

AUDIT REPORT

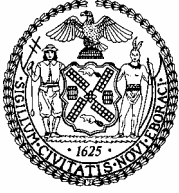


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Operating Practices Of the Department of Finance's Office of The Sheriff Relating to Funds Obtained From the Enforcement of Civil Judgments

ME05-065A

June 21, 2005



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 examined the adequacy of certain operating practices of the Department of Finance's (DOF's) Office of the Sheriff pertaining to the enforcement of monetary civil judgments.

The results of our audit, which are presented in this report, have been discussed with DOF officials, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

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 or telephone my office at 212-669-3747

Very truly yours,

A handwritten signature in black ink that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.
WCT/fh

Report: ME05-065A
Filed: June 21, 2005

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

**Audit Report on the Operating Practices of the
Department of Finance's Office of the Sheriff
Relating to Funds Obtained from the
Enforcement of Civil Judgments**

ME05-065A

AUDIT REPORT IN BRIEF

This audit determined the adequacy of certain operating practices pertaining to the enforcement of monetary civil judgments by the Office of the Sheriff (Sheriff's Office). The Sheriff's Office merged with the Department of Finance (DOF) in 1995. The Sheriff's Office maintains an office in each of the five counties within the City to enforce civil judgments on behalf of private individuals, corporations, organizations, and City agencies seeking payment from debtors. During Fiscal Year 2004, the Sheriff's Office received approximately 3,000 requests to collect funds to satisfy civil judgments.

Audit Findings and Conclusions

The operating practices of the Sheriff's Office relating to the funds it obtains from the enforcement of monetary civil judgments need improvement. While the Sheriff's Office generally initiated enforcement action and disbursed funds to plaintiffs in a timely manner and generally charged appropriate fees, the audit found certain weaknesses in the operating practices of the Sheriff's Office in relation to its enforcement of civil judgments. The audit identified data reliability, functionality, and integration concerns relating to the Sheriff's Office Case Tracking System, which monitors the execution of court orders. In addition, some case files were missing, and there was limited evidence in many other case files that there was an adequate supervisory review of the actions taken to enforce civil judgments. Further, the Sheriff's Office did not have a consistent procedure for calculating interest charges on civil judgments.

Audit Recommendations

To address these issues, the audit recommended that the Sheriff's Office:

- Review the capabilities and usage of its Case Tracking System, especially in its Brooklyn office, to promote data reliability and an effective monitoring of civil judgment enforcement actions.
- Consider the development of an integrated, centrally administered case tracking system.
- Prepare a written procedure requiring a supervisory review, approval, and signature before each case is closed.
- Ensure that each case file is properly stored and readily available.
- Prepare a written procedure explaining the method to be used in the calculation of interest charges in money judgment cases.

DOF Response

On May 24, 2005, we submitted a draft report to DOF and Sheriff's Office officials with a request for comments. We received a written response from DOF and Sheriff's Office officials on June 7, 2005. In their response, DOF and Sheriff's Office officials generally agreed with the audit's findings and recommendations.

The full text of the DOF and Sheriff's Office response is included as an addendum to this report.

INTRODUCTION

Background

The Office of the Sheriff enforces civil judgments and a variety of other court orders. It enforces civil judgments through property executions and executes other court orders through such actions as evictions and serving summonses and subpoenas. The Sheriff's Office merged with the Department of Finance in 1995.

The Sheriff's Office enforces civil judgments on behalf of private individuals, corporations, organizations, and City agencies seeking payment from debtors. When creditors seek its assistance in enforcing the civil judgments the courts have awarded, they must file an enforcement request with the Sheriff's Office and pay a filing fee. The Sheriff's Office must obtain an order of execution from the court to proceed with the property execution.

A property execution involves such action as levying a debtor's bank account or seizing a debtor's physical assets to satisfy a civil judgment. The Sheriff's Office collects money obtained through property executions and then disburses it to the creditor after deducting various charges, such as auction-related expenses and inventory, levy, notice, mileage, and poundage fees. The poundage fee amounts to five percent of the funds that the Sheriff's Office collects through the enforcement of a civil judgment.

To enforce civil judgments, the Sheriff's Office maintains offices in each of the five counties within the City. During Fiscal Year 2004, the Sheriff's Office received approximately 3,000 requests to collect funds to satisfy civil judgments.

Objective

The audit objective was to determine the adequacy of certain operating practices of the Sheriff's Office relating to the enforcement of monetary civil judgments.

Scope and Methodology

This audit covered the period from July 1, 2003 to June 30, 2004 (Fiscal Year 2004).

To gain an understanding of the operations of the Sheriff's Office, we reviewed pertinent New York State Civil Practice Laws and Rules (CPLR) and the written procedures of the Sheriff's Office; interviewed officials of the Sheriff's Office; visited its civil judgment enforcement units in each county in the City; and reviewed files showing its enforcement efforts on selected cases.

To conduct our testing, we obtained from the Sheriff's Office a list of the money judgment cases filed for enforcement during Fiscal Year 2004. We randomly selected for review a sample of 50 of the 2,946 money judgment cases on this list. The case list we received omitted 7,222 cases that the Sheriff's Office claimed were non-money judgment cases. Case numbers are assigned by the Case Tracking System (CTS) upon the filing of requests for the enforcement

of court orders. The case numbers are assigned sequentially irrespective of the type of court order involved. In order to verify that the case list the Sheriff's Office provided us included all of the money judgment cases filed in Fiscal Year 2004, we randomly selected 50 of the 7,222 omitted case numbers, reviewed the corresponding case files, and determined whether these cases were in fact non-money judgment cases.

We reviewed the available records for the 50 money judgment cases in our sample to determine whether the Sheriff's Office served executions on debtors and distributed funds to plaintiffs in a timely manner; whether there was adequate supervisory review of the civil judgment enforcement actions taken; and whether the Sheriff's Office charged appropriate fees and interest in each case. In addition, we reviewed the contract file maintained by the DOF Chief Contracting Officer to determine whether the procurement of auctioneering services used by the Sheriff's Office followed Procurement Policy Board rules.

The results of the above tests, while not statistically projected to their respective populations, provide a reasonable basis for us to assess the adequacy of certain operating practices of the Sheriff's Office relating to the enforcement of monetary civil judgments.

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

Discussion of Audit Results

The matters covered in this report were discussed with DOF and Sheriff's Office officials during and at the conclusion of this audit. A preliminary draft report was sent to DOF and Sheriff's Office officials on April 27, 2005, and was discussed at an exit conference held on May 9, 2005. On May 24, 2005, we submitted this draft report to DOF and Sheriff's Office officials with a request for comments. We received a written response from DOF and Sheriff's Office officials on June 7, 2005. In their response, DOF and Sheriff's Office officials generally agreed with our findings and recommendations. They stated that "the audit and its constructive recommendations are helpful to our continuing efforts to improve operations in this area."

The full text of the DOF and Sheriff's Office response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The operating practices of the Sheriff's Office relating to the funds it obtains from the enforcement of monetary civil judgments need improvement. While the Sheriff's Office generally initiated enforcement action and disbursed funds to plaintiffs in a timely manner and generally charged appropriate fees, the audit found certain weaknesses in the operating practices of the Sheriff's Office in relation to its enforcement of civil judgments. The audit identified data reliability, functionality, and integration concerns relating to the Sheriff's Office Case Tracking System, which monitors the execution of court orders. In addition, some case files were missing, and there was limited evidence in many other case files that there was an adequate supervisory review of the actions taken to enforce civil judgments. Further, the Sheriff's Office did not have a consistent procedure for calculating interest charges on civil judgments.

Data Reliability, Functionality, and Integration Concerns Relating to the Sheriff's Office Case Tracking System

In terms of data reliability, the Sheriff's Office Case Tracking System either has weaknesses or is not being properly utilized. We did not conduct a technical review of the features of the Case Tracking System. However, we became concerned about the reliability of the system's data when it took the Sheriff's Office six weeks to generate a CTS list of the money judgment cases filed for enforcement in the City in Fiscal Year 2004. The list was provided one borough at a time during this six-week period, with the last list coming from the Sheriff's Manhattan office. Officials of the Sheriff's Office stated that problems with the CTS database caused the delay. For example, they stated that when they checked the list, they found some closed cases that had somehow become open again. They had to review each of these cases and close them again. The CTS list, which identified 2,946 money judgment cases, also raised concerns because in 32 instances (relating to each borough except the Bronx) the list had more than one entry for the same case number. For some of the multiple entries, different creditors were identified. Officials of the Sheriff's Office stated that the multiple listings and different creditor names for the same case number were the result of data-entry errors.

Case numbers are assigned upon the filing of requests for the enforcement of court orders. The case numbers are assigned sequentially irrespective of the type of court order involved. The list we received omitted 7,222 case numbers that the Sheriff's Office claimed were non-money judgment cases.

In order to verify that the case list of the Sheriff's Office included all of the money judgment cases filed in Fiscal Year 2004, we randomly selected 50 of the 7,222 omitted case numbers, reviewed the corresponding case files, and determined whether these cases were in fact non-money judgment cases. Our review of the files corresponding to the 38 Manhattan, Queens, Staten Island, and Bronx cases in our sample showed that these cases were in fact non-money judgment cases.

However, for the 12 Brooklyn cases in our sample, two cases were actually money judgment cases that should have been included on the money judgment case list, and three cases

could not be found by the Brooklyn office. Officials told us that the CTS system is unreliable and occasionally skips numbers when assigning case numbers. They claimed that this is what happened for the three missing cases. They stated that these three cases were in a gap of 208 numbers skipped by CTS. As a result of these discrepancies, we expanded our review in the Brooklyn office and randomly selected an additional 18 case numbers omitted from the money judgment case list. Three of these 18 cases were also money judgment cases that should have been on the money judgment list. In total, five of the 30 Brooklyn case numbers omitted from the money judgment case list were in fact money judgment cases that should have been on the list, and three of the omitted numbers were skipped by CTS and did not represent actual cases.

Because of the above data reliability concerns, we concluded that the CTS-generated list of money judgment cases was unreliable, especially as it related to the Sheriff's Brooklyn office. Furthermore, since the Sheriff's Office uses CTS to generate monthly performance reports, these reports may also be unreliable.

In terms of the system's functionality, either the system has limited capabilities or it is not being fully utilized. While the system generates a printout that provides basic information about the case, most case processing information is handwritten onto forms in the case files. For example, information on the steps that were taken to enforce a civil judgment is handwritten onto a "case card." Information on the amount of funds collected and the calculation of interest and fees is handwritten onto the Deputy Sheriff's Return and Disbursement Voucher.

In terms of system integration, each of the Sheriff's county offices maintains its own CTS system. The five systems are not integrated. While the CTS system in each county office is basically the same, Sheriff's Office officials explained that the county office CTS systems have been upgraded at different times and, as a result, have occasionally had different capabilities. An integrated system could be upgraded more easily because the upgrade could be done centrally. Such upgrades would help ensure that each county office system has the same capabilities and controls. An integrated system with a central database would also facilitate central office monitoring of county offices' civil judgment enforcement efforts.

Sheriff's Office officials claim that the CTS system in each county office must be separate because it must implement a priority system based on the dates the requests for enforcement were filed in the county office. However, an integrated system could allow for the creation of five distinct enforcement priority lists within a uniform, centrally administered system.

The Sheriff's Office Case Tracking System either has limited capabilities or is not being properly or fully utilized. In addition, the lack of system integration makes system upgrades and monitoring more difficult.

Recommendations

1. The Sheriff's Office should review the capabilities and usage of its Case Tracking System, especially in its Brooklyn office, to promote data reliability and an effective monitoring of civil judgment enforcement actions.

DOF Response: "The New York City Department of Finance Office of the Sheriff (Sheriff) is currently exploring various options to determine how it can upgrade and/or replace the case tracking system currently utilized by the Sheriff county offices."

2. The Sheriff's Office should consider the development of an integrated, centrally administered case tracking system.

DOF Response: "The Department agrees with this recommendation and believes that an integrated, centrally administered case tracking system will better meet the operational needs of the Sheriff."

Supervisory Review of Enforcement

Actions Was Inadequate

The supervisory review of the Sheriff's Office's civil judgment enforcement actions was inadequate. The Sheriff's Office was unable to find three of the 50 money judgment cases in our sample. Our review of the 47 cases for which records were available revealed that 29 had no evidence of supervisory review.

According to Sheriff's Office officials, before a case is closed, a supervisor must review and approve the enforcement actions taken by a deputy sheriff to enforce the civil judgment. This approval should be indicated by the supervisor signing the case card, which shows the actions taken to enforce a judgment. When judgments are satisfied, the approval should also be indicated on the Deputy Sheriff's Return and Disbursement Voucher, which shows funds collected and disbursed. However, the Sheriff's Office does not have a written procedure on supervisory reviews. In addition, while the Deputy Sheriff's Return and Disbursement Voucher requires an "Approved By" signature, the case card does not.

For the 47 money judgment cases in our sample for which records were available, only 14 were fully or partially satisfied. For one of the 14 cases, there was no evidence of a supervisory review of the case card or the Deputy Sheriff's Return and Disbursement Voucher. The remaining 33 cases were unsatisfied despite enforcement efforts by the Sheriff's Office. There was no evidence of a supervisory review of the case cards for 28 of these 33 cases. In some instances it was unclear whether sufficient efforts had been taken before the case was closed.

In one case, an unsatisfied money judgment for about \$3,000, the deputy sheriff wrote on the case card that no execution order was received from the court. There is no indication in the case file that the Sheriff's Office had followed up with the court or that a supervisor reviewed the case before it was closed. In a second case, a Parking Violations Bureau judgment, the case

card, which was not signed by the deputy sheriff who handled the case, was simply stamped “withdrawn,” without any explanation or any evidence of supervisory review.

Without proper supervisory review, the Sheriff’s Office cannot be assured that all the necessary steps to successfully enforce a civil judgment are taken before closing an unsatisfied money judgment case.

Recommendations

3. The Sheriff’s Office should prepare a written procedure requiring a supervisory review, approval, and signature before each case is closed.

DOF Response: “The supervisors in the Sheriff county offices were required during the period of time covered by this audit to review and approve cases and sign-off on each case before closure. All cases were submitted to the supervisors for this review process. In some instances the supervisor did not actually sign-off on the case closures. This does not mean that the cases were not actually reviewed by the supervisor before they were closed. The supervisors in the Sheriff county offices are also currently required to review all cases prior to closure. The Sheriff issued written case closure procedures to all county offices on May 3, 2005.”

Auditors’ Comment: In its response, DOF expressed concerns about a case example that we presented in the preliminary draft report relating to this finding and recommendation. However, we replaced this example with a different example prior to the issuance of the draft report.

4. The Sheriff’s Office should ensure that each case file is properly stored and readily available.

DOF Response: “The Sheriff county offices have had problems in the past with the proper storage of cases. These problems are attributable to the prior usage of temporary workers whose job skills were not adequate to the task. City employees assigned to the Sheriff county offices who are familiar with the case filing procedures currently perform all case filing.”

Sheriff’s Office Did Not Ensure Consistent Interest Calculations

The Sheriff’s Office did not ensure that a consistent procedure was followed for calculating interest charges on judgments. It was able to collect funds from judgment debtors for 14 of the 47 cases in our sample for which records were available. Nine of the 14 case judgments were fully satisfied and five were partially satisfied. Interest was not calculated on the five case judgments that were partially satisfied because an interest payment is only pursued if the principal amount of the judgment is fully paid. Due to complexities relating to the calculation of interest in fully satisfied money judgment cases, a written procedure is necessary

to help ensure that a consistent method is followed. However, the Sheriff's Office has no such written procedure.

CPLR §5003 states that "every order directing the payment of money which has been docketed as a judgment shall bear interest from the date of such docketing." Further, CPLR §5004 states that "interest shall be at the rate of nine per centum per annum." The Sheriff's Office must calculate interest from the date of the docketing of the judgment to the date of payment.

Per CPLR §5232(a), a Sheriff's levy on a defendant's bank account is valid for 90 days. Because the Sheriff's Office does not know in advance how long it will take the bank to pay, a deputy sheriff, when serving the levy, routinely adds additional interest to the amount due to cover the additional time the bank will take to comply. This complexity can lead to inconsistencies in the calculation of interest. For example, in one of the nine cases in our sample in which interest was charged, the Sheriff's Office assumed, in calculating the interest charge, that the bank would pay by the following month, but the bank actually took the full three months to pay. In another of these cases, the Sheriff's Office assumed, this time correctly, that the bank would take the full three months to pay. There is also the complexity of determining the interest that should be charged when the number of months between the docketing of the judgment and the time of payment includes a fraction of a month (e.g., six and one-half months). Although the Case Tracking System calculates interest charges, Sheriff's Office officials told us—and our review of the case files indicated—that they generally do not rely on this system for interest calculations.

Because of the complexities noted above, a written procedure on the calculation of interest in money judgment cases is needed to help ensure consistency. Consistency will promote fairness for both plaintiffs and defendants in the awarding and assessment of interest payments in money judgment cases.

Recommendation

5. The Sheriff's Office should prepare a written procedure explaining the method to be used in the calculation of interest charges in money judgment cases.

DOF Response: "The Sheriff issued written interest calculation procedures to all county offices on May 25, 2005."



**FINANCE
NEW • YORK**
MARTHA E. STARK
COMMISSIONER

BY FAX AND HAND-DELIVERY

June 7, 2005

Mr. Greg Brooks
Deputy Comptroller
Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

**Re: Audit # ME-05-065A
Draft Report Audit on the Operating Practices of the Department of
Finance's Office of the Sheriff Relating to Funds Obtained From the
Enforcement of Civil Judgments**

Dear Mr. Brooks:

This letter is the New York City Department of Finance (Finance) response to the City of New York Office of the Comptroller (Comptroller) Draft Audit Report on the Operating Practices of the Department of Finance Office of the Sheriff Relating to Funds Obtained from the Enforcement of Civil Judgments.

Thank you for your audit recommendations. The audit and its constructive recommendations are helpful to our continuing efforts to improve operations in this area. We also appreciate the audit's acknowledgement that "the Sheriff's Office generally initiated enforcement actions and disbursed funds to plaintiffs in a timely manner and generally charged appropriate fees..."

The draft report asks the Department of Finance's Sheriff's Office to implement five (5) recommendations. Below are the recommendations made in the draft report and our responses:

- 1. Review the capabilities and usage of its Case Tracking System, especially in its Brooklyn office, to promote data reliability and an effective monitoring of civil judgment enforcement actions.**

The New York City Department of Finance Office of the Sheriff (Sheriff) is currently exploring various options to determine how it can upgrade and/or replace the case tracking system currently utilized by the Sheriff county offices.

2. Consider the development of an integrated, centrally administered case tracking system.

The Department agrees with this recommendation and believes that an integrated, centrally administered case tracking system will better meet the operational needs of the Sheriff.

3. Prepare a written procedure requiring a supervisory review, approval, and signature before each case is closed.

The supervisors in the Sheriff county offices were required during the period of time covered by this audit to review and approve cases and sign-off on each case before closure. All cases were submitted to the supervisors for this review process. In some instances the supervisor did not actually sign-off on the case closures. This does not mean that the cases were not actually reviewed by the supervisor before they were closed. The supervisors in the Sheriff county offices are also currently required to review all cases prior to closure.

The Sheriff issued written case closure procedures to all county offices on May 3, 2005. The procedure is as follows:

“Lieutenants are required to initial the case card for each case after it is closed. The initials are to be placed on the office return date line and the date you are approving the closure of the case must also be placed on the office return date line.”

On page 7, under Supervisory Review of Enforcement Actions, the Audit states “In one case an unsatisfied money judgment for several million dollars, the deputy sheriff wrote on the case card that no letter was ever received from the bank upon which a levy was served. There is no indication in the case file that the Sheriff’s Office had followed up with the bank or that a supervisor had reviewed the case before it was closed.”

Your representatives at the exit conference provided the case number for this case (#M2003002353) upon the request of representatives of Finance (after the conference). The Sheriff’s Office reviewed the case file and determined that the case was in fact properly closed. The bank served an execution with notice to garnishee in this case and advised the Sheriff in writing that they did not have an account in the name of the judgment debtor. The Sheriff performed the service requested by the filing party. A copy of the letter from the bank is in the case file.

4. Ensure that each case is properly stored and readily available.

The Sheriff county offices have had problems in the past with the proper storage of cases. These problems are attributable to the prior usage of temporary workers whose job skills were not adequate to the task. City employees assigned to the Sheriff county offices who are familiar with the case filing procedures currently perform all case filing.

5. Prepare a written procedure explaining the method to be used in the calculation of interest charges in money judgment cases.

The Sheriff issued written interest calculation procedures to all county offices on May 25, 2005. The procedure is as follows:

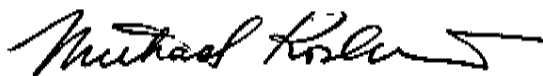
"Interest Calculation Procedures

Two (2) months interest will be added from the date the execution is received by the Department of Finance's Office of the Sheriff. This interest calculation is subject to the review and discretion of supervisory personnel."

We wish to thank you for your efforts, as they contribute to the Department of Finance's incentive to continue with its plans to improve performance in the Sheriff's Office especially through the utilization of technology.

If you have any questions concerning this response, please feel free to call me at (212) 669-4860.

Sincerely,



Michael Koslow
Audit Coordinator

cc: Martha E. Stark, Commissioner, Department of Finance
Rochelle Patricof, First Deputy Commissioner, Department of Finance
Lindsay Eason, Sheriff