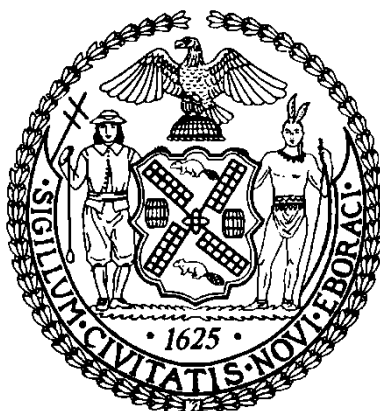


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

BUREAU OF FINANCIAL AUDIT

**H. Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the
Compliance of Sunny Days in the Park, Inc.,
With Its License Agreement and
Payment of Fees Due**

FR10-081A

June 23, 2010



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

John C. Liu
COMPTROLLER

June 23, 2010

To the Residents of the City of New York:

My office has audited the compliance of Sunny Days in the Park, Inc., (Sunny Days) with its license agreement with the Department of Parks and Recreation. We audit private companies that conduct business on City property as a means of ensuring that they comply with their agreements.

The license agreement requires Sunny Days to operate and maintain an outdoor café in the Rotunda at the West 79th Street Boat Basin in Riverside Park, Manhattan, and to pay the City fees based on reported gross receipts. The audit found that Sunny Days did not properly calculate its total gross receipts and license fees due the City and did not pay these fees on time. As a result, Sunny Days owes the City \$3,394 in fees and \$653 in late fees. Furthermore, the audit could not conclude with assurance that Sunny Days accurately recorded and reported all gross receipts and paid all required fees to the Department because of internal control deficiencies pertaining to the manner in which Sunny Days uses the Squirrel point-of-sale system to record and report gross receipts.

The audit recommended that Sunny Days ensure that the point-of-sale system automatically records all cash sales from all bars at the time of sale, adapt the point-of-sale system to properly record and report all transactions, ensure that all revenue from mobile bars is accurately recorded, remit to the Parks Department \$3,394 in additional license fees and \$653 for late fees due, ensure that all future promotions and discounts are reported in gross receipt reports, ensure that all gross receipts and late charges are calculated in accordance with the terms of the license agreement and that such payments are made on a timely basis.

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

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

Sincerely,

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

John C. Liu

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

**Audit Report on the Compliance of
Sunny Days in the Park, Inc., With Its License Agreement
and Payment of Fees Due**

FR10-081A

AUDIT REPORT IN BRIEF

We performed an audit of the license agreement between the Department of Parks and Recreation (Department) and Sunny Days in the Park, Inc. (Sunny Days) to operate an outdoor café in the Rotunda at the West 79th Street Boat Basin in Riverside Park, Manhattan. According to the agreement, Sunny Days is required to pay the City the greater of a minimum annual fee or an annual percentage of gross receipts consisting of 12 percent of the sale of beverages, food, and all other sources of revenue from the operation of the premises (e.g., parties and events, gratuities). For operating year 2009, the minimum annual fee was \$290,000.

The license agreement also requires Sunny Days to maintain the proper amounts of insurance, deposit \$72,500 with the New York City Comptroller's Office as security, and pay all utility charges, including electricity, gas, water, and sewer charges. For operating year 2009, Sunny Days reported receiving \$3,704,275 in gross receipts and surcharges and paid a percentage of gross receipts totaling \$444,513.

Sunny Days uses the Squirrel computerized point-of-sale system for recording and reporting gross receipts.

Audit Findings and Conclusions

Sunny Days did not properly calculate its total gross receipts and license fees due to the City and did not pay these fees on time. As a result, Sunny Days owes the City \$3,394 in fees and \$653 in late fees.

Furthermore, we cannot conclude with assurance that Sunny Days accurately recorded and reported all gross receipts and paid all required fees to the Department because of internal control deficiencies for the manner in which Sunny Days uses the Squirrel point-of-sale system to record and report gross receipts. Specifically, cash sales from the bar are not automatically recorded in the gross revenue file; cash sales from a mobile bar are not recorded in the point-of-sale system; revenue derived from an auditor observation was not properly recorded; the records

of actual and voided transactions, pre-paid bar gratuities, party deposits, and check transfers are reported separately, precluding the ability to properly trace and reconcile guest checks; and parties and events could not always be reconciled with Sunny Days' general ledger.

Sunny Days complied with license agreement requirements pertaining to paying utility bills on time, submitting the required security deposit, and maintaining proper insurance coverage. Additionally, Sunny Days complied with the required insurance endorsements indicating the City and the Department as additional insured entities.

Audit Recommendations

This report makes a total of 12 recommendations. The major recommendations are that Sunny Days' should:

- Ensure that the point-of-sale system automatically records all cash sales from all bars on the premises at the time of sale.
- Adapt the point-of-sale system to properly record and report all transactions.
- Ensure that all revenue from mobile bars is accurately recorded in the point-of-sale system.
- Immediately remit to the Department \$3,394 in additional license fees consisting of \$2,190 in fees related to revenue from promotions and discounts, and \$1,204 in fees related to understated revenue from party deposits and unreported party gratuities.
- Immediately pay the Department \$653 for late fees due.
- Ensure that all future promotions and discounts are reported in gross receipt reports submitted to the Department.
- Ensure that all gross receipts and late charges are calculated in accordance with the terms of the license agreement and that such payments are made on a timely basis.

The Department should:

- Issue a Notice-to-Cure to Sunny Days requiring it to pay \$4,047 in additional license fees and late charges.
- Reconcile the amount of license fees and late charges previously collected with the information contained in this report.

INTRODUCTION

Background

On April 9, 2003, the Department of Parks and Recreation (Department) signed a two-year license agreement with Sunny Days in the Park, Inc., (Sunny Days) to operate an outdoor café in the Rotunda at the West 79th Street Boat Basin in Riverside Park, Manhattan. (The agreement included an option to extend for four one-year terms.) The Department agreed to all four one-year extensions with the final extension commencing on April 1, 2008 and terminating March 31, 2009. The Department further extended the license agreement until October 31, 2009. The café—which is open from April to October—consists of an open air patio, a covered rotunda, and the bar areas (bar right, bar left, mobile bar).

According to the agreement, Sunny Days is required to pay the City the greater of a minimum annual fee or an annual percentage of gross receipts consisting of 12 percent of the sale of beverages, food, and all other sources of revenue from the operation of the premises (e.g., parties and events, gratuities). For operating year 2009, the minimum annual fee was \$290,000.

The license agreement also requires Sunny Days to maintain the proper amounts of insurance, deposit \$72,500 with the New York City Comptroller's Office as security, and pay all utility charges, including electricity, gas, water, and sewer charges. For operating year 2009, Sunny Days reported receiving \$3,704,275 in gross receipts and surcharges and paid a percentage of gross receipts totaling \$444,513.

Sunny Days uses the Squirrel computerized point-of-sale system for recording and reporting gross receipts.

Objectives

The objectives of this audit were to determine whether Sunny Days in the Park, Inc., complied with its license agreement, including whether it:

- Properly calculated its total gross receipts and license fees due the City and paid these fees on time; and
- Complied with the other major requirements of its license agreement (e.g., maintained the required insurance coverage and security deposits and paid its utility charges).

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. 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 of this audit covered operating year 2009 (April 1, 2009, to October 31, 2009). We obtained and reviewed the license agreement, revenue reports, other relevant documents, and the following audit reports:

- New York City Comptroller’s Audit Report No. FN01-065A dated March 23, 2001, concerning the permit fees due from the Good Service Company, Inc. (West 79th Rotunda Café) and its compliance with its permit agreement.
- Department of Parks and Recreation Audit Report No. R-08-006 dated March 24, 2009, *Compliance of Sunny Days in the Park, Inc. with its License Agreement and its Payment of License Fees Due the City*, covering the period April 1, 2006, to March 31, 2008.

We conducted unannounced observations of the café on August 7, August 8, August 14, and October 9, 2009. We interviewed Sunny Days’ owner, managers, accountant, and bookkeeper and performed walkthroughs of the operations to understand its procedures for recording and reporting revenue. We documented our understanding of these procedures in memoranda. Also, we reviewed the manual for the café’s computerized point-of-sale system (Squirrel).

We obtained and reviewed reports of gross receipts totaling \$3,704,275 that were submitted to the Department for operating year 2009. We then conducted various tests to meet our objectives by examining \$1,143,483 (30%) of the total amount of reported gross receipts. This amount consisted of \$699,394 for May 2009—the second highest grossing month for operating year 2009—and \$444,089 for party revenue in operating year 2009.¹ Specifically, to determine whether Sunny Days is properly recording and reporting revenue:

- We obtained and reviewed an exported data file from the Squirrel point-of-sale system containing the daily gross revenue reports for May 2009, totaling \$699,394. In order to analyze the daily data, we sorted the information by check number and payment type. In addition, we separately reviewed the revenue report receipts from the various bars and sorted the information by bar location and payment type (i.e., AMEX, Discover, MasterCard, VISA, cash). Based on the sorted information, we calculated:

1. Daily number of customer checks processed and their total value exclusive of tips. We determined whether the dollar value was consistent with the daily grand cash-out total.

¹ \$513,736.12 was the total amount of party revenue reported for operating year 2009. However, \$69,646.94 of this amount is included in the total receipts reviewed for May 2009.

2. Total daily cash sales for each bar. We determined whether the amount of the charges was consistent with the cash-out total for each bar.
 3. Daily beginning and ending customer check numbers. We determined whether checks were sequential or contained gaps in numbering.
 4. Number of checks missing from the daily check sequence. We ascertained whether the missing checks were accounted for.
 5. Total value of customer checks for May 2009. We determined whether the total amount was consistent with the revenue reported to the Department.
- To validate daily gross receipts reported on the May 2009 report, we obtained the daily customer guest checks for the period May 1 to May 8 (for which the guest checks totaled \$55,784.02), and reconciled our calculated total daily revenue to the revenue amount in the daily net transaction report. We did this by reconciling the daily credit card and cash payments to the daily revenue reports and verifying the amount of cash revenue for the bar to the bar “cash out” slips, which are part of the daily receipts. In addition, we determined whether credit card payments noted in the check summaries (that records each waiter’s daily credit card and cash payments) matched the payments in the spreadsheets we prepared of daily revenue.
 - We obtained from Sunny Days officials an exported data file from the Squirrel system containing detailed gross revenue reports for August 2009 and October 2009. We used these files to ascertain whether the receipts obtained during our three August observations and our one October observation were properly recorded.
 - Finally, we reconciled all net transaction reports to the general ledger for all gross receipts for operating year 2009 and compared them to the monthly reports submitted to the Department.

To verify the total amount of gross receipts for events and parties for operating year 2009, we:

- Obtained the café’s party log book, party contracts binder, party receipt envelopes, and schedule of catering gratuities reported to the Department for operating year 2009. Using these documents, we recorded all 172 parties held at the café from April to October 2009, and 48 other events that were either cancelled, reserved as rain dates, or moved to a different venue. For each event we recorded information such as party name, date and time, amount of party deposit received and corresponding check numbers, and the amount of bartender and cook gratuities received and corresponding check numbers. In addition, we recorded information from the customer receipts such as receipt numbers, subtotal due, tax, tip, total amount due and paid, and the method of payment.

- We ascertained whether all events recorded in the party log could be traced to a corresponding contract and whether there was a party receipt envelope for each event that took place. In addition, we determined whether all contract numbers were in sequential order.
- We summarized the bartender gratuities, cook gratuities, and party tips for each event to determine whether Sunny Days reported 12 percent of catering gratuities to the Department. We then subtotaled the tips for each event and compared the dollar value to the amount of tips reported to the Department for each particular event and calculated any differences. For each month, we calculated the total tips and multiplied that total by 12 percent. We then compared the resulting figure to the amount of catering gratuities reported to the Department and calculated any differences.
- We reviewed the party envelopes for the entire operating year. For each month, we documented the amount of party deposits received and the dates of receipt for each event. We then tested the detailed party deposits for operating year 2009. We reviewed the general journal entries in the transaction detail by account report for account no. 2555 (Party Deposits Received) and account no. 2556 (Party Deposits Used). We compared our documented party deposits for operating year 2009 with the party deposits recorded in the transaction detail. According to a citation in a prior audit performed by the Department, Sunny Days should be reporting party deposits in the month they are received. We determined whether our audited figures for received party deposits were reconciled with the deposits recorded on the transactions detail for that same month.

Finally, to determine whether revenue collected through cash and credit cards was included in revenue reported to the Department, we obtained from Sunny Days' officials the bank statements, deposit slips, and credit card settlement reports for operating year 2009. We analyzed all credit card and cash transactions and compared them with the bank statements and deposit slips. We then compared the transactions with the monthly net transaction reports submitted to the Department.

To determine whether Sunny Days complied with other major requirements of its license agreement, we reviewed the most recent utility bills for timely payment. We examined documents to check whether the correct security deposit had been filed with the New York City Comptroller's Office and whether Sunny Days maintained the proper insurance coverage as required by the license agreement.

The results of the above tests provided a reasonable basis for us to determine whether Sunny Days is reporting all its gross receipts to the Department and complying with the terms of the license agreement.

Discussion of Audit Results

The matters covered in this report were discussed with Sunny Days officials during the course of this audit. A preliminary draft report was sent to Sunny Days and Department officials on April 16, 2010, and discussed at an exit conference held on May 6, 2010. On May 20, 2010, we submitted a draft report to Sunny Days and Department officials with a request for comments. We received written comments from Sunny Days and the Department on June 4, 2010.

In its response, Department officials asserted that “Parks has issued Sunny Days a letter requiring it to comply with certain Recommendations, and to submit a written response advising Parks on its progress toward addressing those Recommendations.” The Department agreed with seven recommendations and partially agreed with five recommendations.

Of nine recommendations pertaining to Sunny Days, it agreed with one recommendation, disagreed with two recommendations, partially disagreed with two recommendations, and did not respond to four recommendations.

The responses by Sunny Days and the Department are included as addenda to this report.

FINDINGS AND RECOMMENDATIONS

Sunny Days did not properly calculate its total gross receipts and license fees due to the City and did not pay these fees on time. As a result, Sunny Days owes the City \$3,394 in fees and \$653 in late fees.

Furthermore, we cannot conclude with assurance that Sunny Days accurately recorded and reported all gross receipts and paid all required fees to the Department because of internal control deficiencies pertaining to the manner in which Sunny Days uses the Squirrel point-of-sale system to record and report gross receipts. Specifically, cash sales from the bar are not automatically recorded in the gross revenue file; cash sales from a mobile bar are not recorded in the point-of-sale system; revenue derived from an auditor observation was not properly recorded; the records of actual and voided transactions, pre-paid bar gratuities, party deposits, and check transfers are reported separately, precluding the ability to properly trace and reconcile guest checks; and, parties and events could not always be reconciled with Sunny Days' general ledger.

Sunny Days complied with license agreement requirements pertaining to paying utility bills on time, submitting the required security deposit, and maintaining proper insurance coverage. Additionally, Sunny Days complied with the required insurance endorsements indicating the City and the Department as additional insured entities.

These matters are discussed in greater detail below.

Internal Control Deficiencies with Recording and Reporting Gross Receipts

We cannot be reasonably assured that all restaurant income was reported to the Department. Our review of the records and reports generated by the computerized point-of-sale Squirrel system indicated internal control deficiencies. Specifically:

- Cash sales from the bar area (bar right, bar left) are maintained in a temporary file and are not automatically recorded at the time of sale, thereby resulting in inaccurate recording and reporting of gross receipts.
- Cash sales from the mobile bar are not recorded in the point-of-sale system, thereby compromising the accuracy of gross receipts reported.
- Separate reports record actual and voided transactions, pre-paid bar gratuities, party deposits, and guest check transfers, thereby precluding the ability to properly trace and reconcile guest checks.²

² A "check transfer" occurs when a customer who has ordered a drink from the bar subsequently decides to order a meal. That customer's guest check number and bar charges are transferred to another check number that is used to order food from a waiter at the seated area.

As a result of these internal control deficiencies, we cannot attest that all revenue from café operations is accurately recorded and reported to the Department.

Temporary File for Bar Cash Sales

The method by which Sunny Days records cash sales from the bar area is prone to error and manipulation. Cash sales at the bar are not automatically included in the guest check sequence at the time of sale.³ As a result, we found that cash sales from the bar are not always accurately recorded and reported as discussed below.

Sunny Days did not record a cash transaction made by our auditors during an observation of café operations on August 14, 2009. Auditors made a \$13 cash purchase at the bar and obtained a receipt for guest check no. 487454. However, check no. 487454 was recorded in the daily gross revenue report as a \$67 credit card transaction. Sunny Days officials speculated that the bartender might have kept the guest check open in error and continued using it for a new customer. We are skeptical of this explanation since the auditors' purchase occurred at 2:10 p.m. while the credit card transaction for the other customer was recorded at 8:40 p.m.—an unlikely length of time given the large number of customers at the café that day.

In any event, the cash transaction made by our auditors was clearly not recorded by Sunny Days and, accordingly was never included among the gross receipts that were reported to the Department. Although the amount of the transaction is insignificant, the problem it represents leads us to conclude that the point of sale system may be flawed because it can be manually adjusted and overridden by Sunny Days management. Consequently, we have no assurance about the integrity of the recording and reporting of bar cash sales by Sunny Days.

Sunny Days officials told us that cash sales from the bar are recorded in a temporary file in the Squirrel system. The temporary file can contain up to 150 cash sales before a manager reviews the sales and transfers the file to the daily gross receipts file—a method of recording sales that represents a poor internal control. Sales should be recorded at the time of sale to ensure their accuracy and to preclude the possibility of fraudulent transactions.

No Point-of-Sale System for Mobile-Bar Sales

We identified another problem in reporting revenue from cash sales at the bar. Our auditors observed a mobile bar (Robbie's Bar) in the café rotunda during the evening of August 7. Our review indicated that the bar revenue was subsequently recorded as a lump sum payment in the Squirrel system—rather than as individual transactions that should have been recorded at the time of sale. Recording sales directly in a point-of-sale system is an important internal control for ensuring that all sales and gross receipts are accurately recorded and reported.

³ When reconciling each business day's gross receipts, we were required to do a separate calculation for cash sales from the bar to ascertain the final amount of daily gross receipts.

Recommendations

Sunny Days should:

1. Ensure that the point-of-sale system automatically records all cash sales from all bars on the premises at the time of sale. In that regard, cease the practice of maintaining sales receipts in a temporary file.

Sunny Days Response: “Each time a check is rung at the bar it immediately gets assigned a check number, thus it is recorded at the time of opening into the Point of Sale Computer.”

Department Response: “With regard to Recommendations 1 and 2, the auditors found that Sunny Days’ POS system records up to 150 bar sales in a ‘temporary file.’ The Report states that this method of recording sales is ‘prone to error and manipulation.’ The Report goes on to cite a specific example in which a \$13 cash transaction made by an auditor on the afternoon of August 14, 2009 was subsequently passed on (after being paid by the auditor) to the bill of a separate customer who purchased drinks that evening, several hours later.

“While it is clear that the evening customer was billed incorrectly, based upon Parks’ research the incorrect billing is attributable to user error. Specifically, the POS operator did not close the auditor’s order after it was filled—thus allowing the order *and check number* to be transferred to another customer. [Emphasis in original.] Further, as discussed at the exit conference for this Report, sales in the ‘temporary file’ cannot be deleted without going into the POS system’s deletion report, where each deletion is held and available for review and analysis. Indeed, the ‘temporary file’ is a function of the POS system’s fast bar setting that allows Sunny Days to efficiently serve bar customers. Detailed sales information is still captured, and daily sales reports for cash sales are available. Consequently, Parks has not determined that the use of a ‘temporary file’ represents a material risk to the accuracy and completeness of Sunny Days’ bar sales, nor prevents Sunny Days from recording cash sales at the time of sale.

“That said, the findings connected to Recommendations 1 and 2 identify areas where internal controls need to be improved. Parks has required Sunny Days to ensure that all staff is properly trained to close sales after they have been filled so that all cash sales are recorded at the time of sale. Additionally, Parks has directed Sunny Days’ management to examine the number of sales transactions held in the ‘temporary file’ at one time and to determine a reduced number of transactions that will still allow the bar to operate efficiently.”

Auditor Comment: Sunny Days’ contention that each bar check “immediately gets assigned a check number” and is recorded in the POS system is clearly gainsaid by the Department’s assertion that the auditor’s check number was transferred to another customer.

Notwithstanding speculation by officials of the Department and Sunny Days, we are not convinced that the incorrect auditor billing was solely attributable to a staff error. Our auditors—the only patrons at the bar when the purchase was made—noted that business at the bar was slow that afternoon. Moreover, the auditors received a receipt for the purchase that was generated through the POS system. Accordingly, the explanation that the “POS operator” did not close the auditor’s order after it was filled, leading to the order and check number being transferred to another customer, is dubious.

Although we do not advocate the use of a temporary file to maintain sales receipts, the Department’s decision to instruct Sunny Days to reduce the number of transactions in the temporary file is a meaningful step towards ensuring accuracy and possibly precluding errors in recording sales.

2. Adapt the point-of-sale system to properly record and report all transactions.

Sunny Days Response: Sunny Days attached a letter from the Point of Sale company.

Department Response: Same as recommendation #1.

3. Ensure that all revenue from mobile bars is accurately recorded in the point-of-sale system.

Sunny Days Response: “New Point of Sale terminals have already been installed at mobile bar.”

Department Response: “Parks agrees with this Recommendation. Sunny Days has advised Parks that additional POS terminals are now in use at the mobile bar.”

Problems with Identifying Daily Transactions

Sunny Days does not use the Squirrel system to produce a comprehensive report that lists all daily transactions. Our review of the May 2009 gross revenue report identified two guest checks that were numbered out of sequence.⁴ We subsequently determined that the two missing check numbers were not used and were listed in a May 2009 voids report. Nevertheless, the voided check numbers should have been listed in the gross revenue report. The use of separate reports to record actual and voided transactions precludes the ability to properly trace and reconcile the guest checks and, consequently, to ensure that all revenue is being properly reported.

Moreover, 44 guest check numbers were missing from the May 2009 gross revenue report. We subsequently identified the missing checks in different reports: 27 in a bar gratuity

⁴ The ending check number for May 18 was 420638; the beginning check number for May 19—which should have been 420639—was 420640. Similarly, the ending check number for May 25 was 430196; the beginning check number for May 26—which should have been 430197—was 430198.

payment report, 15 in a transfers report, 1 in a payments report, and 1 in a party deposit receipt.⁵ We note that Sunny Days officials were also unable to immediately identify the whereabouts of the missing check numbers because they were contained in disparate reports. Although we ultimately reconciled the sequence of check numbers, a comprehensive report would be a valuable resource for tracking all transactions.

These findings highlight problems with the Squirrel point-of-sale system in ensuring that all transactions are accounted for in one report and are transparent. Unless these problems are corrected, there is a possibility that not all gross receipts are being reported to the Department.

Recommendations

Sunny Days should:

4. Ensure that the point-of-sale system produces a comprehensive transaction report for the Department that includes all actual and voided sales, and contains complete information on all gross receipts including bar gratuity receipts, check transfers, and party deposit receipts.

Sunny Days Response: “There is no Point of Sale system for the restaurant industry that will generate one report as requested. It is industry standard to have these reports issued separately. (Example: A voided transaction no longer exists and therefore cannot be included in a sequential listing of all transactions for a given day. It can, however, be monitored in the voided transaction report for that day.)”

Department Response: “Parks has directed Sunny Days to work with its POS system manufacturer to create a report that meets the criteria stated in the Report to the fullest extent possible. We expect an update from Sunny Days on this matter within the next thirty days.”

Auditor Comment: It should also be noted that 44 check numbers were not included in the voided transaction report mentioned by Sunny Days. The check numbers were scattered among disparate reports including those showing gratuity payments and check transfers.

5. Review the information provided in this report and ensure that all gross receipts are being accurately reported to the Department.

Sunny Days Response: Sunny Days did not respond to this recommendation.

Department Response: “Parks has directed Sunny Days to comply with Recommendation 5 and routinely review reports prepared in response to Recommendation 4.”

⁵ The transfers report lists all check transfers.

Other Recording and Reporting Issues

Sunny Days owes the City \$3,394 in additional fees and \$653 in late fees because it did not include promotions and discounts and did not accurately record and report party deposits and gratuities.

Promotions and Discounts Excluded From Gross Receipts

Sunny Days did not include in its report of gross receipts for operating year 2009 customer promotions or discounts totaling \$18,248. According to license agreement §2.1(1), “Gross Receipts shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind.” Sunny Days officials contend that promotions and discounts are a cost of doing business. Nevertheless, as required by the agreement and standard accounting practice, the cost of doing business represents a portion of gross receipts (in contrast to net receipts). Consequently, promotions and discounts must be reported as revenue to the Department. A total amount of \$2,190 is therefore due the City.

Party Deposit Revenue Not Reported

Sunny Days did not accurately record and report the amount of party deposits it received in April, May and June 2009, thereby understating its gross receipts by \$6,741. As a result, Sunny Days owes the Department \$809 in additional fees. Furthermore, party deposit receipts were understated by an additional \$2,530 because Sunny Days improperly deducted the receipts from the party deposits “used” account on two occasions, rather than just once, thereby resulting in \$304 in fees. Accordingly, the total amount of additional fees is \$1,113.

Party Gratuities Not Reported

Of 172 parties held at the Café in Fiscal Year 2009, catering gratuities were properly recorded and reported for all but 8 parties. For these cases, gross receipts were understated by \$763, thereby resulting in \$91 in additional fees owed the City.

Although Sunny Days’ management considered the omission of the eight parties an “oversight,” we note that the practice of Sunny Days is to manually record party entries in a party log book and contracts binder. This practice, however, is deficient as it lacks safeguards to ensure that required entries are always made.

In addition, our reconciliation of the gross receipts recorded by account in the transaction detail report with the monthly report of gross receipts submitted to the Department for July, August, and September 2009, showed that Sunny Days over reported the amount of gross receipts by \$4,791. As a result, Sunny Days paid the Department \$575 in excess fee payments.⁶

⁶ The difference between the two reports for July totaled \$62 in over reported receipts. The difference for August totaled \$580 in over reported receipts. In September, the amount of gross receipts over reported totaled \$4,149.

Late Fees Due

Sunny Days did not pay its operating year 2009 percentage fee of gross receipts and catering gratuities on time. The Department consequently assessed, and Sunny Days paid, \$6,130 in late fees. However, the Department must also assess Sunny Days in late fees for unreported catering gratuities, promotions, and discounts, and for underreported gross receipts, as discussed in this audit report. We calculate that the amount of these late fees totals \$653.

Recommendations

Sunny Days should:

6. Immediately remit to the Department \$3,394 in additional license fees consisting of \$2,190 in fees related to revenue from promotions and discounts, and \$1,204 in fees related to understated revenue from party deposits and unreported party gratuities.

Sunny Days Response: “Sunny Days In The Park has built its business at the West 79th Street Boat Basin Café from \$500,000 to \$3,700,000 (2009). In order to accomplish this in this economic climate Sunny Days needs to build customer loyalty. As you are aware in the Service/Entertainment business customer loyalty is built in many ways. The most important is financial rewards to our customers. An example: Complimentary drinks to repeat customers. You have to give something for repeat business.

“Also to build catering events you have to have food tastings. Companies and individuals who wish to book large events require food tastings in most cases before booking. Sunny Days records all transactions when we have our catering customers sample our food.

“Sunny Days does not agree that we should pay the City of New York to accomplish the above. In closing it does not make sense to charge Sunny Days for trying to develop higher grosses which in return raise the fee paid to New York City.”

Department Response: “Parks has directed Sunny Days to remit payment of license fees and late charges related to the value of complimentary meals provided to friends or family, party deposits and party gratuities. However, Parks does not agree with the portion of Recommendations 6 and 7 that represents an assessment for unreported complimentary meals that we consider to represent a legitimate business expense for Sunny Days in order to promote and grow its business. For example, a complimentary meal provided to a customer who is planning to have a large catered event at the facility.”

Auditor Comment: The Department and Sunny Days contend that promotions and discounts to build customer loyalty and promote business are a legitimate business

expense. Although we do not dispute that notion, we nevertheless contend that the value of promotions and discounts constitute gross receipts, which must be reported to the Department.

While the Department agrees that the value of complimentary meals provided to friends or family must be reported as gross receipts, we note that the documentation maintained by Sunny Days is inadequate to ascertain whether the recipients of complimentary meals were family and friends or prospective customers. One recipient we were able to identify—the owner of a private restaurant that is managed by an official of the Sunny Days concession—obtained 26 percent of the value of all complimentary meals granted by Sunny Days and was clearly not a prospective customer. Accordingly, we affirm that the value of all complimentary meals must be included in the gross receipts reported to the Department.

7. Immediately pay the Department \$653 for late fees due.

Sunny Days Response: Sunny Days did not respond to this recommendation.

Department Response: Same as recommendation #6.

8. Ensure that all future promotions and discounts are reported in gross receipt reports submitted to the Department.

Sunny Days Response: Same as recommendation #6.

Department Response: “Parks has directed Sunny Days to comply with Recommendation 8. Specifically, Sunny Days must immediately start reporting in gross receipts the value of complimentary meals provided to friends or family.”

Auditor Comment: As previously discussed, Sunny Days must report the value of all complimentary meals provided.

9. Ensure that all gross receipts and late charges are calculated in accordance with the terms of the license agreement and that such payments are made on a timely basis.

Sunny Days Response: Sunny Days did not respond to this recommendation.

Department Response: “Parks agrees with this Recommendation and has directed Sunny Days to comply.”

The Department should:

10. Issue a Notice-to-Cure to Sunny Days requiring it to pay \$4,047 in additional license fees and late charges.

Department Response: “As stated in our response to Recommendations 6 and 7, Parks has issued a letter to Sunny Days requiring it to remit payment of license fees and late charges related to complimentary meals provided to friends or families, party deposits and gratuities.”

Auditor Comment: We disagree with the Department’s position in this matter, and assert that Sunny Days must remit payment of license fees and late charges related to all complimentary meals. As previously discussed, the records maintained by Sunny Days are inadequate to ascertain meaningful distinctions between complimentary meals provided to family and friends and those to promote business.

11. Reconcile the amount of license fees and late charges previously collected with the information contained in this report.

Department Response: “Parks will reconcile its records to reflect the audit’s finding that Sunny Days overpaid Parks in the amount of \$575 and also owes additional amounts from unreported revenue.”

12. Ensure that Sunny Days complies with all the recommendations in this report.

Department Response: “We will also ensure that Sunny Days complies with the Recommendations in the Report in the manner that we have requested.”

SUNNY DAYS IN THE PARK, INC.

June 3, 2010

City of New York
Office Of The Comptroller
1 Centre Street Room 1100
New York, NY 10007-2341

Re: Audit Report on the Compliance of Sunny Days
In The Park, Inc., with Its License Agreement
And Payment of Fees Due
Fr10-081A

Dear Deputy Comptroller Kim:

Attached is a copy of Sunny Days In The Park, Inc. response to some of the
issues raised in your above referenced Audit.

Respectfully,



James Enzel
President

SUNNY DAYS IN THE PARK, INC.

In response to both Page 2, first Audit Recommendation and Page 7, first Internal Control Deficiencies item:

Each time a check is rung at the bar it immediately gets assigned a check number, thus it is recorded at the time of opening into the Point of Sale Computer.

In response to Page 2, second Audit Recommendation:

Please refer to the attached letter directly from the Point of Sale company.

In response to Page 2, third Audit Recommendation and Page 7, second Internal Control Deficiencies item:

New Point of Sale terminals have already been installed at mobile bar.

In response to Page 7, third Internal Control Deficiencies item:

There is no Point of Sale system for the restaurant industry that will generate one report as requested. It is industry standard to have these reports issued separately. (Example: A voided transaction no longer exists and therefore cannot be included in a sequential listing of all transactions for a given day. It can, however, be monitored in the voided transaction report for that day.)

In response to page 2, fourth and sixth Audit Recommendations: (Promotions and Discounts sections):

Sunny Days In The Park has built its business at the West 79th Street Boat Basin Café from \$500,000 to \$3,700,000 (2009). In order to accomplish this in this economic climate Sunny Days needs to build customer loyalty. As you are aware in the Service/Entertainment business customer loyalty is built in many ways. The most important is financial rewards to our customers. An example: Complimentary drinks to repeat customers. You have to give something for repeat business.

Also to build catering events you have to have food tastings. Companies and individuals who wish to book large events require tastings in most cases before booking. Sunny Days records all transactions when we have our catering customers sample our food.

SUNNY DAYS IN THE PARK, INC.

Sunny Days does not agree that we should pay the City of New York to accomplish the above. In closing it does not make sense to charge Sunny Days For trying to develop higher grosses which in return raise the fee paid to New York City.

In all of the years Sunny Days has operated The West 79th Street Boat Basin Café we have paid an overage after our base fee to the City of New York.

Inclosing Sunny Days In The Park, Inc. will continue to work with the Squirrel System and Mike Chaney to explore ways to better the system,

My thanks to the Comptroller's Office and the Audit staff for their time and effort to make Sunny Days In The Park, Inc. a better company.

squirrel
systems

Mr. James Enzel
Sunny Days in the Park,
49 West 64th Street
New York, NY 10023

Re: Audit and Reports of Squirrel System

Dear Mr. Enzel

Thank You for your email and concern regarding your recent audit by the comptroller's office.

Let me Start by offering you any help you may need in talking with them to understand the sales process of entering the sales into the system in both a fine dining environment and then a fast bar environment, and then following it into the reporting procedures within Squirrel systems, and the many different reports, along with a brief history of the Squirrel P.O.S system.

Squirrel has been an in the Restaurant Industry for 25years, and is considered to have some of the best back office reports available. Squirrel was designed to help restaurant operators meet the needs of their guests.

As you are aware, in the fine dining atmosphere of the restaurant industry it is necessary for operators to have the ability to print separate checks for a table, or a small group at that table into partial checks.

They also need the ability to transfer them from a bar department to a Dining department table based on customers' needs and sometimes human error.

With the system reports there are multiple ways for management to audit this information.

If you need to me help address every bullet point about the squirrel system I can offer my help, but to highlight just a few of them I will target the main ones now.

1. The bar checks are recorded in the system at time of sale. (not a temporary file)
2. Sunny Days purchased two new terminals from us for their remote locations, and they are already installed.
3. Voids, reports, promo reports are separate by design and available with several options, detail or summary to help isolate issues when they arise, or If management needs to dig further into an issue.
4. In regards to check number 487454—(pg8) I looked at the actual check number and it looks to be a bartender error. Your check was opened at 1:07pm according to the check detail by the day bar. The first item was a \$6.00 dolar beer and the second item a \$7.00 dollar frozen drink. (\$13) The report shows it was closed at 8:40pm by a different position called Bar Right, for the 67.00 you mentioned. This is a human error, or theft by an employee of the restaurant where you both would have lost revenue.

In conclusion

I think the temporary file issue is a misunderstanding in the explanation of how the fast bar works. There are no temporary files, just open checks or tables recorded immediately in the system.

The reports are there, just not on one page.

And I have also forwarded this information on to the Squirrel Companies main office for their review.

Please let me know if there is anything or way I can help you in the future.

Sincerely,

Michael K. Chaney



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10065

Elizabeth W. Smith
Assistant Commissioner
Revenue and Marketing

June 4, 2010

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

H. Tina Kim
Deputy Comptroller for Audit
City of New York Office of the Comptroller
One Centre Street
New York, NY 10007-2341

Re: Comptroller's Draft Audit Report on the Compliance of Sunny Days in the Park, Inc. with its License Agreement and Payment of Fees Due/ Audit Report FR10-031A

Dear Deputy Comptroller Kim:

This letter addresses the findings and recommendations ("Recommendations") contained in the New York City Comptroller's ("Comptroller") Draft Audit Report ("Report"), dated May 20, 2010, on the compliance of Sunny Days in the Park, Inc. ("Sunny Days") with its License Agreement ("Agreement") with the New York City Department of Parks & Recreation ("Parks"). In response to the Report, Parks has issued Sunny Days a letter requiring it to comply with certain Recommendations, and to submit a written response advising Parks on its progress toward addressing those Recommendations.

As you know, the Report found that Sunny Days complied with its Agreement requirements to pay utility bills on time, submit the required security deposit and maintain proper insurance coverage. However, the Report could not conclude with assurance that all gross receipts were accurately reported, and that all fees were paid to Parks. Specifically, the Report identified certain "internal control deficiencies" with the manner in which Sunny Days used its point-of-sale ("POS") system. The Report proposed the following Recommendations to Sunny Days related to its use of the POS system and other financial-related compliance matters:

Recommendation 1 – Ensure that the point-of-sale system automatically records all cash sales from all bars on the premises at the time of sale. In that regard, cease the practice of maintaining sales receipts in a temporary file.

Recommendation 2 – Adapt the POS system to properly record and report all transactions.

With regard to Recommendations 1 and 2, the auditors found that Sunny Days' POS system records up to 150 bar sales in a "temporary file." The Report states that this method of recording sales is "prone to error and manipulation." The Report goes on to cite a specific example in which a \$13 cash transaction made by an auditor on the afternoon of August 14, 2009 was subsequently passed on (after being paid by the auditor) to the bill of a separate customer who purchased drinks that evening, several hours later.

While it is clear that the evening customer was billed incorrectly, based upon Parks' research the incorrect billing is attributable to user error. Specifically, the POS operator did not close the auditor's order after it was filled—thus allowing the order *and check number* to be transferred to another



customer. Further, as discussed at the exit conference for this Report, sales in the "temporary file" cannot be deleted without going into the POS system's deletion report, where each deletion is held and available for review and analysis. Indeed, the "temporary file" is a function of the POS system's fast bar setting that allows Sunny Days to efficiently serve bar customers. Detailed sales information is still captured, and daily sales reports for cash sales are available. Consequently, Parks has not determined that the use of a "temporary file" represents a material risk to the accuracy and completeness of Sunny Days' bar sales, nor prevents Sunny Days from recording cash sales at the time of sale.

That said, the findings connected to Recommendations 1 and 2 identify areas where internal controls need to be improved. Parks has required Sunny Days to ensure that all staff is properly trained to close sales after they have been filled so that all cash sales are recorded at the time of sale. Additionally, Parks has directed Sunny Days' management to examine the number of sales transactions held in the "temporary file" at one time and to determine a reduced number of transactions that will still allow the bar to operate efficiently.

Recommendation 3 – Ensure that all revenue from mobile bars is accurately recorded in the POS system.

Parks agrees with this Recommendation. Sunny Days has advised Parks that additional POS terminals are now in use at the mobile bar.

Recommendation 4 – Ensure that the POS system produces a comprehensive transaction report for Parks that includes all actual and voided sales, and contains complete information on all gross receipts including bar gratuity receipts, check transfers and party deposit receipts.

Parks has directed Sunny Days to work with its POS system manufacturer to create a report that meets the criteria stated in the Report to the fullest extent possible. We expect an update from Sunny Days on this matter within the next thirty days.

Recommendation 5 – Review the information provided in this report and ensure that all gross receipts are being accurately reported to Parks.

Parks has directed Sunny Days to comply with Recommendation 5 and routinely review reports prepared in response to Recommendation 4.

Recommendation 6 – Immediately remit to Parks \$3,394 in additional license fees consisting of \$2,190 in fees related to revenue from promotions and discounts, and \$1,204 in fees related to understated revenue from party deposits and unreported party gratuities.

Recommendation 7 – Immediately pay \$653 for late fees due.

Parks has directed Sunny Days to remit payment of license fees and late charges related to the value of complimentary meals provided to friends or family, party deposits and party gratuities. However, Parks does not agree with the portion of Recommendations 6 and 7 that represents an assessment for unreported complimentary meals that we consider to represent a legitimate business expense for Sunny Days in order to promote and grow its business. For example, a complimentary meal provided to a customer who is planning to have a large catered event at the facility.

Recommendation 8 – Ensure that all future promotions and discounts are reported in gross receipt reports submitted to Parks.

Parks has directed Sunny Days to comply with Recommendation 8. Specifically, Sunny Days must immediately start reporting in gross receipts the value of complimentary meals provided to friends or family.

Recommendation 9 – Ensure that all gross receipts and late charges are calculated in accordance with the terms of the Agreement and that such payments are made on a timely basis.

Parks agrees with this Recommendation and has directed Sunny Days to comply.

The Report also addresses the following Recommendations to Parks:

Recommendation 10 – Issue a Notice-to-Cure to Sunny Days requiring it to pay \$4,047 in additional license fees and late charges.

Recommendation 11 – Reconcile the amount of license fees and late charges previously collected with the information contained in this Report.

Recommendation 12 – Ensure that Sunny Days complies with all the Recommendations in this Report.

As stated in our response to Recommendations 6 and 7, Parks has issued a letter to Sunny Days requiring it to remit payment of license fees and late charges related to complimentary meals provided to friends or families, party deposits and gratuities (Recommendation 10). Parks will reconcile its records to reflect the audit's finding that Sunny Days overpaid Parks in the amount of \$575 and also owes additional amounts from unreported revenue (Recommendation 11). We will also ensure that Sunny Days complies with the Recommendations in the Report in the manner that we have requested (Recommendation 12).

Finally, Parks wishes to thank you and your audit staff for the time and effort devoted to completing this Report.

Sincerely,



Elizabeth W. Smith

Cc: Robert L. Garafola, Elizabeth W. Smith, Jun Lee, Walter Roberts