducted and ensure that all necessary repairs are performed on a timely basis.

DCAS Response: DCAS will continue to do so.

2. Comptroller Recommendation: DCAS should determine how much money was overpaid by Dircksen & Talleyrand for the long-term lease agreement based on the incorrect rent calculations and incorrect credit. DCAS should then credit Dircksen & Talleyrand for the appropriate amount.

DCAS Response: DCAS determined that a net credit in the amount of \$2,619 for the audit period was due to Dircksen & Talleyrand. This amount was applied as a credit to the long-term lease account as of May 17, 2011. Dircksen & Talleyrand was advised of the credited amount by letter dated June 1, 2011.

3. Comptroller Recommendation: DCAS should collect the additional \$575 that is due for the security deposit for the long-term lease agreement.

- 2 -

DCAS Response: DCAS received \$575 for the additional security deposit from Dirksen & Talleyrand on June 29, 2011.

We appreciate the opportunity to review and provide our comments to the Draft Report.

Sincerely,


Edna Wells Handy

C: George Davis, Office of the Mayor
Mitch Gipson
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Theresa Ward
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