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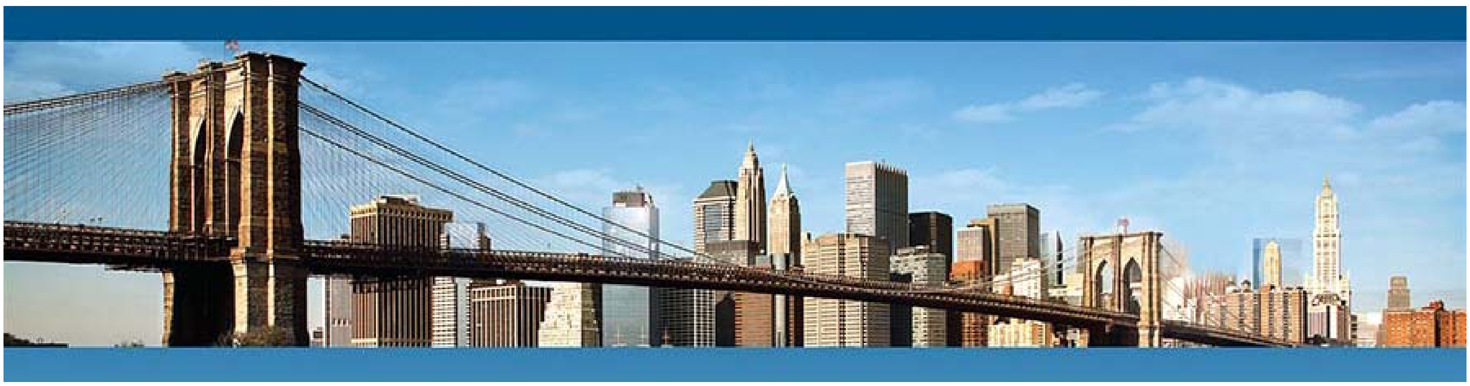

FINANCIAL AUDIT

Tina Kim

Deputy Comptroller for Audit

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

FK12-079A

June 28, 2013

http://comptroller.nyc.gov

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

John C. Liu
COMPTROLLER

June 28, 2013

To the Residents of the City of New York:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the financial and operating practices of the Kings County Public Administrator's Office (KCPA). We audit Public Administrator offices to ensure that they identify, collect, safeguard, and fully distribute estate assets to appropriate heirs; settle estates in a timely manner; and comply with statutory rules and regulations.

KCPA is responsible for administering the estates of individuals in Brooklyn who die without a will or when no other appropriate individual is willing or qualified to administer the estate. As an estate administrator, KCPA has a fiduciary duty to protect decedents' property from waste, loss, or theft; conduct thorough investigations to discover all assets; liquidate assets at public sale or distribute assets to heirs; pay the decedent's bills and taxes; and locate persons entitled to inherit from the estate and ensure that the legal distributees receive their inheritance.

KCPA failed to properly carry out its fiduciary responsibilities because it did not act in the best interests of estates, carry out its duties prudently, and comply with statutory rules and regulations. Specifically, KCPA did not implement internal controls for critical estate administration functions including asset identification, collection, safeguarding, and distribution; estate accounting including the recording, documenting, and reporting of income and expenses transactions; bank account administration; and estate management, monitoring, and tracking.

Additionally, KCPA failed to submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor the required financial and operational reports that would allow them to effectively assess, monitor, and hold KCPA accountable for its performance.

On other matters, KCPA's failure to establish proper internal controls to monitor and safeguard estate assets may have provided the opportunity for certain mishandling of estate activities and the recently reported misappropriation of funds. During the course of our audit, we became aware of an issue involving the indictment of a KCPA bookkeeper for stealing more than $2.6 million from decedents' estates between August 2008 and November 2011.

The results of our audit, which are presented in this report, have been discussed with KCPA officials, and their comments have been considered in preparing this report. Their complete written response is included in 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
FINANCIAL REPORTING

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

FK12-079A

AUDIT REPORT IN BRIEF

The Kings County Public Administrator (KCPA) is responsible for administering the estates of individuals in Brooklyn who die without a will or when no other appropriate individual is willing or qualified to administer the estate. As an estate administrator, KCPA has a fiduciary duty to: "protect the decedent's property from waste, loss, or theft;…to conduct thorough investigations to discover all assets; to liquidate assets at public sale or distribute assets to heirs; to pay the decedent's bills and taxes; and to locate persons entitled to inherit from the estate and ensure that the legal distributees receive their inheritance." KCPA utilizes the CompuTrust database system to account for estate activities, including all income and expense transactions. According to CompuTrust, as of June 30, 2011, KCPA was responsible for 3,323 estates valued at $74.6 million.

KCPA's activities are primarily governed by Article 11 of the New York State Surrogate's Court Procedures Act (SCPA). KCPA is required to submit to the Surrogates Court, the New York State and New York City Comptrollers, the New York State Attorney General, and the New York City Mayor audits and reports on open and closed estates to allow them to assess, monitor, and hold KCPA accountable for its fiscal and operational performance.

Audit Findings and Conclusion

KCPA failed to properly carry out its fiduciary responsibilities because it did not act in the best interests of estates, carry out its duties prudently, and comply with statutory rules and regulations. Specifically, KCPA did not implement internal controls for critical estate administration functions including asset identification, collection, safeguarding, and distribution; estate accounting including the recording, documenting, and reporting of income and expenses transactions; bank account administration; and estate management, monitoring, and tracking.

Additionally, KCPA failed to submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor the required financial and operational reports that would allow them to effectively assess, monitor, and hold KCPA accountable for its performance.

On other matters, KCPA's failure to establish proper internal controls to monitor and safeguard estate assets may have provided the opportunity for certain mishandling of estate activities and the recently reported misappropriation of funds. During the course of our audit, we became aware of an issue involving the indictment of a KCPA bookkeeper for stealing more than $2.6 million from decedents' estates between August 2008 and November 2011.

Audit Recommendations

To address these issues, we make 18 recommendations, including that KCPA should:

- Implement asset identification checklists detailing basic databases for staff to search, including but not limited to the Department of Finance's Automated City Register Information System (ACRIS) public database of real property records, the Office of the New York State Comptroller (OSC) public database of unclaimed funds, and the New York State Department of Motor Vehicles (NYS-DMV) database of automobiles, boats, and other motorized vehicles records.
- Ensure that staff properly completes Desk Review Form Disbursement Cover Sheets detailing the amount, reason, and review and approval for expenses, attach supporting documentation to them, and maintain them in estate files.
- Ensure that staff maintain in estate files documentation of estate income transactions, including but not limited to appraisal reports, bills of sale, receipts, and checks.
- Periodically compare source documents, including but not limited to income and expense documentation and Letters of Administration to data recorded in CompuTrust to ensure accuracy and reliability.
- Maintain a master inventory record in each estate file or in CompuTrust that details every item of estate property held by the Public Administrator (PA) in its safe, warehouse, banks, and other locations.
- Utilize CompuTrust "tickler" functions or implement an alternative system that is capable of notifying KCPA when critical actions need to be performed and tracking estates' progress.
- Properly reconcile CompuTrust and bank balances on a monthly basis.
- Periodically review its Outstanding Check Register, void checks outstanding more than 180 days, determine why they were not cashed, and reissue checks accordingly.
- Immediately submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor outstanding audits and reports. Thereafter, submit audits and reports within prescribed timeframes.
- Institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expenses transactions; and estate management, monitoring, and tracking, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expenses transactions; and estate management, monitoring, and tracking.

KCPA Response

KCPA did not address the report's findings and recommendations or disagreed with the report's findings, stating that the audit did not take into account information and documentation presented to the auditors. However, as acknowledged by KCPA in its response, we conducted a lengthy review of KCPA processes, estate files, and other relevant KCPA and independently obtained documentation. Throughout the audit fieldwork and reporting process, we repeatedly requested, reviewed, and considered all relevant documentation provided to us. However, the KCPA Public Administrator was generally non-responsive to our requests for documentation.

In its response, KCPA focused on refuting the report's finding that KCPA did not identify, collect, or credit decedents' estates for assets worth $2.2 million, and more particularly, those findings pertaining to real property, stating, "we have now presented you with documentation that each of the six real estate matters that you cite in the chart was acted upon properly by the PA and any funds that were to be received were properly credited to the correct estate account." However, KCPA did not establish asset identification policies and procedures or checklists detailing basic databases for its staff to search or conduct supervisory reviews of estate files. Consequently, for 27 of 50 sampled open estates, KCPA did not, in fact, identify, collect, credit decedents' accounts for, and ultimately distribute assets, including real property, worth at least $2.2 million. (The Draft Report cited KCPA for not identifying, collecting, or crediting decedents' estates for assets worth $2.8 million. This number was reduced based on additional documentation provided to us after the issuance of the Draft Report and prior to the issuance of this report. Specifically, KCPA provided us documentation that two properties were properly administered through other estates.) For example, based on our review of Department of Finance (Finance) real property records, in December 2009, KCPA sold a decedent's six-family home for $140,000. However, KCPA did not maintain evidence of this transaction in the decedent's estate file.

INTRODUCTION

Background

The KCPA is responsible for administering the estates of individuals in Brooklyn who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate. As an estate administrator, KCPA has a fiduciary duty to: "protect the decedent's property from waste, loss, or theft;…to conduct thorough investigations to discover all assets; to liquidate assets at public sale or distribute assets to heirs; to pay the decedent's bills and taxes; and to locate persons entitled to inherit from the estate and ensure that the legal distributees receive their inheritance." KCPA utilizes the CompuTrust database system to account for estate activities, including all income and expense transactions. According to CompuTrust, as of June 30, 2011, KCPA was responsible for 3,323 estates valued at $74.6 million.

Upon settling estates, KCPA is required to submit to Finance a 5 percent commission and retain a 1 percent commission. These commissions are based on estate gross value and serve to cover administrative costs.

KCPA activities are governed by: Article 11 of the SCPA; the Report and Guidelines of the Administrative Board for the Office of the Public Administrators (Guidelines); the New York City Comptroller's Office Directive # 28, "Reporting Requirements for Public Administrators;" § 207.63 of the Uniform Rules for NYS Trial Courts; and Title 2, § 72.1 of the New York Codes, Rules, and Regulations. KCPA is required to submit to the Surrogates Court, the New York State and New York City Comptrollers, the New York State Attorney General, and the New York City Mayor audits and reports on open and closed estates to allow them to assess, monitor, and hold KCPA accountable for its fiscal and operational performance.

An audit issued by the Comptroller's Office on June 30 2009, stated, "the auditors could not be assured that the estate distributions that the KCPA made were appropriate." Specifically, the auditors found that the KCPA lacked secure and reliable CompuTrust data, adequate inventory tracking, a reliable record of estates, a supervisory review system, supporting documentation for reported activities, and written procedures. KCPA also failed to submit to oversight agencies required audits and reports and document its vendor selection process and real estate auctions.

The current PA was appointed in October 2008. In his response to the 2009 audit report, the PA largely acknowledged and agreed to correct reported issues.

Objectives

The objective of this audit was to determine whether KCPA properly executed its fiduciary responsibilities, including safeguarding estate assets, accurately reporting revenue and expenses, and managing estate activities in accordance with Article 11 of the SCPA and other applicable State and City regulations.

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 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 was Fiscal Year 2011 through Fiscal Year 2013. 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 KCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to KCPA officials and discussed at an exit conference held on May 29, 2013. On May 31, 2013, we submitted a draft report to KCPA officials with a request for comments. We received a written response from KCPA on June 21, 2013.

In his response, the KCPA Public Administrator did not address the report's findings and recommendations or disagreed with the report's findings, stating that the audit did not take into account information and documentation presented to the auditors as follows:

> "We note that the Comptroller's office had auditors in our office for a long period and indicated that its field work was complete and then returned for an additional period and then presumably worked on the preliminary report at the Comptroller's office and then I received a call on a Monday at 5:30 and was told that we had to meet that Wednesday and a preliminary report was delivered by messenger 2 days later. This pattern was repeated for the Draft Report and it is clear that the Reports were prepared before the meeting and were issued without taking into account major substantive issues that were raised at these meetings."

As acknowledged by the KCPA Public Administrator, we conducted a lengthy review of KCPA processes, estate files, and other relevant KCPA and independently obtained documentation. Throughout the audit fieldwork and reporting process, we repeatedly requested, reviewed, and considered all relevant documentation provided to us. However, the KCPA Public Administrator was generally non-responsive to our requests for documentation and, in fact, deleted numerous email requests for documentation without reading them. On May 15, 2013, and May 29, 2013, we formally presented to the KCPA Public Administrator preliminary findings discussed with him and KCPA staff during the course of the audit and disclosed these preliminary findings in reports sent to the KCPA on May 17, 2013, and May 31, 2013.

On May 31, 2013, we requested that KCPA provide us a written response to the formal draft report and

> "ensure that your response specifically addresses each recommendation made in the attached audit, and/or that it includes an "Agency Implementation Plan" (AIP). In your response/Audit Implementation Plan, please provide an estimated date of implementation for each recommendation."

In accordance with Comptroller's Office policy, KCPA was initially afforded 10 business days to provide its response and subsequently granted a five business day extension. Nevertheless, the

KCPA Public Administrator in his response maintained that he was not afforded ample time to respond to the report's findings and, therefore, responded to only some of the audit's findings as follows:

> "We have attempted to address some of the issues in the Report but note that given time restraints we have just given an overview of some of the issues we have regarding the report and errors in it."

The KCPA response focused on refuting the report's finding that KCPA did not identify, collect, or credit decedents' estates for assets worth $2.2 million, and more particularly, those findings pertaining to real property, stating,

> "[i]n connection with the real estate, we have now presented you with documentation that each of the six real estate matters that you cite in the chart was acted upon properly by the PA and any funds that were to be received were properly credited to the correct estate account."

KCPA provided detailed responses regarding assets that were not identified, collected, or credited to five decedents' estates. We addressed these specifically in our Auditor's Comments and Detailed Discussion of KCPA's Response (an appendix to this report). However, KCPA did not establish asset identification policies and procedures or checklists detailing basic databases for its staff to search or conduct supervisory reviews of estate files. Consequently, for 27 of 50 sampled open estates, KCPA did not, in fact, identify, collect, credit decedents' accounts for, and ultimately distribute assets, including real property, worth at least $2.2 million. For example, based on our review of Finance real property records, in December 2009, KCPA sold a decedent's six-family home for $140,000. However, KCPA did not maintain evidence of this transaction in the decedent's estate file.

Additionally, the KCPA response did not specifically address the report's recommendations and provide a timeframe for their implementation as requested. This is particularly concerning because:

- According to CompuTrust, as of June 30, 2011, KCPA was responsible for 3,323 estates valued at $74.6 million.
- KCPA was previously cited by its independent auditor in 2007 and by the Comptroller's Office in 2009 for nearly all of the issues cited in this report.
- The current PA was appointed in October 2008. In his response to the 2009 Comptroller's Office audit report, the PA largely acknowledged and agreed to correct reported issues. However, KCPA has still not done so.
- KCPA's failure to establish proper internal controls to monitor and safeguard estate assets may have provided the opportunity for certain mishandling of estate activities and the recently reported misappropriation of funds. As noted, a KCPA bookkeeper was indicted for stealing more than $2.6 million from decedents' estates between August 2008 and November 2011.

Finally, we wish to note that the Draft Report cited KCPA for not identifying, collecting, or crediting decedents' estates for assets worth $2.8 million. This number was reduced based on additional documentation provided to us after the issuance of the Draft Report and prior to the issuance of this report. Specifically, KCPA provided us documentation that two properties were properly administered through other estates.

KCPA's detailed responses regarding assets that were not identified, collected, or credited to five decedents' estates and our comments are included as an appendix to this report. Addtionally, the full text of the KCPA response (with redaction of specific estate names and property addresses) is included as an addendum to this report.

FINDINGS

KCPA failed to properly carry out its fiduciary responsibilities because it did not act in the best interests of estates, carry out its duties prudently, and comply with statutory rules and regulations. Specifically, KCPA did not implement internal controls for critical estate administration functions including asset identification, collection, safeguarding, and distribution; estate accounting including the recording, documenting, and reporting of income and expenses transactions; bank account administration; and estate management, monitoring, and tracking. Most notably, KCPA did not:

- Establish asset identification policies and procedures or checklists detailing basic databases for its staff to search or conduct supervisory reviews of estate files. Consequently, for 27 of 50 sampled open estates, KCPA did not identify, collect, credit decedents' accounts for, and ultimately distribute assets worth at least $2.2 million;
- Monitor its staff to ensure they consistently completed authorization forms and maintained supporting documentation for expenses paid on behalf of estates. For 50 sampled open estates, KCPA lacked such documentation for expenses totaling $2.3 million. As a result, we are not reasonably assured that these expenses were legitimate, reasonable, and appropriate and, ultimately, that distributees received all estate proceeds to which they were entitled.
- Manage, monitor, and track estates' progress to ensure that estates were settled and proceeds were distributed in a timely manner. Section 1109 of the SCPA requires that KCPA submit to the Surrogate's Court semi-annual reports of estates not fully distributed within two years from the date when the first permanent Letters of Administration or Letters Testamentary were issued and the reasons that these estates have not been distributed. According to CompuTrust, as of January 11, 2013, 1,188 of 1,287 of formal estates—92.3 percent—with balances totaling $35.7 million have not been fully distributed within two years from the date when the first permanent letters were issued.

Additionally, KCPA failed to submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor the required financial and operational reports that would allow them to effectively assess, monitor, and hold KCPA accountable for its performance.

On other matters, KCPA's failure to establish proper internal controls to monitor and safeguard estate assets may have provided the opportunity for certain mishandling of estate activities and the recently reported misappropriation of funds. During the course of our audit, we became aware of an issue involving the indictment of a KCPA bookkeeper for stealing more than $2.6 million from decedents' estates between August 2008 and November 2011.

These issues are discussed in the following sections of this report.

Did Not Identify, Collect, or Credit Decedents' Estates for Assets Worth $2.2 Million

KCPA did not identify, collect, or credit decedents' estates for significant assets. SCPA Guidelines stipulate, "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." However, KCPA did not establish asset identification policies and procedures or checklists detailing basic databases for its staff to search, including:

- Finance's ACRIS public database of real property records;
- The OSC public database of unclaimed funds. These include funds from bank accounts, insurance proceeds, stocks, and trust funds; and
- The NYS-DMV database of automobiles, boats, and other motorized vehicles records.

Additionally, KCPA supervisory personnel did not review estate files with staff to ensure they performed their jobs properly. Consequently, for 27 of 50 sampled open estates, KCPA did not identify, collect, or credit decedents' estates for assets worth $2.2 million as follows:

Assets Not Identified, Collected, or Credited to Decedents' Estates as of FY13

Asset	Instances	Instances for Which Actual or Estimated Dollar Value Available	Dollar Value
Real Property	4	3	$1,477,000
Cash – held by legal or financial institutions and inheritance	40	23	$711,602
Cash – Unclaimed Funds	24	0	Indeterminate
Personal Property	7	3	$9,480
Motor Vehicles	3	0	Indeterminate
Total	**78**	**29**	**$2,198,082**

Because of the lax control environment and lack of documentation, it is not always clear whether assets were not identified or collected or whether they were, in fact, collected but not credited to decedents' estates either unintentionally or intentionally. Based on our review, both of these scenarios seem to have occurred. For example,

- In October 2008, KCPA staff identified $50,000 in cash in a decedent's safe deposit box. However, KCPA staff neglected to obtain Letters of Administration authorizing it to act on behalf of the decedent and subsequently collect this money. KCPA supervisory personnel did not review this estate file and detect this oversight. After we alerted KCPA, it collected the $50,000 and credited the decedent's estate in January 2013.
- Based on our review of ACRIS real property records, in December 2009, KCPA sold a decedent's six-family home for $140,000. However, KCPA did not maintain evidence of this transaction in the decedent's estate file.

  KCPA Response: "This section has a chart titled 'Assets Not Identified, Collected, or Credited to Decedent's Estates as of FY!3.' This chart should be removed from the final draft as it is riddled with errors, and contains false information and I advised the Comptroller of problems with this chart in the preliminary draft meeting and notified them (after being handed a chart of items for the first time at the meeting and glimpsing in cursory fashion at the meeting) that this chart was riddled with misstatements and that the real property matters, which comprise over $2 million were in error. Instead of waiting for information and giving us adequate time to address these items, your office just released the Draft Report filled with these errors. We note that your office made these statements in the initial chart without ever asking me about the individual real estate items, which could have been easily resolved had I been asked about the estates.

"In connection with the real estate, we have now presented you with documentation that each of the six real estate matters that you cite in the chart was acted upon properly by the PA and any funds that were to be received were properly credited to the correct estate account."

Auditor Comment: We discussed these issues with the KCPA Public Administrator during the course of audit, dating back to November 2012, and formally at meetings held on May 15, 2013, and May 29, 2013, and repeatedly requested documentation to evidence that assets were identified, collected, or credited decedents' estates. However, KCPA did not provide us such documentation for the above-referenced estates. (The Draft Report cited KCPA for not identifying, collecting, or crediting decedents' estates for assets worth $2.8 million. This number was reduced based on additional documentation provided to us after the issuance of the Draft Report and prior to the issuance of this report. Specifically, KCPA provided us documentation that two properties were properly administered through other estates.)

KCPA provided detailed responses regarding assets that were not identified, collected, or credited to five decedents' estates. Please refer to the Appendix for KCPA's detailed responses and our comments.

KCPA Response: "We note also that for matters for example where we receive small funds from the Police Department we do not search unclaimed funds or try to collect any such funds and merely release funds to funeral creditors or relatives that may seek the funds."

Auditor Comment: Regardless of estate value, the Guidelines require that "[t]he PA shall take all steps necessary to assure that personal property belonging to a person dying within the PA's county is collected and credited to the decedent's estate." As noted, these steps should include searches of basic databases such as the OSC public database of unclaimed funds.

KCPA Response: "[T]here are a series of policies in place regarding estates. In connection with large estates, the office conducts, where possible, an investigation of the home or apartment of the decedent to look for assets….The investigators look for kinship information and look for evidence of assets and bring back any documents they find and write a report about the results of their investigation. Also, case managers have a group of standard inquiries that they conduct regarding potential estates including sending out change of address requests so that we get forwarded mail that may show assets and claims, letters to HRA on the existence of an HRA claim and letters to unclaimed funds regarding possible assets. In addition, based on information in the file, the case managers send out inquiries to banks, financial institutions and insurance companies that may have estate assets. Further, the case managers look for possible pension assets from employers, unions and pension plans such as NYCERS. Finally, case managers and/or attorneys send out tax transcript requests to receive tax and 1099 information that may identify other assets that may exist. So, there is in fact an extensive check for possible assets of the estate. For some estates, the case managers collect assets and for other estates the attorneys prepare the paper work for collection of assets. When the assets are collected, the attorneys review the files to confirm that the assets have been collected and prepare the draft accounting. One of our attorneys prepares a list of believed assets of the estate at the time that the PA receives letters.

"The Public Administrator discusses matters with the investigators and case managers on a regular basis and also has sat with the investigators to go over open investigations. The Public Administrator also reviews the mail that comes into the office, so he sees forwarded estate mail and then instructs case managers to collect such assets if the assets have not already been collected."

Auditor Comment: As evidenced by the report's findings, KCPA staff did not consistently follow the above-detailed informal policies and procedures. (Please refer to above-cited examples and to the Appendix.) Again, this happened, in part, because KCPA did not establish formal written asset identification policies and procedures or checklists, and KCPA supervisory personnel did not review estate files with staff to ensure they performed their jobs properly.

Did Not Ensure Estate Expenses Were Authorized and Appropriate

As an estate administrator, KCPA has a fiduciary duty to "protect the decedent's property from waste, loss, or theft." However, KCPA did not ensure that estate expenses were authorized and appropriate.

Did Not Maintain Documentation to Support Expenses

KCPA did not properly document expenses paid from decedents' estates. As noted, KCPA is charged with paying decedents' bills and taxes. To ensure such expenses are reasonable, appropriate, and adequately supported, KCPA employs a Desk Review Form Disbursement Cover Sheet, which documents the amount, reason, and review and approval for expenses paid from decedents' estates. KCPA staff are required to complete these forms, attach supporting documentation such as vendor invoices to them, and maintain them in estate files. However, KCPA did not monitor its staff to ensure they consistently did so. For 50 sampled open estates, we reviewed 1,017 expense transactions totaling $3,538,276 and found that 446 transactions totaling $2,323,107 lacked properly completed forms and documentation. Consequently, we are not reasonably assured that these expenses were reasonable, appropriate, and legitimate.

KCPA Response: "The Report states that the KCPA did not monitor its staff to ensure that they consistently completed authorization forms and maintained supporting documentation for expenses paid on behalf of estates. This is untrue. Staff in fact do not have the ability to obtain checks without the authorization of the public administrator or the deputy public administrator. In order for a check to be issued, the staff member will prepare a disbursement request, with attached back up as necessary. The disbursement is then given to the Public Administrator or Deputy Public Administrator to review and they must either approve the disbursement by signing the authorization for the check or reject the request. They then give the disbursement request to the book keeper to cut the check and then the Public Administrator or the Deputy review the check and the disbursement request before signing the check. Checks can only be signed by the Public Administrator or the Deputy Public Administrator and they sign checks supported by the check disbursement requests."

Auditor Comment: As evidenced by the report's findings, KCPA staff did not consistently complete Desk Review Form Disbursement Cover Sheet forms, attach supporting documentation such as vendor invoices to them, and maintain them in estate files. For example, KCPA paid accounting and various real estate title, insurance, inspection, and maintenance expenses on behalf of an estate. There were seven expense transactions totaling $1,576 paid between June 2011 and April 2012. For these seven transactions, KCPA did not complete Desk Review Form Disbursement Cover Sheets and maintain vendor invoices for four transactions totaling $1,310, and KCPA did not attach vendor invoices to Desk Review Form Disbursement Cover Sheets for the remaining three transactions totaling $266. Consequently, we are not reasonably assured that these expenses were reasonable, appropriate, and legitimate.

Did Not Competitively Solicit Vendors

KCPA did not competitively solicit vendors as required. The Guidelines state,

> "On an annual basis, the PA shall advertise in a newspaper of general circulation within the County where the PA maintains his or her office that the PA is formulating a list of outside vendors to provide services to the PA. Based on response to the advertisement and the PAs' knowledge of competent outside vendors, the PA shall prepare a list of the providers in each category, specifying for each the provider's usual fee. In selecting an outside vendor to provide services, the PA shall select one who is competitive with other vendors in the classification. In all events, the vendors chosen must have the complete confidence of the PA based upon their prior working relationship or general reputation and standing in the community."

However, KCPA did not annually solicit and evaluate vendors including accountants, appraisers, auctioneers, and tradesmen. KCPA was previously cited for not documenting its vendor selection process by the Comptroller's Office in 2009 and agreed to correct this problem. However, KCPA still has not done so. Instead, in December 2012, KCPA maintained that it generally uses specific vendors and that these vendors were selected based on recommendations and prior experience. Consequently, we are not reasonably assured that fees charged to estates were competitive and reasonable.

Approved Excessive Counsel Fees

KCPA charged estates inappropriate legal fees. The Interim Report and Guidelines of the Administrative Board approved in 2002 stipulates that "[i]n the absence of extraordinary circumstances, the Public Administrators shall require their counsel to limit their request for compensation in any estate to an amount not to exceed a fee computed under the following schedule:"

The Administrative Board Legal Counsel
Fee Schedule

Estate Gross Value	Fee
First $750,000	6.0%
Next $500,000	5.5%
Next $250,000	5.0%
Next $500,000	4.5%
Next $3,000,000	3.0%
Over $5,000,000	1.5%

KCPA applied this pay scale to its formal estates, i.e., those valued at $30,000 or more. However, KCPA did not consider it applicable to informal estates, i.e., those valued at less than $30,000[1], and did not charge informal estates fees of 6 percent. Instead, KCPA utilized an alternative informal estates compensation schedule, which provided for stated rather than percentage fees. This alternative compensation schedule resulted in informal estates being charged higher effective percentage fees and, ultimately, distributees not receiving all the funds to which they were entitled as follows:

Alternative Informal Estates Legal
Counsel Fee Schedule

Informal Estate Gross Value	Fee	Effective Minimum Percentage	Effective Maximum Percentage
≤ $1000	$60	6.0%	100.0%
>$1,000 ≤ $2,000	$200	10.0%	20.0%
>$2,000 ≤ $3,000	$300	10.0%	15.0%
>$3,000 ≤ $5,000	$450	9.0%	15.0%
>$5,000 ≤ $7,000	$550	7.9%	11.0%
>$7,000 ≤ $10,000	$600	6.0%	8.6%
>$10,000 ≤ $15,000	$900	6.0%	9.0%
>$15,000	$1,200	4.0%	8.0%

Based on our review of 30 sampled closed informal estates, KCPA approved legal fees in excess of 6 percent for 16 of 30 estates. For these 16 estates, excess legal fees totaled $2,438.

KCPA Response: "We disagree with the assertion that the PA paid excessive legal fees for small estates. The fee structure was in place well before 2008 and was used in Kings County and I believe in other counties. Further, the Office of Court

[1] Prior to January 1, 2009, formal estates were those valued at $20,000 or more, and informal estates were those valued at less than $20,000.

Administration was aware of these fees and the attorney at OCA who was counsel to the Administrative Board recognized the fee structure used by our office and decided to change that fee structure in the new guidelines."

Auditor Comment: As an estate administrator, KCPA had a fiduciary duty to "protect the decedent's property from waste, loss, or theft." The Public Administrator, and not the Office of Court Administration (OCA), is responsible for substantively reviewing and approving estate expenses—including legal counsel fees. Accordingly, KCPA should have ensured that such expenses were authorized and appropriate.

As noted, the Interim Report and Guidelines of the Administrative Board approved in 2002 stipulated that "[i]n the absence of extraordinary circumstances, the Public Administrators shall require their counsel to limit their request for compensation…to an amount not to exceed a fee" of 6 percent for estates with a value of $750,00 or less. And contrary to KCPA's assertion, OCA did not change this fee structure—rather the 2012 Guidelines affirmed that this fee structure applied to small estates.

Did Not Maintain Reliable and Effective Accounting and Tracking Systems

KCPA did not maintain reliable and effective systems to account for and safeguard estate assets, and manage, monitor, and track estates' progress as required. The Guidelines stipulate that Public Administrators maintain: "a double-entry bookkeeping system to record and summarize all receipts and disbursements for each estate;" "a central record for each estate under his or her administration, with individually numbered entries for every item of personal property, every stock or bond certificate, every bank account, and other miscellaneous assets;" and "a case management system to track the progress of each estate's administration."

Additionally, Comptroller's Directive # 1 states,

> "Management, throughout the organization, should be comparing actual functional or activity level performance data to planned or expected results, analyzing significant variances and introducing corrective action as appropriate. Key indicator tracking and self-assessment checklists are important tools in measuring the control posture of various functional activities. Tracking and aging mechanisms are crucial in those agencies that are responsible for collection of rents, taxes, fines, franchise fees and other types of revenue."

Nevertheless, KCPA did not implement or maintain effective accounting, inventory, or estate management systems. Consequently, KCPA did not ensure that distributees received all estate proceeds to which they were entitled and that estates were settled and proceeds distributed in a timely manner.

Estate Accounting System Is Not Reliable

KCPA did not ensure that critical CompuTrust data is reliable. The Guidelines require that

> "Each PA shall implement and maintain a double-entry bookkeeping system to record and summarize all receipts and disbursements for each estate. The entries in this accounting system shall reflect the estate to which they pertain, the

date of receipt and the source of funds received, the date and nature of each disbursement and invoices or other documentation supporting the disbursement, and any other relevant information. All entries shall be made promptly after receipt or disbursement."

However, as previously noted, KCPA did not credit decedents' estates for all assets and did not maintain documentation to support expenses. KCPA was previously cited by the Comptroller's Office in 2009 for not completely and accurately recording data in CompuTrust. To correct this issue, the Comptroller's Office recommended that KCPA regularly independently review CompuTrust data. However, KCPA responded, "[w]e do know what is intended in this recommendation and therefore cannot respond to it." Consequently, based on our review of 50 sampled open estates, CompuTrust data remains unreliable as follows:

Number and Dollar Value of Sampled and Unsupported CompuTrust Asset and Expense Data as of Fiscal Year 2013

	Total # of Transactions	**Total $ Value of Transactions**	**# of Transactions Not Supported**	**$ Value of Transactions Not Supported**
Assets	369	$13,432,624	93	$548,178
Expenses	1,017	$3,538,276	446	$2,323,107

Because KCPA did not maintain documentation, such as appraisal reports, bills of sale, receipts, and checks, to support amounts recorded in CompuTrust, we are not reasonably assured that all assets were credited to decedents' estates and estates were credited for appropriate amounts; expenses were legitimate, reasonable, and appropriate; and, ultimately, that distributees received all estate proceeds to which they were entitled.

KCPA Response: "We disagree with your assertion that the Estate Accounting System is not reliable. The statement that KCPA did not credit estates for assets received is not correct and reflects a failure on the part of the Comptroller to make inquiry before making such statements and from errors we noted for some examples in the discussion of the chart on page 6. We dispute the claim that payments were received and not credited in the ledger and also dispute various other items in that chart."

Auditor Comment: As noted, we discussed these issues with the KCPA Public Administrator during the course of audit, dating back to November 2012, and formally at meetings held on May 15, 2013, and May 29, 2013, and repeatedly requested documentation to evidence that assets were identified, collected, or credited decedents' estates. However, KCPA did not provide us such documentation for the above-referenced estates. (KCPA provided detailed responses regarding assets that were not identified, collected, or credited to five decedents' estates. Please refer to the Appendix for KCPA's detailed responses and our comments.)

Additionally, as noted, KCPA did not ensure that its estate accounting system was reliable because KCPA did not maintain documentation in estate files to support asset and expense data recorded in CompuTrust. As noted, this documentation should have included appraisal reports, bills of sale, receipts, checks, properly completed Desk

Review Form Disbursement Cover Sheet forms, and vendor invoices. In the absence of this documentation, we are not reasonably assured that all assets were credited to decedents' estates and estates were credited for appropriate amounts; expenses were legitimate, reasonable, and appropriate; and, ultimately, that distributees received all estate proceeds to which they were entitled.

Did Not Appropriately Restrict Access to Estate Accounting System

KCPA did not appropriately restrict access to CompuTrust, which is used to account for estate activities including all income and expense transactions. Comptroller's Office Directive # 18, "Guidelines for the Management, Protection and Control of Agency Information and Information Processing Systems" states,

> "The protection and control of data and information processing resources is an important element of the agency's overall internal control environment….User identifications and passwords are among the most widely used and visible forms of access control. The user identification identifies the individual to the system. Passwords control the applications or system information an individual is permitted to access. Access authorization must be carefully designed to insure that employees have access only to files or programs that are necessary for their job function. Active password management includes…Deactivation of inactive user accounts and accounts for employees whose services have terminated."

However, KCPA did not:

- Establish unique user accounts and passwords for all users. KCPA employed two shared accounts for its caseworkers and attorneys, and
- Deactivate user accounts for seven individuals—the KCPA bookkeeper indicted for stealing more than $2.6 million and six individuals no longer employed by KCPA.

Consequently, KCPA did not appropriately restrict access to sensitive information, establish accountability for transactions, and protect against inappropriate and fraudulent transactions.

KCPA Response: "In connection with access to CompuTrust, all inactive users have been removed from CompuTrust. Further, any inactive user did not have a pass word to gain access to the system. Attorneys have not had a password to access the system for at least several years. I do not know when a caseworker account was used but since I began at KCPA, each staff member had their own user ID and password. Each individual at KCPA has particular access that limits their ability to use the system and restricts their ability to use the system. So, a person needs special authority to cut checks."

Auditor Comment: As noted, as of August 2012, KCPA did not deactivate accounts for seven individuals not actively employed by KCPA—including the KCPA bookkeeper indicted for stealing more than $2.6 million. This individual had unrestricted access to CompuTrust including the ability to issue checks and access to estate accounts, accounts payable, vendor files, and bank reconciliations. This individual reportedly used this access to steal estate funds. KCPA's failure to immediately deactive the bookkeeper's user account upon his indictment clearly evidences that KCPA did not appropriately restrict access to sensitive information, establish accountability for transactions, and protect against inappropriate and fraudulent transactions.

Did Not Maintain a Master Inventory of Estate Assets

KCPA did not maintain a comprehensive inventory of estate assets. The Guidelines stipulate,

> "Each PA must maintain a central record for each estate under his or her administration, with individually numbered entries for every item of personal property, every stock or bond certificate, every bank account, and other miscellaneous assets. This master record shall enumerate all property for each estate maintained by the PA in safes, warehouses, banks and any other locations….
>
> "The record for any particular estate may consist of a file containing documents already maintained by the PA which list property maintained in various locations….Alternatively; each PA may develop computerized inventories and tracking systems as the central records for each estate."

However, KCPA did not maintain master inventory lists in each estate file. Although CompuTrust is capable of maintaining estate inventories, KCPA did not utilize this feature. KCPA was previously cited for these issues by its independent auditor in 2008 and by the Comptroller's Office in 2009. In response to its independent audit, KCPA stated, "[w]e agree that we need to improve our utilization of CompuTrust and we are in the process of redoing our inventory records so that we will have full control of our inventory." Similarly, in 2009, in response to the Comptroller's Office audit, KCPA acknowledged it needed to improve and indicated that it was "completing a master inventory of items in the vault." However, KCPA still does not maintain a comprehensive inventory of estate assets. Instead, different KCPA staff maintain separate inventory spreadsheets for assets maintained in its safe including stock and bond certificates, jewelry, and coins; real property; and automobiles. However, these inventories do not sufficiently detail assets. Moreover, they are incomplete. In the absence of a comprehensive and reliable inventory, we are not reasonably assured that estate assets were accounted for and, ultimately, that estate distributees received all assets to which they were entitled.

KCPA Response: "[W]e do keep a master inventory of each item in the vault. We did a complete new inventory of the vault to correct flaws in the previous inventory of the vault. Our inventory records information about vault property in CompuTrust and there is also an excel spreadsheet master list of the inventory in the vault including coins, bonds, stock certificates and jewelry. The bank information is recorded in CompuTrust. Regarding the vault, we have an inventory system that is updated at the time that any inventory is put into to the vault or released."

Auditor Comment: The 2012 Guidelines require "[e]ach PA shall implement and maintain an electronic case management system…The case management system shall provide…an individual inventory of each item of real and personal property of saleable value relating to each estate, and the location of such assets." During the course of the audit and in the response, KCPA indicated that it records inventory records in CompuTrust. However, KCPA provided us no evidence of this. Further, KCPA's "excel spreadsheet master list of the inventory in the vault" does not constitute an electronic case management system or a comprehensive inventory of estate assets. This spreadsheet accounts only for small personal property items stored in its vault and does not account for the most significant estate assets, real property, or property held in warehouses, banks, and other locations.

Did Not Maintain and Utilize a Reliable Estate Management Tracking System

KCPA did not maintain and utilize a reliable estate management tracking system as required. The Guidelines stipulate,

> "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."

Although CompuTrust is capable of tracking estates' progress and has a "tickler" function to notify KCPA when certain actions need to be performed, KCPA did not utilize these features. Moreover, as previously noted, KCPA did not ensure that CompuTrust data was reliable. Based on our review of 50 sampled open estates, KCPA did not properly record or maintain documentation to support the dates that 15[2] Letters of Administration were issued. This date is critical because it is used to measure how long estates remain open and how long it takes to settle estates, information which KCPA is required to report to oversight agencies and should itself track.

KCPA was previously cited for this issue by its independent auditor in 2008 and by the Comptroller's Office in 2009. In response to the Comptroller's Office audit, KCPA indicated, "We have been working on a series of measures to identify and track all matters in the office." However, KCPA is still not tracking estates' progress. Consequently, KCPA is not ensuring that estates are settled and that estate proceeds are distributed in a timely manner. This issue is detailed below.

> ***KCPA Response:*** "I note that for a substantial period my office did not have a deputy who could oversee the activities of the case managers and investigators. We have had a deputy in place for about 3 months and she meets with the case managers and investigators on a weekly basis to discuss matters that they are working on. She and I are discussing specific matters on a daily basis, with the weekly meeting designed to discuss the overall caseload of these staff members. In addition, we have developed 3 detailed spreadsheets tracking activity in large estates (where the Public Administrator has been appointed administrator of the estate or has filed papers to be appointed administrator of the estate), for voluntary estates and for collection of assets tracking the transmittal of papers for collection of assets and receipt of funds."

> ***Auditor Comment:*** KCPA staff meetings and spreadsheets do not constitute a reliable estate management tracking system capable of generating reports and monitoring delays in estate administration and settlement. The 2012 Guidelines require "[e]ach PA shall implement and maintain an electronic case management system containing a record of each estate under administration.…All estate activity shall be recorded

[2] KCPA did not enter eight dates in CompuTrust, did not maintain four Letters of Administration to support recorded dates, and inaccurately recorded three dates.

promptly in the case management system. The case management system shall provide: (a) a tracking and recording system which shall include a calendar or report-generating function that reflects the status of each estate, so that the PA may monitor unusual delays in the administration of any estate."

KCPA Response: "Regarding the issuance of Letters of Administration, when receive notice that letters have issued to the Public Administrator, the Letters are given to our bookkeeper, who enters the information regarding the Letters in CompuTrust (date of Letters and if the Letters have any restrictions or limitations) and puts the Letters in a binder that is kept by the Deputy. Also, as letters are received the Deputy records the issuance of the letters in a master list spreadsheet of active cases that we have been creating that is already quite detailed."

Auditor Comment: KCPA should not just retain Letters of Administration and record them in an Excel spreadsheet. The KCPA Deputy PA or other KCPA supervisory personnel should also review them to ensure the accuracy of data entered in CompuTrust. As noted, this data is critical because it is used to measure how long estates remain open and how long it takes to settle estates, information which KCPA is required to report to oversight agencies and should itself track.

Did Not Properly Administer Bank Accounts

KCPA did not properly administer bank accounts because it did not properly perform bank reconciliations for estate accounts with June 2011 balances totaling $77.1 million and void long-outstanding checks or determine why checks were not cashed, including checks payable to estate distributees as required. KCPA was previously cited for bank account reconciliation and outstanding check issues by its independent auditor in 2008 and by the Comptroller's Office in 2009. In response, KCPA indicated that it would reconcile accounts to the extent that funding and staffing constraints allow, and void checks after 180 days and reissue if necessary.

Bank Reconciliations

KCPA did not properly perform bank reconciliations for estate accounts with June 2011 balances totaling $77.1 million. The Guidelines state, "the PA shall reconcile any accounts which s/he has been maintaining that contain commingled estate funds and/or interest accrued on estate funds, with any records s/he maintains concerning those estate funds." Although CompuTrust is capable of reconciling accounts, KCPA does not utilize this feature. Instead, KCPA performed manual reconciliations. However, KCPA supervisory personnel did not review and sign off on reconciliations to ensure that they were done properly. This is a key control to detect errors and misappropriation of estate assets and ensure that distributees receive all assets to which they were entitled.

KCPA Response: "We do not agree with the statement that reconciliations are not done properly. Also, when adjustments need to be made the accountant writes a letter to the bank regarding the adjustments, which is signed by the Public Administrator, after review of the validity of the adjustment from the reconciliation."

Auditor Comment: Bank account reconciliations were not done properly. Most notably, based on our review of KCPA records, KCPA bank records reported balances for estates that were not reflected on KCPA book balances and vice versa. KCPA bank reconciliations did not explain these discrepancies. Additiionally, KCPA supervisory personnel did not review and sign off on reconciliations and detect and resolve these discrepancies.

Long-Outstanding Checks

KCPA did not void long-outstanding checks or determine why checks were not cashed in a timely manner as required. As noted, KCPA is responsible for paying decedents' bills and taxes, ensuring that the legal distributees receive their inheritance, and submitting to the City commissions to cover administrative costs. Therefore, KCPA should void un-cashed checks after 180 days, determine why they were not cashed, and reissue checks accordingly. However, based on our review of KCPA's Outstanding Check Register dated July 14, 2011, KCPA did not do so. Specifically, we identified 75 checks totaling $981,653, including checks payable to vendors, distributees, and the City, that were outstanding for between 182 and 540 days. On November 11, 2011—during the course of the audit—KCPA stopped payment on these checks. However, KCPA did not investigate why these checks were not cashed in a timely manner and reissue all checks—including checks payable to distributees.

KCPA Failed to File Required Financial and Operating Reports with Various Oversight Agencies

KCPA repeatedly failed to submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor the required financial and operational reports. Consequently, these State and City regulatory authorities could not effectively assess, monitor, and hold KCPA accountable for its administration of estates and ensure that KCPA settled estates and distributed estate proceeds in a timely manner as follows:

Annual Independent Audit

KCPA did not have an annual independent audit performed. Section 1109 of the SCPA requires,

> "[e]ach public administrator shall conduct annually an audit of his office by an independent certified public accountant and such a report based on such audit shall be filed with the surrogate of the county where appointed, the mayor and the comptroller of the city of New York, and the attorney general of the state of New York and the comptroller of the state of New York….and include a review of the performance of the office with respect to the guidelines and uniform fee schedules established by the administrative board."

For Fiscal Year 2011, the City allocated KCPA $43,174 to have such an audit performed. Nevertheless, KCPA did not do so. This is particularly troubling because:

- KCPA has not had an audit performed since 2007;
- KCPA was previously cited for this issue by a Comptroller's Office audit issued in June 2009. At that time, KCPA agreed to complete a Fiscal Year 2008 independent audit as soon as possible; and
- In its Annual Report of the Public Administrator to the Surrogate submitted in August 2012, KCPA indicated, "[t]he auditors have completed their field inspection and field

work at our office and we are expecting in the very near future the draft 2008 audit." However, KCPA did not provide us evidence that this audit or audits of subsequent years were engaged or completed.

Reports on Open Estates

KCPA did not file semi-annual reports on open estates as required by Section 1109 of the SCPA, which states,

> "Each public administrator shall file every six months with the surrogate of the county where appointed a report of every estate administered by the public administrator which has not been fully distributed within two years from the date when the first permanent letters of administration or letters testamentary were issued. Such report shall include…date of issuance of first permanent letters, approximate amount of gross estate, approximate amount that has been distributed to beneficiaries, approximate amount remaining in fiduciary's hands, reason that the estate has not yet been fully distributed."

This is particularly troubling because:

- KCPA has not filed semi-annual reports on open estates since 2008;
- KCPA was previously cited for this issue by a Comptroller's Office audit issued in June 2009. At that time, KCPA agreed to ensure that required reports are submitted in a timely manner and that a copy of each report is maintained in a centralized office file; and
- In its Annual Report of the Public Administrator to the Surrogate, KCPA indicated that it had, in fact, filed reports for the reporting year as mandated by SCPA 1109, which include semi-annual reports on open estates.

KCPA Response: "Our office filed the different annual reports with the Office of Court Administration and timely filed the 2012 annual report with the Office of Court Administration. We also filed through 2011 the report with the State Comptroller, so all the agencies could monitor the activities regarding these estates."

Auditor Comment: The filing of its annual report does not satisy all KCPA reporting requirements and does not allow all oversight agencies, i.e., the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor, to effectively assess, monitor, and hold KCPA accountable for both its fiscal and operational performance.

It appears that KCPA may not be filing these reports because it is not settling estates and distributing estate proceeds in a timely manner. According to CompuTrust, as of January 11, 2013, 92.3 percent of formal estates have not been fully distributed within two years from the date when the first permanent Letters of Administration or Letters Testamentary were issued. The following is an aging of all open formal estates:

Aging of KCPA Open Formal Estates as of January 11, 2013

Length of Time Estate Open	Number of Estates	Percentage of Estates	Estate Balances	Percentage of Estate Balances
≤ 2 Years	99	7.7%	$20,943,309	37.0%
> 2 and ≤ 5 Years	212	16.5%	$19,674,819	34.8%
> 5 and ≤ 10 Years	395	30.7%	$12,756,078	22.5%
> 10 Years	581	45.1%	$3,245,773	5.7%
TOTAL	**1,287**	**100.0%**	**$56,619,979**	**100.0%**

According to KCPA officials, KCPA staff did not always update CompuTrust estate status codes. Therefore, the 1,287 estates detailed above may include estates that were, in fact, closed (with or without reserve balances), but were not coded as such in CompuTrust.

> ***KCPA Response:*** "The Comptroller has a finding and a chart it claims relates to "formal estates", which says that there are 1287 open 'formal estates.' We discussed this matter in detail at our last meeting and attempted to correct the misunderstanding of the Comptroller's office about coding of estates in CompuTrust and the definition of a large estate. This discussion proved fruitless as the chart on page 14 is still included in the Report even though the chart is misleading and does not in any way reflect open estates. We may discuss this matter in more detail in a few days but note that we emphasized that it has no meaning and is misleading at best. Furthermore, we explained that unless the Public Administrator is appointed, it cannot administer a large estate and it is not a large estate."

> ***Auditor Comment:*** We reported KCPA estate data generated from its CompuTrust system, which we appropriately disclosed was unreliable, because KCPA staff did not always update CompuTrust estate status codes. Additionally, KCPA maintains that it recorded estates in CompuTrust that were not actually under its administration. This only reinforces that KCPA did not maintain reliable records of estates under its administration and, therefore, cannot generate and file with State and City regulatory authorities the required financial and operational reports rendering them unable to effectively assess, monitor, and hold KCPA accountable for its administration of estates and ensure that KCPA settled estates and distributed estate proceeds in a timely manner.

Reports on Closed Estates

KCPA did not file semi-annual reports on closed estates as required by Section 1109 of the SCPA, which states,

> "Each public administrator shall file monthly with the surrogate of the county where appointed, mayor and the comptroller of the city of New York a statement

of such of his accounts as have been closed or finally settled in such form as the comptroller may prescribe."

Comptroller's Directive # 28 prescribes that such statements must detail for each closed estate dates estate was assigned and closed; value; reason, amount, and to whom legal fees and administrative expense were paid; amount and to whom distributions were made; and Commissions paid to the City treasury, if any. KCPA did not submit monthly reports for October 2011 through January 2012 until August 2012. More importantly, KCPA has not submitted reports for February 2012 through March 2013.

Did Not Report to Tax Authorities Vendor Payments of $103,377

KCPA did not report to the Internal Revenue Service (IRS) and state tax department all payments made to vendors. IRS Form 1099-MISC, Miscellaneous Income, instructions state, "[a]ttorneys' fees of $600 or more paid in the course of your trade or business are reportable in box 7 of Form 1099-MISC" and specifies that "[t]he term attorney includes a law firm or other provider of legal services." Further, Comptroller's Directive # 28 states, "if a Public Administrator is the payer, for purposes of information reporting, for payments to a service provider on behalf of an estate that it administers, the Public Administrator is required … 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." However, KCPA did not always do so. Specifically, for Calendar Year 2011, KCPA did not issue eight legal service providers 1099-MISC forms and report to the IRS payments totaling $103,377. As a result, these eight providers may have underreported their income and reduced their tax liability.

Did Not Institute Written Policies and Procedures

KCPA did not implement internal controls for critical estate administration functions and document them in written policies and procedures. These functions include asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expense transactions; and estate management, monitoring, and tracking. Comptroller's Directive # 1 states, "Internal control activities help ensure that management's directives are carried out. They include a wide range of diverse activities such as approvals, authorizations, verifications, record reconciliations, open item aging, transaction analyses, performance reviews, security evaluations, and the creation and maintenance of related records that provide evidence of the execution of these activities." These "[i]nternal controls should be documented in management administrative policies or operating manuals." In 2009, KCPA was previously cited by the Comptroller's Office for not implementing formal policies and, in response, indicated that "[w]e are developing written policies and procedures." However, as of Fiscal Year 2013, KCPA still has not done so. This repeated failure to establish policies and procedures contributed to the deficiencies detailed throughout the report. Therefore, KCPA should immediately develop and implement comprehensive policies and procedures to safeguard its considerable charge (i.e., as of June 30, 2011, KCPA was responsible for 3,323 estates valued at $74.6 million).

> ***KCPA Response:*** "Finally, we disagree regarding the issue of internal controls. We believe that our use of Positive Pay Payee combined with the review of cut checks by the PA and the deputy along with the detailed spreadsheets that show each activity that we are conducting on an ongoing basis provides the controls needed especially given

the size of our agency and other work that must be done by the Public Administrator and Deputy in review of active matters and the review of court filings."

Auditor Comment: The implementation of Positive Payee and Excel spreadsheets do not constitute a comprehensive system of internal controls for critical estate administration functions including: asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expense transactions; and estate management, monitoring, and tracking. Positive Payee is but one control over bank account administration and, as noted, newly implemented KCPA spreadsheets do not constitute a reliable estate management tracking system. Again, KCPA should implement a comprehensive system of internal controls for critical estate administration functions and document them in written policies and procedures.

Other Matters

As the findings presented by this report disclose, KCPA's lack of proper internal controls is an issue of serious concern. Specifically, KPCA's failure to establish proper internal controls to monitor and safeguard estate assets may have provided the opportunity for certain mishandling of estate activities and, more particularly, for the recently reported misappropriation of funds. During the course of our audit, we became aware of an issue involving the indictment of a KCPA bookkeeper for stealing more than $2.6 million from decedents' estates between August 2008 and November 2011.

KCPA Response: "Regarding the indictment ofthe KCPA bookkeeper, we do not with to discuss this matter because there is a pending criminal proceeding. However, I note that the indictment came about because I noticed a suspicious check in the bank statement and I contacted the Department of Investigation about a forged check and triggered the investigation by the Department of Investigation."

Auditor Comment: Had KCPA implemented a comprehensive system of internal controls for critical estate administration functions and documented them in written policies and procedures, KCPA may have *prevented* rather than detected the reported misappropriation of funds.

RECOMMENDATIONS

As noted, the KCPA response did not specifically address the report's recommendations and provide a timeframe for their implementation as requested. We included KCPA responses to audit findings associated with the recommendations below when available.

KCPA should:

1. Implement asset identification checklists detailing basic databases for staff to search, including but not limited to ACRIS public database of real property records, OSC public database of unclaimed funds, and NYS-DMV database of automobiles, boats, and other motorized vehicles records.

KCPA Response: KCPA did not address this recommendation.

2. Periodically review asset identification checklists and estate files with staff to ensure that assets are identified, collected, and credited to decedents' estates.

KCPA Response: KCPA did not address this recommendation.

3. Ensure that staff properly completes Desk Review Form Disbursement Cover Sheets detailing the amount, reason, and review and approval for expenses, attach supporting documentation to them, and maintain them in estate files.

KCPA Response: "The Report states that the KCPA did not monitor its staff to ensure that they consistently completed authorization forms and maintained supporting documentation for expenses paid on behalf of estates. This is untrue. Staff in fact do not have the ability to obtain checks without the authorization of the public administrator or the deputy public administrator. In order for a check to be issued, the staff member will prepare a disbursement request, with attached back up as necessary. The disbursement is then given to the Public Administrator or Deputy Public Administrator to review and they must either approve the disbursement by signing the authorization for the check or reject the request. They then give the disbursement request to the book keeper to cut the check and then the Public Administrator or the Deputy review the check and the disbursement request before signing the check. Checks can only be signed by the Public Administrator or the Deputy Public Administrator and they sign checks supported by the check disbursement requests."

Auditor Comment: As evidenced by the report's findings, KCPA staff did not consistently complete Desk Review Form Disbursement Cover Sheet forms, attach supporting documentation such as vendor invoices to them, and maintain them in estate files. For example, KCPA paid accounting and various real estate title, insurance, inspection, and maintenance expenses on behalf of an estate. For these seven transactions, KCPA did not complete Desk Review Form Disbursement Cover Sheets and maintain vendor invoices for four transactions totaling $1,310, and KCPA did not attach vendor invoices to Desk Review Form Disbursement Cover Sheets for the remaining three transactions totaling $266. Consequently, we are not reasonably assured that these expenses were reasonable, appropriate, and legitimate.

4. Advertise for vendors by posting a standing announcement on its website or other acceptable websites, or on an annual basis advertise for vendor services sought in a newspaper of general circulation in Brooklyn.

KCPA Response: KCPA did not address this recommendation.

5. Prepare a list of vendors based on responses and on KCPA's knowledge of competent outside vendors. The list should detail vendor fees and be updated at least annually.

KCPA Response: KCPA did not address this recommendation.

6. Select vendors who are competitive with other vendors providing the same services.

KCPA Response: KCPA did not address this recommendation.

7. Pay formal and informal estate legal counsel fees in accordance with new Guidelines, effective May 1, 2012.

KCPA Response: "We disagree with the assertion that the PA paid excessive legal fees for small estates. The fee structure was in place well before 2008 and was used in Kings County and I believe in other counties. Further, the Office of Court Administration was aware of these fees and the attorney at OCA who was counsel to the Administrative Board recognized the fee structure used by our office and decided to change that fee structure in the new guidelines."

Auditor Comment: As an estate administrator, KCPA had a fiduciary duty to "protect the decedent's property from waste, loss, or theft." The PA, and not OCA, is responsible for substantively reviewing and approving estate expenses—including legal counsel fees. Accordingly, KCPA should have ensured that such expenses were authorized and appropriate.

As noted, the Interim Report and Guidelines of the Administrative Board approved in 2002 stipulated that "[i]n the absence of extraordinary circumstances, the Public Administrators shall require their counsel to limit their request for compensation…to an amount not to exceed a fee" of 6 percent for estates with a value of $750,00 or less. Contrary to KCPA's assertion, OCA did not change this fee structure—rather the 2012 Guidelines affirmed that this fee structure applied to small estates.

8. Ensure that staff maintain in estate files documentation of estate income transactions, including but not limited to appraisal reports, bills of sale, receipts, and checks.

KCPA Response: KCPA did not address this recommendation.

9. Periodically compare source documents, including but not limited to income and expense documentation and Letters of Administration to data recorded in CompuTrust to ensure accuracy and reliability.

KCPA Response: KCPA did not address this recommendation.

10. Appropriately restrict user access to CompuTrust by deactivating shared and inactive user accounts.

KCPA Response: "In connection with access to CompuTrust, all inactive users have been removed from CompuTrust. Further, any inactive user did not have a pass word to gain access to the system. Attorneys have not had a password to access the system for at least several years. I do not know when a caseworker account was used but since I began at KCPA, each staff member had their own user ID and password. Each individual at KCPA has particular access that limits their ability to use the system and restricts their ability to use the system. So, a person needs special authority to cut checks."

Auditor Comment: As noted, KCPA did not deactivate accounts for seven individuals not actively employed by KCPA—including the KCPA bookkeeper indicted for stealing more than $2.6 million. This individual had unrestricted access to CompuTrust including the ability to issue checks and access to estate accounts, accounts payable, vendor files, and bank reconciliations. This individual reportedly used this access to steal estate funds. KCPA's failure to immediately deactivate the bookkeeper's user account upon his indictment clearly evidences that KCPA did not appropriately restrict access to sensitive information, establish accountability for transactions, and protect against inappropriate and fraudulent transactions.

11. Maintain a master inventory record in each estate file or in CompuTrust that details every item of estate property held by the PA in its safe, warehouse, banks, and other locations.

KCPA Response: "[W]e do keep a master inventory of each item in the vault. We did a complete new inventory of the vault to correct flaws in the previous inventory of the vault. Our inventory records information about vault property in CompuTrust and there is also an excel spreadsheet master list of the inventory in the vault including coins, bonds, stock certificates and jewelry. The bank information is recorded in CompuTrust. Regarding the vault, we have an inventory system that is updated at the time that any inventory is put into to the vault or released."

Auditor Comment: The 2012 Guidelines require "[e]ach PA shall implement and maintain an electronic case management system…The case management system shall provide…an individual inventory of each item of real and personal property of saleable value relating to each estate, and the location of such assets." During the course of the audit and in the response, KCPA indicated that it records inventory records in CompuTrust. However, KCPA provided us no evidence of this. Further, KCPA's "excel spreadsheet master list of the inventory in the vault" does not constitute an electronic case management system or a comprehensive inventory of estate assets. This spreadsheet accounts only for small personal property items stored in its vault and does not account for the most significant estate assets, real property, or property held in warehouses, banks, and other locations.

12. Utilize CompuTrust "tickler" functions or implement an alternative system that is capable of notifying KCPA when critical actions need to be performed and tracking estates' progress.

KCPA Response: "I note that for a substantial period my office did not have a deputy who could oversee the activities of the case managers and investigators. We have had a deputy in place for about 3 months and she meets with the case managers and investigators on a weekly basis to discuss matters that they are working on. She and I are discussing specific matters on a daily basis, with the weekly meeting designed to discuss the overall caseload of these staff members. In addition, we have developed 3 detailed spreadsheets tracking activity in large estates (where the Public Administrator has been appointed administrator of the estate or has filed papers to be appointed administrator of the estate), for voluntary estates and for collection of assets tracking the transmittal of papers for collection of assets and receipt of funds."

Auditor Comment: KCPA staff meetings and spreadsheets do not constitute a reliable estate management tracking system capable of generating reports and monitoring delays in estate administration and settlement. The 2012 Guidelines require "[e]ach PA shall implement and maintain an electronic case management system containing a record of each estate under administration.…All estate activity shall be recorded promptly in the case management system. The case management system shall provide: (a) a tracking and recording system which shall include a calendar or report-generating function that reflects the status of each estate, so that the PA may monitor unusual delays in the administration of any estate."

13. Properly reconcile CompuTrust and bank balances on a monthly basis.

KCPA Response: "We do not agree with the statement that reconciliations are not done properly. Also, when adjustments need to be made the accountant writes a letter to the bank regarding the adjustments, which is signed by the Public Administrator, after review of the validity of the adjustment from the reconciliation."

Auditor Comment: Bank account reconciliations were not done properly. Most notably, based on our review of KCPA records, KCPA bank records reported balances for estates that were not reflected on KCPA book balances and vice versa. KCPA bank reconciliations did not explain these discrepancies. Additiionally, KCPA supervisory personnel did not review and sign off on reconciliations and detect and resolve these discrepancies.

14. Ensure that bank reconciliations are independently reviewed and signed by both preparers and reviewers.

KCPA Response: "The deputy and I will go over the monthly reconciliations with our accountant and will sign the reconciliations after the review."

15. Periodically review its Outstanding Check Register, void checks outstanding more than 180 days, determine why they were not cashed, and reissue checks accordingly.

KCPA Response: KCPA did not address this recommendation.

16. Immediately submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor outstanding audits and reports. Thereafter, submit audits and reports within prescribed timeframes.

KCPA Response: "Our office filed the different annual reports with the Office of Court Administration and timely filed the 2012 annual report with the Office of Court Administration. We also filed through 2011 the report with the State Comptroller, so all the agencies could monitor the activities regarding these estates."

Auditor Comment: The filing of its annual report does not satisy all KCPA reporting requirements and does not allow all oversight agencies, i.e., the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor, to effectively assess, monitor, and hold KCPA accountable for both its fiscal and operational performance.

17. Appropriately report to the IRS and state tax authorities vendor income and issue 1099-MISC forms to all vendors paid more than $600.

KCPA Response: KCPA did not address this recommendation.

18. Institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expenses transactions; and estate management, monitoring, and tracking, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expenses transactions; and estate management, monitoring, and tracking.

KCPA Response: "Finally, we disagree regarding the issue of internal controls. We believe that our use of Positive Pay Payee combined with the review of cut checks by the PA and the deputy along with the detailed spreadsheets that show each activity that we are conducting on an ongoing basis provides the controls needed especially given the size of our agency and other work that must be done by the Public Administrator and Deputy in review of active matters and the review of court filings."

Auditor Comment: The implementation of Positive Payee and Excel spreadsheets do not constitute a comprehensive system of internal controls for critical estate administration functions including asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expense transactions; and estate management, monitoring, and tracking. Positive Payee is but one control over bank account administration and, as noted, newly implemented KCPA spreadsheets do not constitute a reliable estate management tracking system. Again, KCPA should implement a comprehensive system of internal controls for critical estate administration functions and document them in written policies and procedures.

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 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 was Fiscal Year 2011 through Fiscal Year 2013.

To obtain an understanding of the policies, procedures, and regulations governing KCPA, we reviewed: Article 11 of the SCPA; the Guidelines; § 207.63 of the Uniform Rules for NYS Trial Courts; Title 2, § 72.1 of the New York Codes, Rules, and Regulations; and Comptroller's Directive #28, "Reporting Requirements for Public Administrators." We also reviewed the New York City Comptroller's Internal Control and Accountability Directives, Directives #1, "Principles of Internal Control," #11, "Cash Accountability and Control," and #18, "Guidelines for the Management, Protection & Control of Agency Information & Information Processing Systems." These directives were used as criteria in evaluating KCPA's financial and operating practices.

We reviewed the prior Comptroller's Audit Report on the Estate Management Practices of the Kings County Public Administrator (MG09-054A) issued on June 30, 2009, as well as the last independent audit report which covered Fiscal Year Ended June 30, 2007, and was issued on November 21, 2008.

To gain an understanding of KCPA's critical financial and operating practices and assess KCPA's internal controls, we interviewed KCPA officials regarding asset identification, collection, safeguarding, and distribution; estate accounting including the recording, documenting, and reporting of income and expenses transactions; bank account administration; and estate management, monitoring, and tracking. We also conducted walk-throughs and observations of CompuTrust, deposit and issuance of checks, vault where small inventory items are stored, and a real estate auction held on December 18, 2012.

We haphazardly sampled 50 estates from KCPA's file room from those that were open in August 2012. According to CompuTrust, the 50 sampled open estates had a value of $13.4 million.

To determine whether KCPA identified, collected, or credited decedents' estates for assets, we reviewed documentation maintained in the 50 sampled open estate files including KCPA property reports, New York City Police Department Property Clerk Invoice, nursing home and guardianship final accounting reports, safe deposit opening reports, financial institution records and documents, income tax returns, and appraisal reports. We then reviewed CompuTrust trial balances and inventory records and identified assets that were not identified, collected, or credited to decedents' estates.

To determine whether KCPA identified all assets for the 50 sampled open estates, we searched for assets on the following databases:

- ACRIS public database of real property records;
- OSC public database of unclaimed funds; and

- NYS-DMV database of automobiles, boats, and other motorized vehicles records.

For the 50 sampled open estates, we obtained CompuTrust trial balance reports detailing 369 income transactions totaling $13,432,624 and 1,017 expense transactions totaling $3.5 million. We then determined whether KCPA maintained supporting documentation for reported income and expenses in estate files. For income transactions, we checked whether KCPA maintained maintain documentation, such as appraisal reports, bills of sale, receipts, and checks, to support amounts recorded in CompuTrust. For expense transactions, we checked whether KCPA maintained completed Desk Review Form Disbursement Cover Sheets detailing the amount, reason, and review and approval for expenses, and attached supporting documentation, such as vendor invoices, to them.

Additionally, for the 50 sampled open estates, we determined whether KCPA maintained copies of Letters of Administration in estate files and accurately recorded in CompuTrust the date letters were issued for formal estates.

We sampled formal and informal estates closed in Fiscal Year 2011 as follows:

- We obtained the monthly reports of closed estates submitted to the Comptroller's Office and determined that 87 formal estates with a value of $42.6 million and 71 informal estates with a value of $571,774 were closed;
- From the 87 closed estates, we randomly sampled 10 closed estates with a combined value of $11.4 million using a random number generator; and
- From the 71 informal estates, we randomly sampled 30 closed estates with a combined value of $471,473 using a random number generator.

For each of the 40 closed estates, we determined whether KCPA maintained separate estate files and expenses were paid in accordance with the final accounting or court decree. Specifically, we verified that checks were made payable to specified parties and for specified amounts. We also determined whether legal fees were paid in accordance with Interim Report and Guidelines of the Administrative Board approved in 2002 and quantified the number and dollar value of overpayments.

To determine whether KCPA appropriately reported vendor income to the IRS and issued IRS Form 1099-MISC to vendors paid more than $600, we obtained KCPA reports detailing total amounts paid vendors during Calendar Year 2011 and identified 73 vendors paid more than $600. We then obtained all IRS Forms 1099-MISC issued by KCPA for Calendar Year 2011 and determined whether KCPA issued 1099s to all 73 vendors.

To assess KCPA's access controls for CompuTrust, on August 20, 2012, we obtained from CompuTrust the "Current User Profile List" detailing user names, and inquiry, input, and report access. On December 6, 2012, we reviewed the profile list with the Public Administrator to determine whether access to CompuTrust was appropriately restricted. Specifically, we inquired about shared user names and whether user access was deactivated for users not actively employed by KCPA.

To assess whether KCPA properly administered bank accounts, we reviewed KCPA's June 2011 bank reconciliation to determine whether KCPA was able to reconcile CompuTrust and bank balances. We also checked whether the June 2011 bank reconciliation was signed by a preparer and was independently reviewed.

Additionally, we obtained the Outstanding Check Register dated July 14, 2011, to determine whether KCPA voided checks in a timely manner. Specifically, we determined whether KCPA voided checks outstanding more than 180 days, determined why they were not cashed, and reissued checks accordingly. We quantified the number and dollar amounts of checks outstanding more than 180 days.

To determine whether KCPA filed required audits and reports with oversight agencies as required, we requested from KCPA and oversight agencies copies of the most recently submitted reports.

DETAILED DISCUSSION OF KCPA'S RESPONSE

In its response, KCPA maintained "[i]n connection with the real estate, we have now presented you with documentation that each of the six real estate matters that you cite in the chart was acted upon properly by the PA and any funds that were to be received were properly credited to the correct estate account" and provided detailed responses regarding assets that were not identified, collected, or credited to five decedents' estates. This Appendix contains KCPA's detailed responses as well as our comments. (For the full text of KCPA's response, see the Addendum to this report.)

Did Not Identify, Collect, or Credit Decedents' Estates for Assets Worth $2.2 Million

Re: Estate # 1 – Real Property

KCPA Response: "In connection with the comment on page 6 regarding the…property (referenced by you as a 6 family residence sold for $140,000), we have presented the documentation that the property was transferred as part of a settlement between family members and the Estate was not to receive any funds from the deed transfer."

Auditor Comment: As noted, based on our review of ACRIS real property records, in December 2009, KCPA sold this decedent's six-family home for $140,000. Specifically, we reviewed the Administrator's Deed and the Real Property Transfer Report, which both indicated that KCPA, as administrator to an estate probated on August 5, 2009, sold the decedent's six-family home for the "Full Sale Price" of $140,000. However, KCPA did not maintain evidence of this transaction in the decedent's estate file.

Re: Estate # 2 – Real Property

KCPA Response: "In connection with the…estate, you list a bank account, real property …, property in Alabama and unclaimed funds that are all part of your chart. I reviewed our file and did not see any indication that we applied for letters of administration for this matter. I looked through the entire file because decedent died in 2006 before I began at the PA and there was no activity on the file since early 2007 and I needed to review the file because we had $91.56 in the estate account and I needed to investigate the claim in the Report of assets that were not collected or credited. My office pulled the Court file …and found that [the decedent] was survived by a sister and her niece, with the consent of the sister, filed a Petition for Letters of Administration. I explained this in an email to the Comptroller and indicated that the sister had priority and this matter was not our estate and we could not collect any assets because we did not have letters and would not have applied for letters since the family applied to administer the estate. I also attached a copy of the Petition for Letters that was filed by the niece. I received an email back from the Comptroller stating that 'Based on our review of the documents contained in your file, we consider the estate to be under KCPA's administration and therefore not excluded from our analysis regarding assets that were not identified, collected, or credited to decedent's estates.' This statement evinces a complete lack of understanding of the authority of the Public Administrator and our handling of estate matters. That my office investigated the matter in 2006 and 2007 does not mean that we had any authority to administer the estate or collect estate assets."

Auditor Comment: In response to our inquiries regarding this estate, the KCPA PA informed us that an "alleged" niece applied to administer the decedent's estate. However, the Surrogate's Court did not approve her application. Because she was not deemed qualified to administer this estate, KCPA should have done so. KCPA's failure to apply for formal Letters of Administration does not relieve it of its obligation to administer the estates of individuals in Brooklyn who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate.

Moreover, based on our review of this estate file, KCPA did, in fact, administer the decedent's estate as a small estate. Specifically, KCPA issued Letters Testamentary in January 2007 and February 2007, conducted investigations to discover assets, collected assets, and paid the decedent's bills and taxes. When KCPA discovered that this was a formal estate and that no one was willing or qualified to administer it, KCPA should have applied for formal Letters of Administration and fully carried out its fiduciary responsibilities.

Re: Estate # 3 – Cash

KCPA Response: "We note in connection with the [decedent's] estate, we submitted the documentation showing that the funds from the sale were properly credited to the Estate of [another decedent], who was the owner of the property and that the funds were correctly recorded in the ledger. Your office incorrectly said that the closing funds were not reflected in the ledger based on a mistaken reading of the ledger. It is clear from the ledger that all the funds from the closing were received, deposited in the estate account and recorded in CompuTrust."

Auditor Comment: The property in question was inherited by the decedent from her father. KCPA administered both the decedent's estate and her father's estate. KCPA sold the property through the father's estate and, ultimately, distributed the sale proceeds to the decedent. Based on our review of KCPA's accounting for the father's estate, the net proceeds of the sale were $425,577. However, KCPA's trial balance reflected a deposit of only $391,530. Therefore, it appears that the decedent did not receive real estate sale proceeds of $34,047.

Re: Estate # 4 – Personal Property

KCPA Response: "[T]his matter went to decree in March 2007 and there is a small amount of interest that is being sent to the Commissioner of Finance for unknown kin (the balance of the estate was already sent for unknown kin per the decree). This matter was closed in 2007 and we have no idea what happened regarding the fur coat."

Auditor Comment: Based on a KCPA investigator's report, KCPA delivered "deceased's fur coat to the Fur Vault at Macy's, Kings Plaza, for appraisal and cold storage." KCPA entered a storage contract and paid storage fees for the fur coat. As noted, KCPA has a fiduciary duty to: "protect the decedent's property from waste, loss, or theft;…; to liquidate assets at public sale or distribute assets to heirs; …and to locate persons entitled to inherit from the estate and ensure that the legal distributees receive their inheritance." It is unacceptable for KCPA to disavow its responsibilities and simply state "we have no idea what happened regarding the fur coat."

Re: Estate # 5 – Cash

KCPA Response: "[T]he decedent died in an accident in 1997 and a small bank account was recovered in 1999. The PA's office at that time tried to recover settlement proceeds and the file shows that they tried to locate funds but there is nothing in the file indicating that they were ever able to collect any assets. The file is only open because they collected a small bank account (under $1000) in 1999 and never filed an informatory. That they tried in the 1990s to find additional funds does not mean that funds were ever located or that they were located and not deposited."

Auditor Comment: In response to our inquiries regarding this estate, on January 21, 2013, the KCPA Public Administrator informed us,

> "The file shows that [the decedent] was a plaintiff in a lawsuit that settled for $600,000 and that he received a check for $355,342.70 approximately 3 months before he died. PA Counsel contacted Sterling National Bank regarding the funds and sought information about the deposit of the funds. The papers in the file indicate that the check was deposited in the trust account of Edward J. Kaufman, Esq., who was deceased by March 1999 (handwritten notes in the file suggest that he died around 1 and ½ years before then). PA counsel, Louis R. Rosenthal, wrote to Kenneth Sirlin, Esq, the attorney for the Estate of Edward J. Kaufman, on March 10, 1999 seeking the funds that were deposited in the Kaufman escrow account. I did not see any response to this letter in the file. The file has a copy of a subpoena, with an affidavit of service from the process server who served the subpoena on Mr. Sirlin. The subpoena seeks information about [decedent] deposits. I did not see any response to the subpoena in the file. Neither the ledger nor the file shows that the Public Administrator ever received the settlement funds. Further, Tyrone of my office checked in Surrogate's Court and he did not find any record that the PA ever applied to administer the [decedent's] estate. Thus, there is no writing to indicate that the PA was ever able to recover any of the settlement funds.
>
> "I am writing to an attorney who worked on the matter to see if he has any recollection about this estate."

The KCPA Public Administrator did not respond to follow-up inquiries on this issue.

As noted, the Guidelines stipulate that 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." To ensure the PA does so in a timely manner, the Guidelines stipulate that the "The PA shall maintain a case management system to track the progress of each estate's administration….The system shall include a "tickler" function, so that the PA may monitor unusual delays in the administration of any estate." However, KCPA did not fulfill these duties. Consequently, it appears that either KCPA did not collect this decedent's significant estate assets or they were, in fact, collected but not credited to the decedent's estate either unintentionally or intentionally.

The KCPA counsel who investigated this issue was removed from office for charging more than $2 million in excessive counsel fees and now represents the KCPA bookkeeper indicted for stealing more than $2.6 million.

Office of the
PUBLIC
ADMINISTRATOR
Of Kings County

www.nyc.gov/kcpa

Bruce L. Stein, Esq.
Commissioner

Aaishatu D. Glover, MS, MBA
Deputy Commissioner

June 21, 2013

Ms. Tina Kim
Deputy Comptroller
City of New York
Office of the Comptroller
Bureau of Audit
One Centre Street, Room 1100
New York, NY 10007-2341

Re: Audit Report on the Financial and Operating Practices of the
Kings County Public Administrator
FK12-079A

Dear Ms. Kim

This letter addresses various statements and charts in the above mentioned draft report. We note that the Comptroller's office had auditors in our office for a long period and indicated that its field work was complete and then returned for an additional period and then presumably worked on the preliminary report at the Comptroller's office and then I received a call on a Monday at 5:30 and was told that we had to meet that Wednesday and a preliminary report was delivered by messenger 2 days later. This pattern was repeated for the Draft Report and it is clear that the Reports were prepared before the meeting and were issued without taking into account major substantive issues that were raised at these meetings.

Comments on the Section Titled "Did Not Identify, Collect or Credit Decedent's Estates for Assets Worth $2.8 Million.

This section has a chart titled "Assets Not Identified, Collected, or Credited to Decedent's Estates as of FY!3." This chart should be removed from the final draft as it is riddled with errors, and contains false information and I advised the Comptroller of problems with this chart in the preliminary draft meeting and notified them (after being handed a chart of items for the first time at the meeting and glimpsing in cursory fashion at the meeting) that this chart was riddled with misstatements and that the real property matters, which comprise over $2 million were in error. Instead of waiting for information and giving us adequate time to address these items, your office just released the Draft Report filled with these errors. We note that your office made these statements in the initial chart without ever asking me about the individual real estate items, which could have been easily resolved had I been asked about the estates.

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In connection with the real estate, we have now presented you with documentation that each of the six real estate matters that you cite in the chart was acted upon properly by the PA and any funds that were to be received were properly credited to the correct estate account. In connection [redacted] the comment on page 6 regarding the [redacted] property (referenced by you as a 6 family residence sold for $140,000), we have presented the documentation that the property was transferred as part of a settlement between family members and the Estate was not to receive any funds from the deed transfer.

In connection with the [redacted] estate, you list a bank account, real property at [redacted], property in Alabama and unclaimed funds that are all part of your chart. I reviewed our file and did not see any indication that we applied for letters of administration for this matter. I looked through the entire file because decedent died in 2006 before I began at the PA and there was no activity on the file since early 2007 and I needed to review the file because we had $91.56 in the estate account and I needed to in[redacted] claim in the Report of assets that were not collected or credited. My office pulled the Court file for [redacted] and found that [redacted] was survived by a sister and her niece, with the consent of the sister, filed a Petition for Letters of Administration. I explained this in an email to the Comptroller and indicated that the sister had priority and this matter was not our estate and we could not collect any assets because we did not have letters and would not have applied for letters since the family applied to administer the estate. I also attached a copy of the Petition for Letters that was filed by the niece. I received an email back from the Comptroller stating that "Based on our review of the documents contained in your file, we consider the estate to be under KCPA's administration and therefore not excluded from our analysis regarding assets that were not identified, collected, or credited to decedent's estates." This statement evinces a complete lack of understanding of the authority of the Public Administrator and our handling of estate matters. That my office investigated the matter in 2006 and 2007 does not mean that we had any authority to administer the estate or collect estate assets.

We note in connection with the [redacted] estate, we submitted the documentation showing that the funds from the sale were properly credited to the Estate of [redacted] who was the owner of the property and that the funds were correctly recorded in the ledger. Your office incorrectly said that the closing funds were not reflected in the ledger based on a mistaken reading of the ledger. It is clear from the ledger that all the funds from the closing were received, deposited in the estate account and recorded in CompuTrust.

For non real estate items, we also have a number of objections regarding this section and will address a few examples. Re the Estate of [redacted] this matter went to decree in March 2007 and there is a small amount of interest that is being sent to the Commissioner of Finance for unknown kin (the balance of the estate was already sent for unknown kin per the decree). This matter was closed in 2007 and we have no idea what happened regarding the fur coat.

We note also that for matters for example where we receive small funds from the Police Department we do not search unclaimed funds or try to collect any such funds and merely release funds to funeral creditors or relatives that may seek the funds.

Re the Estate of [redacted] the decedent died in an accident in 1997 and a small bank account was recovered in 1999. The PA's office at that time tried to recover settlement proceeds and the file shows that they tried to locate funds but there is nothing in the file indicating that they were ever able to collect any assets. The file is only open because they collected a small bank account (under $1000) in 1999 and never filed an informatory. That they tried in the 1990s to find additional funds does not mean that funds were ever located or that they were located and not deposited.

You indicate that the PA did not identify, collect, credit decedent's estates for and distribute assets worth at least $2.8 million. As we have discussed above as examples, this statement is simply untrue and raises major questions about the conduct of the audit.

We strongly disagree with each aspect of the first paragraph of the Findings. You say that "KCPA failed to properly carry out its fiduciary responsibilities because it did not act in the best interests of estates, carry out its duties prudently… There is no basis whatsoever for saying that the KCPA did not act in the best interests of estates or that it did not carry out its duties properly and it is impossible to respond to a series of vague comments.

The report says that KCPA "did not establish asset identification policies or procedures detailing basic databases to check or conduct supervisory reviews and therefore KCPA allegedly failed to identify, collect or credit accounts worth at least $2.8 million. As detailed above this figure that the Comptroller uses is divorced from reality and merely evidences flaws in the audit, misunderstanding of PA asset collection and PA estates. Further, there are a series of policies in place regarding estates. In connection with large estates, the office conducts, where possible, an investigation of the home or apartment of the decedent to look for assets (sometimes given when we receive notification this may not be possible or there may be no residence to inspect). The investigators look for kinship information and look for evidence of assets and bring back any documents they find and write a report about the results of their investigation. Also, case managers have a group of standard inquiries that they conduct regarding potential estates including sending out change of address requests so that we get forwarded mail that may show assets and claims, letters to HRA on the existence of an HRA claim and letters to unclaimed funds regarding possible assets. In addition, based on information in the file, the case managers send out inquiries to banks, financial institutions and insurance companies that may have estate assets. Further, the case managers look for possible pension assets from employers, unions and pension plans such as NYCERS. Finally, case managers and/or attorneys send out tax transcript requests to receive tax and 1099 information that may identify other assets that may exist. So, there is in fact an extensive check for possible assets of the estate. For some estates, the case managers collect assets and for other estates the attorneys prepare the paper work for collection of assets. When the assets are collected, the attorneys review the files to confirm that the assets have been collected and prepare the draft accounting. One of our attorneys prepares a list of believed assets of the estate at the time that the PA receives letters.

The Public Administrator discusses matters with the investigators and case managers on a regular basis and also has sat with the investigators to go over open investigations. The Public Administrator also reviews the mail that comes into the office, so he sees forwarded estate mail and then instructs case managers to collect such assets if the assets have not already been collected. I note that for a substantial period my office did not have a deputy who could oversee the activities of the case managers and investigators. We have had a deputy in place for about 3 months and she meets with the case managers and investigators on a weekly basis to discuss matters that they are working on. She and I are discussing specific matters on a daily basis, with the weekly meeting designed to discuss the overall caseload of these staff members. In addition, we have developed 3 detailed spreadsheets tracking activity in large estates (where the Public Administrator has been appointed administrator of the estate or has filed papers to be appointed administrator of the estate), for voluntary estates and for collection of assets tracking the transmittal of papers for collection of assets and receipt of funds.

The Report states that the KCPA did not monitor its staff to ensure that they consistently completed authorization forms and maintained supporting documentation for expenses paid on behalf of estates. This is untrue. Staff in fact do not have the ability to obtain checks without the authorization of the public administrator or the deputy public administrator. In order for a check to be issued, the staff member will prepare a disbursement request, with attached back up as necessary. The disbursement is then given to the Public Administrator or Deputy Public

Administrator to review and they must either approve the disbursement by signing the authorization for the check or reject the request. They then give the disbursement request to the book keeper to cut the check and then the Public Administrator or the Deputy review the check and the disbursement request before signing the check. Checks can only be signed by the Public Administrator or the Deputy Public Administrator and they sign checks supported by the check disbursement requests. Finally, the KCPA has in place now Positive Pay Payee in which the Public Administrator uploads information to its bank on the approved checks for the day. A list of daily checks cut are printed out by the Public Administrator and the signed checks are compared to the list and reviewed by the Public Administrator and the Deputy Public Administrator to make sure that all the checks are proper. Further, all disbursements are reviewed at the time of accounting by the Public Administrator or the Deputy and counsel, which gives a further chance to uncover any checks that were cut without approval. There is no basis for the Comptroller questioning the legitimacy of any check disbursements in the ledger and the Comptroller has not listed specific checks that they can claim are not legitimate.

The Comptroller has a finding and a chart it claims relates to "formal estates", which says that there are 1287 open "formal estates." We discussed this matter in detail at our last meeting and attempted to correct the misunderstanding of the Comptroller's office about coding of estates in CompuTrust and the definition of a large estate. This discussion proved fruitless as the chart on page 14 is still included in the Report even though the chart is misleading and does not in any way reflect open estates. We may discuss this matter in more detail in a few days but note that we emphasized that it has no meaning and is misleading at best. Furthermore, we explained that unless the Public Administrator is appointed, it cannot administer a large estate and it is not a large estate.

Regarding the indictment of the KCPA bookkeeper, we do not with to discuss this matter because there is a pending criminal proceeding. However, I note that the indictment came about because I noticed a suspicious check in the bank statement and I contacted the Department of Investigation about a forged check and triggered the investigation by the Department of Investigation.

We disagree with the assertion that the PA paid excessive legal fees for small estates. The fee structure was in place well before 2008 and was used in Kings County and I believe in other counties. Further, the Office of Court Administration was aware of these fees and the attorney at OCA who was counsel to the Administrative Board recognized the fee structure used by our office and decided to change that fee structure in the new guidelines.

We disagree with your assertion that the Estate Accounting System is not reliable. The statement that KCPA did not credit estates for assets received is not correct and reflects a failure on the part of the Comptroller to make inquiry before making such statements and from errors we noted for some examples in the discussion of the chart on page 6. We dispute the claim that payments were received and not credited in the ledger and also dispute various other items in that chart. Other than the matter that is the subject of the indictment, we contest all other assertions regarding the entries in CompuTrust.

In connection with checks received, a KCPA staff person is given a copy of all checks received by Estates and records the checks in a ledger and there is no basis for the Comptroller saying that is not reasonably assured that all assets were credited to the decedent's estates.
In connection with access to CompuTrust, all inactive users have been removed from CompuTrust. Further, any inactive user did not have a pass word to gain access to the system. Attorneys have not had a password to access the system for at least several years. I do not know when a caseworker account was used but since I began at KCPA, each staff member had their own user ID and password. Each individual at KCPA has particular access

that limits their ability to use the system and restricts their ability to use the system. So, a person needs special authority to cut checks.

On page 11 of the Report it says that KCPA said that it was completing a master inventory of items in the vault. This is correct and we do keep a master inventory of each item in the vault. We did a complete new inventory of the vault to correct flaws in the previous inventory of the vault. Our inventory records information about vault property in CompuTrust and there is also an excel spreadsheet master list of the inventory in the vault including coins, bonds, stock certificates and jewelry. The bank information is recorded in CompuTrust. Regarding the vault, we have an inventory system that is updated at the time that any inventory is put into to the vault or released.

Regarding the issuance of Letters of Administration, when receive notice that letters have issued to the Public Administrator, the Letters are given to our bookkeeper, who enters the information regarding the Letters in CompuTrust (date of Letters and if the Letters have any restrictions or limitations) and puts the Letters in a binder that is kept by the Deputy. Also, as letters are received the Deputy records the issuance of the letters in a master list spreadsheet of active cases that we have been creating that is already quite detailed.

I note that in October 2008 when I began at the KCPA as Deputy Public Administrator, the office did not reconcile the estate accounts, so there was no way to determine whether any of the accounts reconciled with the funds actually on hand at Signature Bank and Esquire Bank. Our internal accountant, who is a Certified Public Accountant, along with a staff accountant from one of our outside accounting firms that prepares estate income tax returns for our office, reconciled several thousand accounts so that we had a current reconciliation. Some of this reconciliation took a huge amount of time because an estate ledger could have hundreds of entries and a mistake could have happened years earlier. We now reconcile the estate accounts on a monthly basis and note that our accountant who conducts the reconciliation does not cut estate checks and does not enter check requests or monies received into CompuTrust. We do not agree with the statement that reconciliations are not done properly. Also, when adjustments need to be made the accountant writes a letter to the bank regarding the adjustments, which is signed by the Public Administrator, after review of the validity of the adjustment from the reconciliation. The deputy and I will go over the monthly reconciliations with our accountant and will sign the reconciliations after the review. We note that the Report says that CompuTrust can reconcile the accounts. We use a reconciliation feature in CompuTrust to indicate when checks cut in the system have cleared. However, we do not believe that the accounts in general can be reconciled through CompuTrust and believe that discrepancies must be resolved by reviewing CompuTrust and bank accounts.

Our office filed the different annual reports with the Office of Court Administration and timely filed the 2012 annual report with the Office of Court Administration. We also filed through 2011 the report with the State Comptroller, so all the agencies could monitor the activities regarding these estates.

Finally, we disagree regarding the issue of internal controls. We believe that our use of Positive Pay Payee combined with the review of cut checks by the PA and the deputy along with the detailed spreadsheets that show each activity that we are conducting on an ongoing basis provides the controls needed especially given the size of our agency and other work that must be done by the Public Administrator and Deputy in review of active matters and the review of court filings.

We have attempted to address some of the issues in the Report but note that given time restraints we have just given an overview of some of the issues we have regarding the report and errors in it.

Sincerely,

Bruce L. Stein, Esq.
Kings County Public Administrator