

# AUDIT REPORT



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

## **Audit Report on the Estate Management Practices of the Kings County Public Administrator**

*MG09-054A*

**June 30, 2009**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

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

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has audited the controls over its estate management practices at the Office of the Kings County Public Administrator (KCPA).

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. We audit public offices such as this as a means of ensuring that they follow applicable laws and guidelines fairly and consistently.

The results of our audit, which are presented in this report, have been discussed with KCPA officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report as an addendum.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written over a horizontal line.

William C. Thompson, Jr.  
WCT/ec

**Report:** MG09-054A  
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*The City of New York*  
*Office of the Comptroller*  
*Bureau of Management Audit*

**Audit Report on the  
Estate Management Practices of the  
Kings County Public Administrator**

**MG09-054A**

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**AUDIT REPORT IN BRIEF**

The objective of this audit was to determine whether the Office of the Kings County Public Administrator (KCPA) had adequate controls over its estate management practices.

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

During this audit, KCPA officials were unable to identify the number of estates KPCA was currently administering. According to the City's Fiscal Year 2008 annual financial report, KCPA collected \$1.7 million in revenues and had expenditures totaling \$536,127, consisting of \$491,077 for Personal Service expenditures and \$45,050 for Other Than Personal Service expenditures.

**Audit Findings and Conclusions**

We determined that during Fiscal Year 2008, KCPA had inadequate controls over its estate management practices. Management had no written procedures or supervisory review system and CompuTrust, its centralized computer record-keeping system, was neither secure nor its data reliable. Management does not maintain a reliable record log of all estates and supporting documentation under its administration, and therefore, does not know the total number of estates it is responsible for. Consequently we cannot be assured that the estate distributions that KCPA has made were appropriate.

We also found that KCPA failed to: (1) report its activities to oversight organizations, as required; (2) adequately review its financial transactions; and (3) track inventory it held for estates. In addition, there were procurement deficiencies, including undocumented vendor selections, missing contracts and 1099s, and inadequate documentation of the December 5, 2007 KCPA real estate auction.

### Audit Recommendations

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

- Management can identify all estates under its administration, along with their current status, assigned attorneys, upcoming key dates and deadlines, inventories, and the appropriate reports for each.
- Staff has written policies and procedures that detail how estates should be administered.
- All required reports are submitted in a timely manner and that a copy of each report is maintained in a centralized office file.
- An audit of KCPA's office by an independent certified public accountant for Fiscal Year 2008 is completed as soon as possible.
- Inventory is logged into a central log as soon as the items are brought to the office, noting, at a minimum, the date received, estate number, inventory bag number, and bin in the vault in which inventory will be maintained.
- Office documents all pertinent information regarding vendors, including how vendors are selected, as well as evidence of the 1099 forms issued to its vendors, and that it maintains current contracts in centralized office files.

### Agency Response

In their response, KCPA officials agreed with 15 of the 18 recommendations and did not address three recommendations.

## INTRODUCTION

### Background

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

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

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

During Fiscal Year 2008, estates with gross values of \$20,000 or less were considered small estates<sup>1</sup>. A PA must file an inforamatory accounting with the Surrogate's Court for estates with a gross value between \$500 and \$20,000. Estates with gross values over \$20,000 are considered large estates and require the PAs to petition the court for Letters of Administration, to file a final accounting documenting all income and expenses associated with an estate, and to receive a decree from the Surrogate's Court Judge detailing how the estate is to be distributed.

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

The SCPA Guidelines authorize the PA to charge each estate an administrative fee of up to one percent of the gross value of each estate and to maintain a suspense account. These fees are deposited in a separate bank account and are used to supplement the PA's budget. The SCPA

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<sup>1</sup> As of January 2009, "small estates" now include estates with gross values of \$30,000 or less, according to the PA.

Guidelines state that suspense account funds are to be used to pay expenses “necessary for the proper functioning of the office’s operations and for the administration of estates.” (The funds can also be used as a loan to estates to pay expenses prior to the conversion of estate assets to cash.)

According to the City’s Fiscal Year 2008 annual financial report, KCPA collected \$1.7 million in revenues and had expenditures totaling \$536,127, consisting of \$491,077 for Personal Service expenditures and \$45,050 for Other Than Personal Service expenditures. During this audit, KCPA officials were unable to identify the number of estates KPCA was currently administering.

In Fiscal Year 2005, our office conducted an audit, *Audit Report on the Estate Management Practices of the Kings County Public Administrator* (ME05-055A issued June 29, 2005). That audit found, among other things, that KCPA needed to (1) maintain files that were better organized and contained all key information and documents and (2) ensure that affidavits of legal services were filed. KCPA responded that the office was understaffed and could not implement all of the Comptroller’s recommendations.

In May 2006, a new PA was appointed, and in February 2007, a new Deputy PA was appointed. In February 2008, the Office of Court Administration (OCA) started to monitor KCPA after receiving reports of missing jewelry. In addition, we were told that the Court Office of Internal Affairs (OIA) was investigating KCPA (no report has yet been issued). In June 2008, the New York City Department of Investigation (DOI) charged an employee, who had begun working at KCPA in November 2007, with stealing \$3,300 from a sealed envelope that had been collected from the safe deposit box of a decedent.

On June 13, 2008, the PA resigned “for various reasons.” The Deputy PA subsequently departed in October 2008. In October 2008, the current PA was appointed as Deputy of KCPA, and in January 2009 was promoted to PA. In April 2009, a new Deputy PA was appointed. Over the last four years, in addition to management turnover, the office of KCPA has also experienced excessive staff turnover, with almost all of its current staff having started less than two years ago.

### **Objective**

The objective of this audit was to determine whether KCPA had adequate controls over its estate management practices.

### **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 2008. To gain an understanding of internal controls over estate management practices of the KCPA, we conducted a walk-through of the

office's physical space, including its vault and off-site storage, as well as its processes for estate management. We also interviewed the current PA, the former Deputy PA, the Assistant Deputy Counsel of OCA, and accountants, case managers, investigators, office support staff, IT personnel of KCPA, as well as an outside vendor that provides computer support to KCPA.

To further assess its estate management practices, we requested KCPA's written procedures and manuals. In addition, to obtain an understanding of the procedures and regulations with which KPCA must comply, we reviewed the following sources related to estate management and the responsibilities of the PAs in New York City:

- 1) SCPA, Article 11, Public Administrators of Counties Within the City of New York (§§ 1101-1128).
- 2) SCPA Guidelines, Surrogate's Court Procedure Act, Section 1128.
- 3) Rules and Regulations of the State of New York, Title 2. Department of Audit and Control, Chapter II, Municipal Affairs, Subchapter E, Administration of Funds Paid Into Courts of Record Counties Within The City of New York, Section 72.1, Report of open estates administered by public administrators of the counties within the City of New York.
- 4) Uniform Rules for New York State Trial Courts, Part 207, Uniform Rules for the Surrogate's Court, section 207.63, Annual Report of Public Administrator.
- 5) Comptroller's Directive #11, "Cash Accountability and Controls."
- 6) Comptroller's Directive: #18, "Information Processing Systems."
- 7) Comptroller's Directive: #28, "Reporting Requirements for Public Administrators."

To familiarize ourselves with KCPA's administration of estates, we judgmentally selected one closed estate (#100929), valued at \$161,434.<sup>2</sup> We determined whether all key documents were in the estate's file and whether estate financial transactions were properly documented in the file and in CompuTrust.

To determine the reliability of data in CompuTrust, we requested a current listing, as of October 8, 2008, of all estate accounts, including the estate and account number, name, date of death, current status, and current dollar balance. We reviewed the data for any breaks in the sequence of estate numbers. We also ascertained whether the 523 estates reported as closed on the Fiscal Year 2008 monthly reports sent to the Comptroller's Office had a closed-status code in CompuTrust.

To assess the adequacy of KCPA's controls over staff access to CompuTrust, we reviewed the list of all user profiles and the levels of their access on September 16, 2008, and

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<sup>2</sup> Our criteria for selection were that it be a closed estate valued between \$100,000 and \$200,000 listed on one of the KCPA's monthly reports of closed estates in Fiscal Year 2008.

again on October 7, 2008. We also questioned KCPA management about system backups and its disaster recovery plan.

To assess the accuracy of estate records, we systematically selected every 10<sup>th</sup> estate file from the total of 391 hard copy estate files at the office of the KCPA. For each estate, we determined whether it was entered in CompuTrust and whether the estate number, estate name, and date of death were listed accurately.

We determined whether KCPA filed the required monthly reports of closed or finally-settled estates to the City Comptroller's Office in accordance with Directive #28. We also determined whether KCPA had filed the required annual audit for Fiscal Year 2007, the semiannual reports for estates whose assets had not been fully distributed within two years, and the annual reports for the Surrogate Court and State Comptroller.

To determine the KCPA's controls over financial transactions, we reviewed check registers for the Estate, Nursing Home, and Police Department accounts, all managed through CompuTrust, as well as the Suspense Account for Fiscal Year 2008. We also reviewed the reconciliation of the Estate bank account for June 2008.

To determine whether checks issued on behalf of estates through CompuTrust from the Estate, Nursing Home, and Police Department bank accounts were accurately processed, we reviewed 3,040 checks (40%) of the 7,557 checks issued during Fiscal Year 2008, accounting for \$19.9 million (51%) of the total \$38.6 million. We obtained the physical checks, as of November 6, 2008, for entries in the check register and matched the estate number, estate name, check date, and dollar amount for each check. In February 2009, we tested checks issued during Fiscal Year 2008 that were still outstanding to see whether they had remained open for more than 180 days from the date that they were issued, the maximum time period allowed by the SCPA Guidelines.

To assess KCPA controls over decedents' inventory, we systematically selected 14 of the 738 inventory bags held for 690 estates that were recorded on KCPA's master inventory listing, as of November 2008, and determined whether the bags could be found in the vault and whether an inventory summary existed in CompuTrust. We also judgmentally selected one bin of inventory in the vault to determine whether all of its contents (inventory bags) were listed on the master inventory listing. Then we judgmentally selected a range of estates listed on the master inventory listing, which indicated the existence of 125 inventory bags in the vault and we attempted to locate them.

To assess controls over procurement, we reviewed KCPA's preferred vendor list, along with lists of 1099 forms KCPA issued in calendar years 2006 and 2007. We judgmentally selected three of five vendors that were each paid more than \$40,000 in Fiscal Year 2008 and requested copies of their current contracts with KCPA.

We also looked at the results of the December 5, 2007 real estate auction, including records of the auction, the closing documents for nine properties sold, and checked whether the proceeds for each estate were correctly recorded in CompuTrust.

We reviewed a previous audit of KCPA entitled *Audit Report on the Estate Management Practices of the Kings County Public Administrator* (ME05-055A), issued June 29, 2005, to determine whether there were any recurring issues.

### **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 an e-mail was sent in lieu of an exit conference. After reviewing the e-mail, we are submitting this draft report to KCPA officials with a request for comments. Their comments will be included in the final version of this report.

We received a written response from KCPA, dated June 22, 2009. In its response, KCPA officials agreed with 15 of the 18 recommendations and did not address three recommendations. The full text of KCPA's response is included as an addendum to this report.

## FINDINGS AND RECOMMENDATIONS

Based on our review and testing, we conclude that, during Fiscal Year 2008, KCPA had inadequate controls over its estate management practices. Management had no written procedures or supervisory review system and CompuTrust, its centralized computer record-keeping system, was neither secure nor its data reliable. Management does not maintain a reliable record log of all estates and supporting documentation under its administration, and therefore, does not know the total number of estates it is responsible for. Consequently, we cannot be assured that the estate distributions that KCPA has made were appropriate.

We also found that KCPA failed to: (1) report its activities to oversight organizations, as required; (2) adequately review its financial transactions; and (3) track inventory it held for estates. In addition, there were procurement deficiencies, including undocumented vendor selections, missing contracts and 1099s, and inadequate documentation of the December 5, 2007 KCPA real estate auction.

### Inadequate Management Controls

KCPA is responsible for administering the estates of decedents in accordance with SCPA Guidelines. However, KCPA's management controls are inadequate for the effective administration of estates. Funds and inventory arrive at the office of KCPA from a variety of sources, including the Police Department, nursing homes, etc., and also as a result of the office's own investigations. These assets must be preserved, and a detailed accounting of each estate must be maintained. In addition, the PA must be able to rely on data from the centralized record-keeping system to keep track of each estate's status so that the office can meet important deadlines and fulfill its reporting requirements.

During Fiscal Year 2008, KCPA did not keep track of cases received or account numbers assigned, nor did it have logs of inventory, mail, phone calls, or complaints received to help it ensure that appropriate and required action was taken for each estate. The former Deputy PA told us that incoming mail was reviewed for bills and checks, but that no reports were generated to keep track of activity in the office. If a case came into the office, management relied on its staff to establish an estate file and to enter the relevant data completely and accurately in CompuTrust.

During our audit, neither we nor KCPA management were able to determine the number of estates currently under KCPA administration, so there was no way to establish a complete population of estates for testing. We were also informed by KCPA staff members that all estate files were not in the file room and that they had no record of estate files, which should have been available, or even a record of those that had been removed.

***KCPA Response:*** "During the course of the audit, the office was also being audited by OCA investigators, who took a substantial amount of files out of the office. Those files have now been returned and files cannot be removed out of the office except if counsel needs a file on an urgent basis. In the event that we allow counsel to remove a file, we keep a record of the removal so that we know which counsel has any file that is not in the office."

**Auditor Comment:** In addition to the files removed by OCA, prior to September 2008, KCPA did not keep track of files taken out of the office by attorneys. While KCPA officials have now implemented a new tracking system, they may not be aware of all files removed from the office by attorneys prior to September 2008.

Keeping track of the status of each estate through a centralized record-keeping system that indicates when KCPA receives a case, when follow-up action is required, and when estate files are removed from its office, is sound business practice. It is all the more important for KCPA to maintain such a record-keeping system in light of a high staff turnover rate. Since no records were maintained of files removed from the office, and by whom, if an estate file was not in the file room or entered in CompuTrust, the possibility that KCPA could lose track of an estate was significantly increased.

The PA related one such an incident of which he had only recently become aware. An account had \$702,000 held by the Department of Finance since 2003 for unknown distributees. KCPA officials did not have complete documentation of this transaction, i.e., the court order authorizing the transaction was missing. However, they were able to find a cancelled check pertaining to that estate. Since this transaction had been executed years before and the money was not in the KCPA's bank accounts, there was no record of any subsequent action taken on behalf on this estate. According to KCPA's accountant, estates like this—in which a court order requires a separate account for guardianship or unknown distributees—are “off the system.”

The PA stated that unless he receives a bank statement, his office would not be aware of the existence of these separate accounts. This is an even greater concern when combined with the fact that there are no written policies and procedures or supervisory reviews, and the data in CompuTrust is incomplete and inaccurate (discussed later in this report). Without adequate management controls in place, the office of KCPA cannot effectively carry out its mission and may lose track of estates in its care.

### **Lack of Written Policies and Procedures**

KCPA has no written formal policies or procedures for monitoring, tracking, and documenting the administration of estates, despite the fact that most of the KCPA's staff had been working there less than two years and would have required training and guidance in office operations. Policies and procedures are intended to help ensure that management directives—in this case, the administration of estates—are carried out effectively and efficiently. Policies and procedures should include a range of activities, such as approvals, authorizations, verifications, reconciliations, and reviews of operating performance. However, KCPA has no written policies and procedures whatsoever with regard to the administration of estates and the carrying out of day-to-day activities.

For instance, in the absence of a pertinent policy, attorneys and their staff were allowed to take hard-copy estate files, consisting of all the essential documents pertaining to estates, out of the KCPA's office without signing for them. Since the office did not track what was taken, what was returned, and what was not, there is a strong possibility that the estate files are incomplete. In August 2008, KCPA instituted a policy to track the estate files. According to

this new policy, all estate files must now be signed out before they are removed from the office. This new policy will allow the staff to keep track of estate files in the future.

Without sufficient oversight of the administration of estates and adequate documentation of the activities performed on behalf of the estates, there is a significant risk that the staff is not carrying out all functions required in the best interest of the estates. Written policies and procedures would allow KCPA, despite high staff turnover, to create a structure that ensures the maintenance of updated and adequate supporting documentation and the ability to track and monitor the administration of estates. Such a structure would, in turn, allow the office to identify estates that require follow-up action and to undertake appropriate measures to meet the required specifications of each estate it administers.

### **Lack of Supervisory Reviews**

During Fiscal Year 2008, KCPA management did not perform supervisory reviews of work, which would have ensured, for instance, that information entered in CompuTrust was accurate or was filed in the appropriate estate file. Our review of one estate file<sup>3</sup> revealed that while many of the key documents were present, there was no summary or checklist of key events and documents. In addition, the file was disorganized, containing duplicate copies of documents and also a document from another estate wrongly placed within the file. Although we reviewed only one estate file, a similar finding of disorganized files without checklists of key events was detailed in the previous audit.

After several discussions regarding the issues pertaining to inadequate management controls and lack of supervisory reviews, the current PA is in the process of addressing these issues. For instance, the PA stated that he reviews all mail and has started to maintain logs to track all checks received, official documents that he signs, statements of death, and estate accountings. In addition, he informed us that he has created a spreadsheet to address those estates that require follow-up activities and that investigators maintain a schedule of open matters that they are working on.

Without performing a supervisory review for each estate, management will not be able to readily identify all estates it is administering and may not detect errors. In addition, without adequate supervisory reviews to ensure that estates are administered properly, KCPA is unable to effectively carry out all of its responsibilities and to ascertain whether estates are administered in accordance with the terms mandated.

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<sup>3</sup> We chose not to test a sample of estate files since KCPA management was unable to determine, and the auditors were unable to confirm, the entire population of estates currently under KCPA administration; therefore, a complete population of estates could not be determined for testing purposes. In addition, as noted in subsequent sections of this report, KCPA also had inadequate control over the hardcopy supporting documentation for the individual estates. Under such circumstances testing the files is not meaningful.

## **Recommendations**

KCPA should ensure that:

1. Management can identify all estates under its administration, along with their current status, assigned attorneys, upcoming key dates and deadlines, inventories, and the appropriate reports for each.

**KCPA Response:** KCPA officials agreed with this recommendation stating that “We have been working on a series of measures to identify and track all matters in the office ...”

2. Staff has written policies and procedures that detail how estates should be administered.

**KCPA Response:** “We are developing written policies and procedures.”

3. All estate files have a summary or checklist of key dates and documents attached that is reviewed by management periodically.

**KCPA Response:** KCPA officials agreed with this recommendation but did not plan to implement it at this time stating that “We agree that a summary sheet of documents in a file would be useful. However, it is impossible to start making summary sheets from scratch. Also, the recommendation is impractical given the small staff size and the huge volume of papers that need to be filed on a constant basis.”

**Auditor Comment:** It is precisely because of limited staffing and case volatility that KCPA should enhance its efforts to maintain well-organized files. Use of a checklist on each estate file would let multiple users know immediately the status of a case and would improve office efficiency.

## **CompuTrust Is Not Secure and Its Data Is Not Reliable**

Our review of the estates recorded in CompuTrust revealed that the system is not secure and its data is not reliable, thereby limiting its effectiveness as a useful tool. CompuTrust was designed to be KCPA’s official database to maintain all information pertaining to estates under KCPA administration so that staff could effectively and efficiently administer the estates. CompuTrust was intended to be used as a computerized tracking and monitoring tool. However, KCPA has not taken adequate measures to help ensure that data recorded in CompuTrust is secure and reliable.

SCPA Guidelines require the PA to maintain a case management system that tracks the progress of the administration of each estate. The system should consist of a centralized tracking and recording system that reflects the status of each active estate. All estate activity must be recorded promptly in the case management system. The system should also include a “tickler”

function so that the PA is able to monitor unusual delays in the administration of an estate. Since April 2000, KCPA has used CompuTrust as its case management system.

According to KCPA officials, employees are required to enter basic information about the decedent (such as date of death, last address, bank accounts, real estate owned, etc.) for all cases that come to their office. Whenever there is an action or update related to the estate (examples: family claims the money, house is sold, decedent is buried, etc.), the new information is required to be entered in CompuTrust. Each estate's information may be entered in CompuTrust by various employees.

During our audit, other than entering the case in CompuTrust when an estate was first brought to KCPA, the office did not use CompuTrust or any other management information system to keep track of or monitor its estate work flow. In addition, based upon our testing, we found that the computer system was not secure, nor was its data complete or reliable. Without a secure and reliable CompuTrust system, KCPA lacks the mechanisms for ensuring that all issues that arise pertaining to estates receive appropriate attention.

### **CompuTrust Is Not Secure**

The security of CompuTrust is compromised. Comptroller's Directive #18, "Guidelines for 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." Regarding access controls, §8.1.2 states, "Access authorization must be carefully designed to insure that employees have access only to files or programs that are necessary for their job function. . . [and] that users are forced to change passwords periodically." It also requires "deactivation of inactive user accounts and accounts for employees whose services have terminated."

Our review found that more than half of the 24 users of the system had access to *all* levels of administration in the system and that users had not been removed from the system after they ended their employment with KCPA. We also found that there were seven user profiles in the system not assigned to specific individuals, five of which had total access to all levels of administration in the system. In addition, KCPA management did not require passwords to be changed periodically. It should be noted that after we advised management of the problem, it took immediate action to restrict access to its computer system, which we later confirmed through testing.

We also found that KCPA does not have a disaster recovery plan for CompuTrust. According to §9.2 of Comptroller's Directive #18, every agency is required to have a disaster recovery plan for its critical systems that "insures that backup and recovery procedures are in place . . . Backups should not be stored in the same location as the operational data to guard against the possibility of original and backup copies being destroyed by the same event or incident." Not only does KCPA not ensure a nightly backup of its computer system, it also has no off-site storage of its database in case of an emergency. Without nightly backups and off-site storage of the CompuTrust database, KCPA risks losing critical information for the estates it is administering.

## **CompuTrust Data Is Not Reliable**

The data in CompuTrust is not reliable in terms of completeness and accuracy. During our testing for data completeness, we identified unexplained gaps in sequentially assigned account numbers and were unable to determine whether all estates were in CompuTrust<sup>4</sup>. During our test for data accuracy, we identified estates with duplicate estate account numbers, estates with negative dollar balances, estates whose status had not been updated, and estates without inventory<sup>5</sup> listings.

While most of the selected estates with available hard-copy files appear to be entered in CompuTrust, we could not determine how many estates may not have been entered because the office does not keep a listing or record of all estates under its administration. As a result, we have no way of knowing how many files were not available for our testing purposes. Of the 391 hard-copy estate files selected from those available in the file room, we found that the estate number, estate name, and date of death for 371 (95%) of these estates were accurately entered in CompuTrust. For the remaining 20 (5%) estates, some of this information did not match the data in CompuTrust, mostly because the estate names differed in some respect or because of typographical errors.

In addition, although CompuTrust automatically assigns sequential six-digit account “control” numbers as new estates are added, we found gaps in the 15,898 sequential account numbers assigned to estates between April 2000 and October 2008, including 410 numbers that had no corresponding assigned estates. A representative from CompuTrust told us that the identified gaps may be a result of maneuvering by KCPA staff. She stated that when CompuTrust assigns an estate a sequential number, KCPA staff, at times, manipulates and overrides that number and assigns a number of its own preference. Since it is possible to alter the account numbers and to overwrite estate names within CompuTrust without management’s knowledge, and since there is no independent log of new assigned account numbers, it is possible for staff to manipulate estate data or not enter estates at all without detection.

Furthermore, when testing the accuracy of the data entered in CompuTrust, we identified estates with duplicate account numbers. While each estate is supposed to be identified by one unique account number in CompuTrust, we found 153 estates that had more than one account number, including 147 estates with two account numbers and six estates with three account numbers. As of October 2008, there were 312 accounts relating to these 153 estates, totaling \$3.1 million. While almost all of the 153 estates had funds in one account at a time, we did identify eight estates with funds totaling \$4,331 that were in more than one account at the same time. Since there is no centralized log of the cases received or account numbers assigned, it is possible for the case to get lost or for a duplicate account number to be assigned to an already established estate. With no supervisory review and more than one account number for an estate in CompuTrust, there is a risk that information and updates may be entered in the incorrect account.

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<sup>4</sup> All estate files were not in the file room and KCPA did not have a record of estate files that should be available or even of all those that had been removed.

<sup>5</sup> Inventory includes small items of value that are stored in the vault at KCPA’s offices until they can be converted into cash for the estates, such as jewelry, collectibles, etc.

Moreover, as of October 8, 2008, we identified 35 accounts in CompuTrust with negative balances, totaling \$30,584, of which \$28,408 (93%) was in five accounts. Since only the PA and Deputy PA are authorized to sign checks on behalf of estates, negative balances should not occur. According to the SCPA Guidelines, KCPA is required to maintain a separate bank account for each estate that is valued at more than \$500. However, the office has established one master bank account, which is partitioned into Federal Deposit Insurance Corporation-insured sub-accounts for each estate. Therefore, without proper review, checks can be written and cashed on these estate sub-accounts, even if the estate itself does not have sufficient funds to cover the checks. By not using CompuTrust to monitor its estates, KCPA is not always aware of the funds held by each estate prior to making disbursements for that estate. As a result, the risk that funds may be lost or misappropriated without detection is significantly increased.

Furthermore, data in CompuTrust is not updated in a timely manner and does not reflect information reported to oversight organizations. For example, Comptroller's Directive #28 states that estates are required to be reported as "closed" on the monthly closed-estate reports after the accounts have been closed or finally settled. However, of the 523 estates that had been reported as closed on these reports in Fiscal Year 2008, 228 (44%) still had balances totaling \$2.9 million and the status of "open" in CompuTrust as of October 2008, 3 to 15 months after they had been "closed."

In our review of inventory practices, discussed in greater detail later in this report, we discovered that estate inventory, such as jewelry, which is required to be entered in CompuTrust, isn't always entered. In one inventory test, 3 (21%) of the 14 selected inventory bags were not listed on CompuTrust. The PA acknowledged that if the inventory is not entered in CompuTrust, KCPA would not know of its existence.

The data entered in CompuTrust is important to the functioning of KCPA's operations. However, the system controls are altered by users, the data is unreliable due to data entry errors and omissions, and there are no adequate controls in place to ensure that CompuTrust is reliable and secure. As a result, the effectiveness of CompuTrust as a monitoring tool is severely limited.

It is in KCPA's best interest to ensure that the system is reliable and secure so that it can be used as an effective monitoring tool and keep track of all service performed on behalf of estates. By keeping a log of the sequential account control numbers assigned to each estate, KCPA can prevent staff from bypassing the system's controls and may be able to avoid duplicate accounts from being created in CompuTrust. In addition, with adequate, independent supervisory review of data entered in CompuTrust, errors and omissions can be identified and corrected, resulting in improved data reliability. Furthermore, KCPA must ensure that it immediately creates and implements a disaster recovery plan for its computer system to minimize the risk of data loss in the event of a disaster.

### **Recommendations**

KCPA should ensure that:

4. Estate names and numbers are immediately entered into a log when assigned an account control number.

**KCPA Response:** “We have a log of estate names and numbers entered into CompuTrust and will update the list on a weekly basis.”

5. Data entered in CompuTrust is independently reviewed on a regular basis.

**KCPA Response:** KCPA officials did not address this recommendation stating that “We do not know what is intended in this recommendation and therefore cannot respond to it.”

**Auditor Comment:** Data entered into CompuTrust should be “independently” reviewed by an individual other than the person who initially entered the information into the system to ensure that data is accurate and complete.

6. Its computer system is secure, backed up nightly, and that copies of key databases are stored off-site.

**KCPA Response:** “[We] have contacted our IT consultant regarding costs of offsite storage of data. We are also contacting DoITT and will then select the best vendor for our storage needs.”

#### Failure To Report Activities, as Required

KCPA did not report all activities pertaining to its administration of estates, as required by the provisions of the SCPA as well as by Comptroller’s Directive #28. In order to provide accountability for the administration of estates, KCPA has monthly, semi-annual, and annual reporting requirements to the Surrogate Court, as well as to the State and City governments. According to §1109 of the SCPA, KCPA is required to submit the following:

- Monthly reports to the Surrogate of the county where the PA is appointed and to the Mayor and the City Comptroller stating the accounts that have been closed or finally settled, in the form prescribed by the Comptroller. (Also required by Comptroller’s Directive #28.)
- Semi-annual reports to the Surrogate of the county where the PA is appointed that list every estate administered that has not been fully distributed within two years from the date the first permanent letters of administration or letters testamentary were issued.
- An annual audit of the PA’s office by an independent CPA, to the Surrogate of the county where the PA is appointed, the Mayor and the City Comptroller, the State Attorney General, and the State Comptroller. (Also required by Comptroller’s Directive #28.)

In addition to the above reporting requirements, KCPA must submit two annual reports:  
1) a report of open estates for which permanent letters<sup>6</sup> of administration were issued to the

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<sup>6</sup> In 2008, the Surrogate Courts issued permanent letters of administration to PAs for estates valued at \$20,000 and above.

State Comptroller based upon §72.1 of the Rules and Regulations of the State of New York and 2) a year-end annual report that, with the participation of the counsel to the PA, provides information, including statistical summaries, of the number and gross value of estates under administration submitted to the Surrogate of the county, based upon §207.63 of the Uniform Rules for New York State Trial Courts.

For Fiscal Year 2008, KCPA filed its 12 monthly closed-estate reports to the City Comptroller and the 2007 annual report to the State Comptroller. However, there was no evidence to indicate that KCPA submitted either of the two semi-annual reports (June 2007 or December 2007) or the 2007 year-end annual report to the Surrogate Court. While KCPA did submit a 2008 year-end annual report to the Surrogate Court and a 2008 annual report to the State Comptroller, both were incomplete and submitted late.

While KCPA did file the required 12 monthly closed-estate reports during Fiscal Year 2008, the reports included estates that still had funds and were not yet closed on CompuTrust. As reported earlier, we found that 228 (44%) of 523 estates were reported as closed by June 30, 2008. However, more than three months later, they were still reflected as “open” in CompuTrust, with balances totaling \$2.9 million. Furthermore, as of April 2009, the closed-estate reports had not been submitted for the six months following October 2008.

Moreover, KCPA failed to complete the annual audit report for Fiscal Year 2007, and as of April 2009 had not yet begun the annual audit for Fiscal Year 2008. Since KCPA officials did not maintain a centralized file of the reports submitted, they were unable to verify the final version of each report or the dates that the reports were submitted, if at all.

Without submitting the required reports in a timely manner to the Surrogate Court and the State and City governments, the overseeing authorities lacked the information required to determine the status of estates administered by KCPA. In addition, an annual audit would help ensure that KCPA’s internal performance and operations were reviewed and corrected as needed at least once a year. The absence of timely audits may suggest that estates are not being handled efficiently and effectively by KCPA.

### **Recommendations**

KCPA should ensure that:

7. All required reports are submitted in a timely manner and that a copy of each report is maintained in a centralized office file.

***KCPA Response:*** KCPA officials agreed with this recommendation.

8. An audit of KCPA’s office by an independent certified public accountant for Fiscal Year 2008 is completed as soon as possible.

***KCPA Response:*** KCPA officials agreed with this recommendation.

## Financial Transactions Not Adequately Reviewed

KCPA management does not ensure that financial transactions related to actions undertaken on behalf of estates are adequately reviewed. As a result, monthly bank reconciliations were not performed resulting in estates having negative dollar balances, there were inadequate controls over the suspense account, and open checks were not voided in a timely fashion. As a result of these weaknesses, the risk that funds may be lost or misappropriated without detection is significantly increased.

### **Lacks Monthly Bank Account Reconciliations**

KCPA does not ensure that bank reconciliations are performed on a monthly basis, as required by §6 of Comptroller's Directive #11, which states that "reconciliations must be made monthly by persons other than those who authorize disbursements, sign checks, process cash receipts, and have accounting functions." In addition, the most recent bank reconciliation for the estate bank account that we obtained from June 2008 showed a negative difference of \$75,608, which KCPA officials had not investigated and could not explain.

The SCPA Guidelines state that "the PA shall review the records relating to the Miscellaneous Receipts Accounts on at least a semi-annual basis to assure that all estate funds, including interest, are properly allocated to the estates to which they belong, that estate funds are accounted for upon settlement of an estate, and that separate accounts are opened for estates whose total fund balance has become greater than \$500." KCPA commingled funds in its miscellaneous receipt accounts (Police Department and Nursing Home bank accounts) without keeping a current listing of dollars held for each estate or case, except for a listing in CompuTrust, which, as stated previously in this report, was unreliable. As a result, KCPA may not be able to accurately identify which estates should be credited with monthly interest from these accounts or which estates have funds that had reached the \$500 threshold and should have been transferred to a sub-account of the estate bank account.

Without monthly bank reconciliations that include explanations for differences between estate records and the bank account balances, it is possible that more funds may be disbursed from estates than they have available, resulting in estates with negative dollar balances. This is especially important since KCPA does not keep funds for large estates in separate bank accounts and does not always know what money is available for disbursements for each small estate in its miscellaneous receipt accounts.

As of October 8, 2008, we found negative dollar balances in 35 estates in CompuTrust, totaling \$30,584. The PA told us that these negative balances can be caused by a number of factors, including clerical errors, timing of deposits, and the transfer of funds from one bank to another. Despite the overall positive balances of the office's master account, to avoid negative balances from occurring in the future, the PA told us in February 2009 that he had asked the bank to advise him prior to cashing checks if the sub-account (estate) upon which they were drawn did not have sufficient funds.

In February 2009, the PA claimed that the office had “cleaned up past negatives” and that he wanted to prevent future negative balances from occurring. Upon our review of the January 31, 2009 estate bank statement, we found that while 25 estates had negative balances at the beginning of the month totaling \$224,729, 11 estates still had negative balances at the end of the month totaling \$8,800. Negative balances could have been avoided if estate balances had been kept in separate accounts, as stated in the SCPA Guidelines, or if monthly reconciliations of the accounts had been performed that included explanations for differences.

### **Inadequate Controls over KCPA Suspense Account**

KCPA does not have adequate controls over its Suspense Account. According to the SCPA Guidelines, each PA may maintain a suspense account and pay certain office expenses not funded by the PA’s budget that are “necessary for the proper functioning of the office’s operations and for the administration of estates.” The guidelines require that “the PA shall keep accurate records of all receipts and disbursements to and from the suspense account. Monthly reports of such receipts and disbursements and the present balance of the suspense account shall be supplied to the Surrogate.”

KCPA has a suspense account, from which it pays salaries and other estate-related and office expenses. During Fiscal Year 2008, the account’s check register showed a starting balance of \$219,422.42 and an ending balance of \$169,413.32. Between July 1, 2007, and June 30, 2008, the account’s register recorded a total of 1,848 transactions, including 1,118 receipts, totaling \$669,132.05 and 730 disbursements, totaling \$719,141.15. As of June 30, 2008, the account’s check register was reconciled to the account’s bank statement, with three outstanding checks totaling \$1,560 accounting for the difference.

However, when we reviewed this account’s check register, we found eight check numbers that had been used twice (different payees, dates, and amounts) and 35 missing check numbers. A KCPA official told us that while the suspense account has pre-printed checks, it is possible to manually override a check number in the account’s check register. The official did not address or explain the eight duplicate checks. He did advise us that of the 35 missing check numbers, 12 checks had been voided and 17 checks had not been voided. He had no explanation for the remaining six checks with the missing check numbers.

Moreover, KCPA does not ensure that there is an adequate segregation of duties over the administration of this suspense account. Consequently, the risk that funds may be lost or misappropriated without detection is significantly increased.

KCPA has one person who is generally responsible for administering the suspense bank account. This person is authorized to make deposits, write checks, and reconcile this account. Without a segregation of duties, the checks and balances that should be in place to identify errors are missing and the risk that funds may be lost or misappropriated without being detected is greatly increased. What is even more problematic is that the person who has been given these responsibilities is not even an employee but is a paid consultant of the KCPA, as discussed in the procurement deficiency section of this report.

According to §6.0 of Comptroller’s Directive #11 on Cash Accountability and Control “reconciliations must be made monthly by persons other than those who . . . process cash receipts . . .[and] have accounting functions, particularly when associated with recording in books of original entry.” In addition, §6.2 of Comptroller’s Directive #11 requires that “unreconciled differences between the bank balance and the book balance must be resolved within three months.”

Had KCPA officials performed monthly reconciliations and attempted to resolve the unreconciled differences, they may have been able to account for these duplicate checks and missing check numbers. Moreover, since the individual at the office who generates the checks, also maintains the check register, receives the bank statements, and reconciles the suspense account, it is apparent that there are inadequate controls and safeguards over this account that prevent KCPA from ensuring that monies are being received and disbursed appropriately. Without adequate controls and supervisory review, the risk that mistakes may go undetected and funds may be misappropriated without detection is significantly increased.

**Open Checks Are Not Voided after 180 Days**

KCPA does not ensure that checks that have not been cashed after 180 days are voided. During Fiscal Year 2008, KCPA issued 7,557 checks through CompuTrust on behalf of estates it administered, totaling \$38.6 million. As of November 2008, 6,510 checks had been cashed, 411 checks had been voided, 45 checks had stop payments, and 591 checks were still outstanding. We reviewed 3,040 (40%) of these 7,557 estate checks, totaling \$19.9 million (51%) of the \$38.6 million disbursed, and found that in all instances for which there was an actual check in the files,<sup>7</sup> the estate name, check date, and dollar amounts on the checks matched those printed in the CompuTrust check register. For reasons previously disclosed, we did not test to the hardcopy supporting estate documentation. The breakdown of the current status of the total estate checks issued and the checks we reviewed is shown in Table I, below:

**Table I**  
Estate Checks by Current Status  
 (As of November 6, 2008)

Current Status	Checks Reviewed	Checks Issued	% of Issued	\$ Reviewed (millions)	\$ Issued (millions)	% of Issued
Total	3,040	7,557	40%	\$19.8	\$38.6	51%
Cashed	2,578	6,510	39%	\$17.7	\$33.9	52%
Cancelled (Voided)	130	411	31%	\$1.0	\$2.4	43%
Stop Payment	24	45	53%	\$0.7	\$1.1	67%
Not Yet Cashed	308	591	52%	\$0.4	\$1.2	31%

<sup>7</sup> Of the 3,040 checks in our sample, we obtained and reviewed all 2,578 cashed and 130 cancelled checks, totaling \$18.7 million, except for 17 checks (two cashed and 15 canceled checks, totaling \$100,839) for which actual checks could not be found. In addition, we could not review the 24 checks that had stop payments and the 308 checks that had not yet been cashed since the actual checks were not available.

According to §4.4 (b) of Comptroller's Directive #11 on Cash Accountability and Control, "checks should state on their face that they are void after a specified period (preferably six months after dating)." We observed that "Void after 180 days" is printed on the face of all estate checks, but upon further investigation, we found that 35 checks, totaling \$226,313, of the 308 checks that had not yet been cashed as of November 6, 2008, were still open more than 180 days after they were issued. While 10 of these checks had been subsequently canceled, at least five checks that were outstanding were not cancelled in a timely manner. The remaining 25 checks, valued at \$45,681, were still outstanding more than 180 days after being issued—between 8 months (245 days) and 14 months (434 days). Furthermore, four of these open checks, valued at \$1,276, had been outstanding for more than one year. By not keeping track of outstanding checks, KCPA has inadequate controls over finances and cannot perform monthly bank reconciliations. As a result, the possibility that errors, such as sending payments to the wrong address, or misappropriation of funds may occur and not be detected is increased.

### **Recommendations**

KCPA should ensure that:

9. There is an adequate segregation of duties over the processes related to bank accounts so that transactions are independently reviewed

**KCPA Response:** "We agree . . . that it is critical for adequate internal control that duties be segregated and that accounts be reconciled."

10. Monthly bank reconciliations are performed by persons other than those who authorize disbursements, sign checks, process cash receipts, and have accounting functions so that negative balances and other discrepancies are investigated and explained.

**KCPA Response:** KCPA officials agreed with this recommendation stating that "[We] acknowledge that the KCPA has not conducted monthly bank reconciliations of the estate bank accounts. . . . if the KCPA has adequate funds it will use a temporary accountant to reconcile estate accounts, but we note that this is not a permanent solution as we do not have adequate funding to add an employee to reconcile accounts."

**Auditor Comment:** We recognize that KCPA has limited resources and is operating with a small staff. However, KCPA should try to implement other forms of control to compensate for the inability to segregate duties, such as ensuring that the reconciliation is reviewed by another individual on a periodic basis.

11. An investigation into the status of the six missing checks and eight duplicate checks cited in this report is conducted.

**KCPA Response:** KCPA officials agreed with this recommendation.

12. Checks are voided after 180 days and reissued if necessary.

**KCPA Response:** KCPA officials agreed with this recommendation.

## Inventory Is Not Adequately Tracked

KCPA is not adequately tracking or safeguarding the inventory that is brought back by investigators for safekeeping after a decedent's residence is searched for valuables. As a result, inventory belonging to estates is not identified and in some cases, is missing. According to the SCPA Guidelines, "Each PA must maintain a central record for each estate under his or her administration . . . . This master record shall enumerate all property for each estate maintained by the PA in safes, warehouses, banks and other locations." Although KCPA currently has a master list for inventory stored on site and has implemented new procedures for signing inventory in and out of the vault, we found that during Fiscal Year 2008, the office failed to safeguard inventory in its care, resulting in OCA monitoring of KCPA, which began in February 2008 after receipt of reports of missing jewelry.

According to the PA, the administration of the previous KCPA engaged the services of Premiere Asset Real Estate, Inc. (PAR), a real-estate auctioneering firm, to conduct the jewelry auction on September 19, 2007. In preparation for this auction, PAR cut the corners of the inventory bags, empty their contents into one pile, and mix the jewelry from the various estates into one pile. There was no listing or photo of what jewelry belonged in each inventory bag, thereby making it impossible to determine which items belonged to which estate. Had KCPA staff accompanied PAR during the preparation of the auction, or had there been a written or photographic record of what was in each storage bag, the inventory from each estate would have been identifiable and jewelry may have been accounted for.

Based on our testing of 14 bags of inventory maintained by KCPA on behalf of estates, we found that the inventory lists attached to the bins in the vault did not match the master inventory listing. The PA stated that inventory was "a work in progress." While we were able to find and match the inventory items contained in the 14 inventory bags we sampled in the vault to the corresponding items listed on the master listing, three of these bags were not listed in CompuTrust, thereby increasing the risk that the items may have been misplaced or stolen. When we brought this matter to the PA's attention, he acknowledged that he would not be aware of the existence of items not entered in CompuTrust.

We also found that the master inventory listing is not updated. The listing does not indicate when inventory is brought to KCPA and does not include when the inventory is sold or transferred to heirs. In addition, the master listing does not include the specific bin in the vault where the items are maintained. Of the 125 inventory bags that we attempted to locate in November 2008, we found all but 25 bags. Then, upon further investigation, we found an additional nine bags on February 25, 2009, and another nine bags on March 6, 2009. The PA provided an explanation for all but one of the remaining seven missing bags, such as the jewelry having been sold at auction or the repackaging of inventory in a new inventory bag. In addition to the above, we found an inventory bag in the vault that was not on the master listing.

All inventory items brought to KCPA should immediately be logged into the office and recorded into CompuTrust at the time that they are received by KCPA. Accurate inventory records are necessary to maintain sufficient controls over decedents' assets and to protect them against the possibility of theft. They are also essential so that KCPA is able to credit the proper

estate with the full value of its inventory and to report the correct value of the estates' worth in its reports to the Surrogate's Court and the State Comptroller. Without a log and supervisory review, it is impossible to determine whether inventory brought to KCPA is appropriately added to the master list and entered in CompuTrust, as required.

When we addressed these issues with the PA, he agreed and stated that "we need a better master list, [to know] when items came in, went out, how long they are here." He went on to say that proper inventory practices would include obtaining all valuables, creating a master list, and then updating CompuTrust.

**KCPA Response:** "The office has been taking steps to improve its inventory control system. In the summer of 2008, the office performed an inventory of the items in the vault. The list was not completely accurate and had some deficiencies, so this spring we began to redo the entire inventory in the vault. In particular, we are completing a master inventory of items in the vault including the estate, PA number, bin number where the item is kept, whether an item has been appraised and the date of the appraisal, date that the PA received the item and the number of the sealed bag containing the inventory (items are delivered in sealed bags by the police department and the investigators also put items in sealed bags). This will enable us to have an exact list of the inventory in the vault and will enable us to determine when to have items appraised and when to have items sold at auction.

### **Recommendations**

KCPA should ensure that:

13. Inventory is logged into a central log as soon as the items are brought to the office, noting, at a minimum, the date received, estate number, inventory bag number, and bin in the vault in which inventory will be maintained.

**KCPA Response:** "We are completing a master inventory of items in the vault including the estate, PA number, bin number where the item is kept, whether an item has been appraised and the date of the appraisal, date that the PA received the item and the number of the sealed bag containing the inventory."

14. A description or photo of the contents of each inventory bag is maintained.

**KCPA Response:** KCPA officials did not address this recommendation.

15. Inventory bag numbers, along with a listing of the contents, should be entered in CompuTrust.

**KCPA Response:** KCPA officials did not address this recommendation.

## Procurement Deficiencies

KCPA is not adhering to procurement guidelines in the selection and use of outside vendors. SCPA Guidelines allow a PA to purchase services from outside vendors “whenever the PA determines that the services . . . are necessary to properly administer the estate.” In using the services of outside vendors, KCPA must adhere to restrictions and specific requirements, such as advertising for vendors on an annual basis and maintaining an updated, preferred-vendor listing. Furthermore, to ensure that fees paid to the vendors are fair and reasonable, KCPA is required to document how its vendors were selected. KCPA is also required to have signed contracts and also to issue IRS-required 1099-MISC forms to vendors.<sup>8</sup>

KCPA’s procurement deficiencies for the three vendors that we reviewed are summarized in Table II, below:

**Table II**  
Procurement Deficiencies

Vendor	\$ Paid	Preferred Vendor	Evidence of How Selected	Contract	1099 Issued
#1	\$108,158	No	No	No	N/A
#2	\$62,484	No	Yes	Yes*	N/A
#3	\$45,065	No	No	No	No

\*Although there is a contract, which started October 1, 2006, that is signed by the former PA, the contract continues indefinitely without an end date.

Vendor #1 was paid \$29,790 for operating three jewelry and household item auctions and \$78,368 for one real estate auction. However, KCPA had no contract or evidence of how the vendor’s fees were determined. This vendor had recently been incorporated in New York State in February 2007, operated the KCPA auctions from September through December 2007 and by October 2008 could no longer be found (phones were disconnected).

Vendor #2, paid \$62,484, told us that he started working with KCPA in November 2005, and that his most recent contract started on October 1, 2006, but had no end date. This vendor has been registered as a professional corporation with New York State since November 2004 and provides accounting services to KCPA as a paid consultant. However, the vendor has a desk and office space on site, generally works in this office five days a week, and supervises an employee of KCPA. This vendor is authorized to make deposits in bank accounts, is in charge of the suspense account, and is responsible for bank reconciliations. His other responsibilities also include corresponding with tax authorities. Moreover, he is listed as an employee on a KCPA insurance policy. By virtue of his work and responsibilities at KCPA, this vendor may be

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<sup>8</sup> The IRS tax code states, “Some payments are not to be reported on Form 1099 . . . generally, payments to a corporation.” Vendors #1 and #2 are corporations in New York State. Therefore, the KCPA was not required to issue 1099s to these vendors.

considered an employee according to IRS standards<sup>9</sup>. When we brought this to the PA's attention, he acknowledged that it may be an issue. In addition, as discussed earlier regarding inadequate segregation of duties, KCPA should assign some of the responsibilities stated above to another staff member.

Vendor #3, an agency, was paid \$45,065 for providing temporary office personnel as well as in placement fees for some of its current employees, including the employee later accused of stealing. However, KCPA had no contract or evidence of how the vendor was selected or how the hourly rates were determined. In addition, this agency was not a corporation and should have received a 1099.

Our review also found that not only were there no contracts for two of these three vendors, but KCPA officials were unable to find the entire file of 1099s issued for 2007. As a result, we were unable to determine whether KCPA issued 1099 forms to all vendors that required them. By failing to issue 1099 forms to all vendors requiring them, KCPA may be allowing the vendors to understate their income to the government and avoid paying taxes on the excluded amounts.

Without adequate documentation of how vendors are selected and of detailed specifications of current contracts, KCPA cannot ensure the integrity of the vendor selection process, nor can it ensure that the fees paid are fair and reasonable. Failure to follow proper procurement guidelines makes the selection process susceptible to fraud, waste, and abuse. Moreover, as a result of the high staff turnover at KCPA, it is all the more essential to retain this documentation in centralized office files so that all future employees of the KCPA can easily find the information.

### **Recommendation**

16. KCPA should ensure that the office documents all pertinent information regarding vendors, including how vendors are selected, as well as evidence of the 1099 forms issued to its vendors, and that it maintains current contracts in centralized office files.

***KCPA Response:*** KCPA officials agreed with this recommendation.

### **Inadequate Documentation of Real Estate Auction**

KCPA does not maintain adequate documentation of its real estate auctions. In the course of administering estates, KCPA receives jewelry, household goods, and real estate, which the office holds until it is released to family or converted into cash for the estates. According to SCPA §1123, the PA is empowered to sell personal property of the decedent at public auction. SCPA Guidelines further specify that inventory records should account for sold and unsold items. The PA is to select the highest of a minimum of three bids, and bidders cannot be related, employed, or associated with the PA or employees of the PA.

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<sup>9</sup> IRS standards require an employer to correctly determine whether the individuals providing services are employees or independent contractors based on the degree of control and independence a worker has in completing their work.

KCPA held one real estate auction on December 5, 2007, run by its jewelry auctioneer PAR, in which nine properties were sold. Record keeping for the auction was inadequate in that there was no sign-in sheet for bidders to document who had attended the auction or any documents to keep track of the of the first and second winning bidders on each property. Records also lacked the closing document for a property sold during the auction. KCPA did have signed terms and conditions agreements from potential bidders, but in the absence of a sign-in sheet, we could not verify that all of the potential bidders signed these agreements.

In reviewing the financial transactions associated with the nine properties sold, we found that in all but two cases, the proceeds from the sales were credited to each estate in a timely manner. In the case of one estate, the escrow payments for two properties were credited to the estate incorrectly, resulting in a net \$5,403.95 that the PA held in escrow for an additional seven months before crediting it to the estate. In the case of another estate, we could not verify the details of the property sale and its associated financial transactions because the closing document could not be found in its estate file.

In addition, we identified a property from the auction whose sale appeared to be irregular. From the documentation obtained, we determined that the party who closed on this property used a \$1.3 million check from a second party's bank account at closing and then "flipped" the property that same day to a third party for a profit of \$44,313. According to the PA, this type of transaction is possible and is allowed since people may purchase properties with the intention to resell them.

However, we found no evidence to indicate that the party who closed on the property was present at the auction, while there was evidence that the third party who ultimately purchased the property was present at the auction. Without adequate documentation, including a sign-in sheet and records of first and second bidders, it is not possible to ensure that auctions are run appropriately and that properties are sold to qualified bidders.

In addition, the estates paid "commissions" totaling \$69,893 (1.2 percent of the \$5.9 million in total sales) to PAR, the auctioneer of this real estate auction. However, as mentioned in the previous section, the PA was not able to find a specific agreement or contract with PAR in the office files detailing how the fees were determined.

In the most recent real estate auction held in December 2008, KCPA operated the auction itself, thus avoiding the substantial fees paid to an outside vendor. In addition, it had a sign-in sheet for all potential bidders, which may also benefit KCPA in promoting future auctions.

**KCPA Response:** "We do not contest the criticisms of the 2007 auction, but disagree with this statement [that KCPA does not maintain adequate documentation of its real estate auctions] because our December 2008 and May 2009 auctions have sufficient documentation."

**Auditor Comment:** We make no comment regarding the December 2008 and May 2009 auctions as our analysis did not include the auctions conducted in Fiscal Year 2009.

## **Recommendations**

KCPA should ensure that:

17. Sign-in sheets for auctions are maintained along with records of the first and second winning bidders on each property.
18. Closing documents for each property are filed in the appropriate estate file.

***KCPA Response:*** KCPA officials agreed with both of these recommendations stating “We do not contest the criticisms of the 2007 auction.”

Office of the  
**PUBLIC**  
**ADMINISTRATOR**  
of Kings County



Bruce L. Stein, Esq.  
*Commissioner*

Nicole N. Austin, MA  
*Deputy Commissioner*

[www.nyc.gov/kcpa](http://www.nyc.gov/kcpa)

June 22, 2009

Mr. John Graham  
Deputy Comptroller  
Audits, Accountancy & Contracts  
The City of New York  
Office of The Comptroller  
Executive Offices  
1 Centre Street  
New York, N.Y. 10007-2341

Dear Mr. Graham:

Annexed is the response of The Kings County Public Administrator to the Draft Report of the Comptroller.

Sincerely,

Bruce L. Stein, Esq.  
Public Administrator

*Office of the  
PUBLIC  
ADMINISTRATOR  
of Kings County*



Bruce L. Stein, Esq.  
*Commissioner*

Nicole N. Austin, MA  
*Deputy Commissioner*

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**RESPONSE OF THE KINGS COUNTY PUBLIC ADMINISTRATOR  
TO THE JUNE 10, 2009 AUDIT REPORT OF THE OFFICE OF THE  
COMPTROLLER  
ON THE ESTATE MANAGEMENT PRACTICES  
OF THE KINGS COUNTY PUBLIC ADMINISTRATOR**

The Kings County Public Administrator responds to the Audit Report of the City Comptroller (hereinafter the "Report") as follows:

- 1) On page 1 of the Report, it says that "Consequently we cannot be assured that the estate distributions that the KCPA has made were appropriate." We note that the Report does not document any instance of improper or incorrect estate distributions. Further, before estate funds are distributed a comprehensive accounting is prepared by counsel to the Public Administrator that lists each and every receipt, all interest and all estate expenses. The Public Administrator thoroughly reviews the accounting and examines in detail the ledger in CompuTrust to make sure that the accounting is accurate and only then is the accounting submitted to the Surrogate's Court. The accounting is supplemented and the Court approves the accounting and issues a Decree on distribution of the estate.
- 2) Page 8 of the Report says that KCPA staff had no record of estate files that had been removed from the office. During the course of the audit, the office was also being audited by OCA investigators, who took a substantial amount of files out of the office. Those files have now been returned and files cannot be removed out of the office except if counsel needs a file on an urgent basis. In the event that we allow counsel to remove a file, we keep a record of the removal so that we know which counsel has any file that is not in the office.
- 3) Page 9 of the Report refers to a conversation with the KCPA's accountant who indicated that in instances where a separate account was created for a guardianship, the information would not appear in CompuTrust. This is correct but the KCPA does know the identity of each account where it is holding funds for a distributee. In this regard, the Public Administrator opens all mail, including bank statements, so he is aware of the special accounts created by the Public Administrator pursuant to Court decree and the office escrow accounts. Additionally, the office is creating a list of such accounts so that the Public Administrator and Deputy Public Administrator are aware of all such accounts at all times.

RESPONSE OF THE KINGS COUNTY PUBLIC ADMINISTRATOR

- 4) Regarding "Recommendation 1", we have been working on a series of measures to identify and track all matters in the office: A) we have a list of every matter that is entered in our CompuTrust data base with the status code for the matter; B) the office investigators keep a log of matters they are working on and update the status of matters on a weekly basis. The investigators discuss open matters weekly and the Public Administrator and Deputy Public Administrator periodically sit in on meetings and receive a copy of the investigators' log, so they can instruct the investigators about steps that should be taken; C) the Public Administrator keeps a record of all papers signed by him for delivery to counsel or given to case managers, including requests for death certificates, requests for tax transcripts, asset inquiry letters and letters seeking collection of assets, so the Public Administrator can track the collection efforts being made in the office; D) the Public Administrator's log book also contains a list of Statements of Death filed by guardians so the office has a list of guardianship matters that may develop into estates; E) the log also lists Petitions for Letters of Administration, Petitions for Settlement of Account and Notices of Settlement of Decrees and other court filings, so that the office can track the status of all papers submitted to the Court; F) we have been creating a list of matters currently being worked on, with the estate, PA number, counsel and status of the matter. We intend over time for this list to include every matter being worked on in the office and will therefore have a firm handle on every matter, including matters turned over to counsel for preparation of petitions for letters of administration and informatory accounts; G) we developed a spreadsheet showing every estate where over \$500 was received from a nursing home on behalf of a decedent, listing the decedent, the PA number, the amount received and next of kin information. In April, 2009 we began sending letters to all next of kin to alert them of the funds being held and have received correspondence from a number of individuals who had obtained letters to administer the decedent's estate or had paid funeral bills. If we do not get this information from kin, we will turn over the matters to counsel for preparation of informatory accounts.
- 5) Regarding "Recommendation 2", we are developing written policies and procedures.
- 6) Regarding "Recommendation 3", we agree that a summary sheet of documents in a file would be useful. However, it is impossible to start making summary sheets from scratch. Also, the recommendation is impractical given the small staff size and the huge volume of papers that need to be filed on a constant basis.
- 7) Page 13 of the Report says that "The PA acknowledged that if the inventory is not entered in CompuTrust, KCPA would not know of its existence." The office has been taking steps to improve its inventory control system. In the summer of 2008, the office performed an inventory of the items in the vault. The list was not completely accurate and had some deficiencies, so this spring we began to redo the entire inventory in the vault. In particular, we are completing a master inventory of items in the vault including the estate, PA number, bin number where the item is kept, whether an item has been appraised and the date of the appraisal, date that the PA received the item and the number of the sealed bag containing the inventory (items are delivered in

RESPONSE OF THE KINGS COUNTY PUBLIC ADMINISTRATOR

sealed bags by the police department and the investigators also put items in sealed bags). This will enable us to have an exact list of the inventory in the vault and will enable us to determine when to have items appraised and when to have items sold at auction.

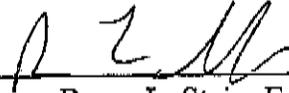
- 8) Regarding "Recommendation 4", we have a log of estate names and numbers entered into CompuTrust and will update the list on a weekly basis.
- 9) Regarding "Recommendation 5", we do not know what is intended in this recommendation and therefore cannot respond to it.
- 10) We agree with "Recommendation 6" and have contacted our IT consultant regarding costs of off site storage of data. We are also contacting DoITT and will then select the best vendor for our storage needs.
- 11) Page 16 of the Report says that the KCPA commingled funds in its Police and Nursing Home accounts, without keeping a current listing of dollars held for each estate, except for CompuTrust. The KCPA in fact updates interest in these accounts on a monthly basis and can print out a list of the amounts being held for each estate in these accounts.
- 12) Regarding Recommendations "7", "8", "11", "12" and "16", we agree with the recommendations.
- 13) Regarding recommendations "9" and "10", we are in complete agreement with the Comptroller that there is no segregation of duties in connection with the Suspense account and acknowledge that the KCPA has not conducted monthly bank reconciliations of the estate bank accounts. Also, we agree that the accountant who manages the suspense account has been performing the bank reconciliation of the suspense account. We agree also that it is critical for adequate internal control that duties be segregated and that accounts be reconciled. However, it is easy to criticize these problems, but the Comptroller does not provide an explanation for curing the problems other than stating that the KCPA should assign some of the accountant's responsibilities to another staff member. This facile solution is not practical as the KCPA is seriously understaffed and does not have anyone with free time to take over part of the accountant's job functions. Nor does anyone on staff have the background to take over his duties.

It is clear that the KCPA needs additional funding from the City so that a full charge bookkeeper can be hired to take over various activities presently being performed by the accountant, thereby enabling the segregation of duties and enabling the accountant to have the time to reconcile estate accounts. Also, if a bookkeeper kept the suspense account books, then there could be segregation of duties with the accountant reconciling the accounts. In the interim, if the KCPA has adequate funds it will use a temporary accountant to reconcile estate accounts, but we note that this is not a permanent solution as we do not have adequate funding to add an employee to reconcile accounts.

RESPONSE OF THE KINGS COUNTY PUBLIC ADMINISTRATOR

- 10) Regarding the recommendations on jewelry inventory, we have taken steps to correct deficiencies in the jewelry inventory as discussed in paragraph 7 above.
- 11) Page 22 of the Report says that "KCPA does not maintain adequate documentation of its real estate auctions." We do not contest the criticisms of the 2007 auction, but disagree with this statement because our December 2008 and May 2009 auctions have sufficient documentation.

Dated this 22<sup>nd</sup> day of June, 2009



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Bruce L. Stein, Esq.  
Public Administrator