

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

**Alan G. Hevesi
COMPTROLLER**



***ADMINISTRATIVE BOARD FOR THE OFFICES
OF THE PUBLIC ADMINISTRATORS***

KINGS COUNTY PUBLIC ADMINISTRATOR

***SELECTED ASPECTS OF ESTATE
ADMINISTRATION***

2002-N-11

DIVISION OF STATE SERVICES

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Alan G. Hevesi
COMPTROLLER

Report 2002-N-11

Honorable Lee L. Holtzman
Chair
Administrative Board for the Offices of the Public Administrators
851 Grand Concourse Room 317
Bronx, NY 10451

Ms. Marietta Small
Public Administrator of Kings County
Supreme Court Building
360 Adams Street Room 144
Brooklyn, NY 11201

Dear Judge Holtzman and Public Administrator Small:

The following is a report of our audit of selected aspects of estate administration by the Kings County Public Administrator. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution; Article II, Section 8 of the State Finance Law; and Article III of the General Municipal Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

April 19, 2004

EXECUTIVE SUMMARY

ADMINISTRATIVE BOARD FOR THE OFFICES OF THE PUBLIC ADMINISTRATORS

KINGS COUNTY PUBLIC ADMINISTRATOR

SELECTED ASPECTS OF ESTATE ADMINISTRATION

SCOPE OF AUDIT

Section 1001(8) of the Surrogate's Court Procedure Act (the Act) holds the Public Administrators responsible for administering the estates of county residents who die intestate and either leave no known heirs or leave heirs who are not qualified or willing to administer the estate. In New York City (City), the County surrogate judges appoint both Public Administrators and their Counsels. *Guidelines for the Operations of the Public Administrators' Offices in New York State* (Administrative Guidelines) promulgated in 1995 by the Administrative Board for the Offices of the Public Administrators (Administrative Board) require Public Administrators to establish a case management system for tracking estate administration. They also direct Public Administrators to specify procedures for office management, record-keeping, cash management, property management, and other administrative functions. As of December 31, 2002, the Kings County Public Administrator reported a caseload of 1,205 open estates with a gross value of \$57.3 million.

Our audit of the Kings County Public Administrator operations during the period January 1, 2001 to February 19, 2003, sought to answer the following question:

- Are operations being carried out in accordance with the Act and Administrative Guidelines?

AUDIT OBSERVATIONS AND CONCLUSIONS

Our review of ten estates identified many instances in which the Kings County Public Administrator has not fully complied with the provisions of the Act and the Administrative Guidelines.

We found that controls over the collection of decedent personal property and the crediting of that property to the estate needs to be improved. For example, for six of the ten estates we reviewed, we found that personal property had not

always been collected or credited to decedent estates, even though the Kings County Public Administrator had knowledge of such property. As a result, arrangements had not been made for their sale so that the proceeds could be distributed to the rightful beneficiaries. Also, commissions due to the New York City Department of Finance were understated. (See pp. 11-13)

We noted several estate disbursements that appear to be inappropriate, and some cases in which estate disbursements had not been documented properly. The Public Administrator needs to strengthen controls to ensure that such expenses are both reasonable and correct. (See pp. 15-17)

Further, we found that the Kings County Public Administrator's Counsel did not always submit affidavits of legal services that comply with the requirements set forth in the Act. Also without the affidavits, there was no assurance that the fees paid were commensurate with the legal services provided. (See p. 19)

In addition, we found that the Public Administrator does not always comply with the vendor-selection provisions of the Administrative Guidelines. We also believe the Administrative Guidelines should be enhanced to encourage the use of competition in selecting vendors. (See pp. 19-23)

Even though the Act requires an annual audit of each Public Administrator by an independent certified public accountant, the Kings County operation has not been audited. The Kings County Public Administrator told us that the City has allocated insufficient funds to pay for the audit. (See p. 23)

COMMENTS OF THE KINGS COUNTY PUBLIC ADMINISTRATOR

The King's County Public Administrator did not agree with several of our conclusions, and provided explanations for some of the exceptions cited. The Public Administrator agreed with certain of our recommendations.

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INTRODUCTION

Background

Section 1001(8) of the Surrogate's Court Procedure Act (the Act) holds the Public Administrators responsible for administering the estates of county residents who die intestate and either leave no known heirs or leave heirs who are not qualified or willing to administer the estate. Headed by a Public Administrator, the Offices of the Public Administrators also administer an estate if neither the executor nor any eligible beneficiary named in the decedent's will is able or willing to serve.

The Act also created the Administrative Board of the Offices of the Public Administrators (Administrative Board), which sets the policies for Public Administrator activities, and consists of 13 members. Five members are surrogate court judges appointed by State appellate judges; three members are appointed by the State's chief administrative judge; two are selected by the president of the State bar association; and one each are appointed by the State Comptroller, the State Attorney General and the president of the State surrogates' association. In New York City (City), the County Surrogate Judges appoint both Public Administrators and their Counsels.

The Office of the State Comptroller (OSC) and New York State Attorney General have conducted joint reviews of Public Administrator operations twice, in 1987 and 1992. Their 1987 joint report identified significant deficiencies and questionable practices in all Public Administrator offices in the City. The report of the joint review conducted in 1992 indicated that little had changed to improve the situation. In 1995, the Administrative Board promulgated "*Guidelines for the Operations of the Public Administrators' Offices in New York State*" (Administrative Guidelines), which require Public Administrators to establish a case management system for tracking the administration of each estate. They also deal with office procedures and record-keeping, cash management, property management, and other administrative functions. When OSC staff again reviewed Public Administrator activities in 1996, they encountered instances of estate values being understated, the lack of required audits, the payment of legal

fees based on a percentage of estate assets rather than the value of the services provided, and unsupported expenses. As of December 31, 2002, the Kings County Public Administrator reported a caseload of 1,202 open estates with a gross value of \$57.3 million.

Audit Scope, Objective, and Methodology

The primary objective of our performance audit was to determine whether selected aspects of estate administration by the Kings County Public Administrator are being carried out in accordance with the Administrative Guidelines and the Act. The scope of our audit covered the period of January 1, 2001 to February 19, 2003. To accomplish our objective, we reviewed documentation relating to the administration of ten sampled estates and interviewed the Public Administrator. We also examined the documentation supporting the procurement of services to determine whether the Public Administrator had complied with the Administrative Guidelines. Our audit included an evaluation of the Administrative Guidelines as they relate to competitive purchasing requirements. We have conducted a similar audit of the Richmond County Public Administrator (Report 2003-N-5) and have issued a separate report of the results of that audit.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Public Administrator that are included in our audit scope. Further, these standards require that we understand the Public Administrator's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations that are included in our audit scope. An audit includes examining, on a test basis, evidence that support transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach to select activities to be audited. This approach focuses our audit efforts on those operations that we have identified through a preliminary survey as having the

greatest probability of needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. Thus, we devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an “exception basis.” This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under Generally Accepted Government Auditing Standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Response of the Kings County Public Administrator

A draft of this report was provided to the Kings County Public Administrator for review and comment. The Public Administrator’s comments were considered in preparing this draft report, and are included as Appendix B. In addition, State Comptroller’s Notes in response to the Public Administrator’s comments are included as Appendix C.

The King’s County Public Administrator did not agree with several of our conclusions, and provided explanations for some of the exceptions cited. The Public Administrator agreed with certain of our recommendations.

Within 90 days after final release of this report, we request that the Administrative Board and the Public Administrator of Kings County report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

PROPERTY COLLECTION

The Administrative Guidelines require Public Administrators to ensure that all personal property belonging to a decedent is collected and credited to the decedent's estate. We selected a judgmental sample of 10 estates consisting of nine estates of varying sizes selected from a listing of about 500 closed estates, and one estate judgmentally selected from a listing of 333 that were open between January 1, 2002 and November 20, 2002. We found that controls over the collection of decedent personal property and the crediting of that property to the estate need to be improved. For example, for six of the ten estates we reviewed, we found that personal property had not always been collected or credited to decedent estates, even though the Kings County Public Administrator had knowledge of such property:

- The Public Administrator's staff had searched the safe-deposit box of a decedent on June 2, 1999, and found 26 U.S. Savings Bonds and stock certificates worth approximately \$84,000. As of January 2003, more than three years later, the bonds and stock had not been converted to cash. The bonds were still in the Public Administrator's possession, although the bulk of the decedent's other assets were distributed on April 27, 2001, to the New York City Department of Finance for the benefit of future, but currently unknown, heirs. After we brought this matter to the Public Administrator's attention, the stock was redeemed for \$5,072, and the process of converting the U.S. Savings bonds was initiated.
- The Public Administrator paid the fire insurance premium on May 7, 2001, for property that was owned partly by a decedent. The policy covered the period June 30, 2000 to June 30, 2001. Since the property was sold on September 15, 2000, a premium refund was due to the payer. However, the Public Administrator did not take adequate steps to collect the \$2,327 refund until we brought this issue to the Public Administrator's attention in late 2002.

- A decedent died in September 1999, leaving an estate that included jewelry appraised at \$2,675. We found that, although other estate assets had been distributed to beneficiaries on November 14, 2001, the value of the jewelry had not been credited to the decedent's estate as of November 2002 because, according to the Public Administrator, appraised values were only estimates and as such did not establish a creditable value until the assets were sold. (The Public Administrator held just one jewelry auction in 2002).

As a result of our audit, the Public Administrator told us that, in the future, the Office will credit to decedent estates the appraised values of jewelry and other non-cash assets that have not been liquidated. This practice would alert the Public Administrator, when the time comes to settle or close out an estate, to the existence of any assets that have not yet been converted to cash.

- We observed in December 2002, that a decedent had owned a safe-deposit box, and questioned why it had not been opened. Even though the Public Administrator became aware of the box on January 28, 2002, its investigators did not open the box until January 23, 2003 – almost a full year later.

Because the Public Administrator had not collected or credited certain assets to decedent estates, arrangements had not been made for their sale so that the proceeds could be distributed to the rightful beneficiaries. This also resulted in the understatement of the commission due to the New York City Department of Finance. This calculation is based on the value of the gross estate.

These assets were not credited to the decedents' estates partly because the Kings County Public Administrator had not established adequate written procedures for recording non-cash estate assets. For assets that had been converted to cash, the Public Administrator maintained a computerized ledger that listed each cash deposit as well as the related income. However, there was no central record or ledger that listed non-cash assets such as jewelry, stocks, bonds, household items, real property, refunds, credits, vehicles, etc. Non-cash assets were often listed by hand on the outside of an estate's file, even

though that practice was not the master central record-keeping procedure called for in the Administrative Guidelines.

In response to our audit, the Public Administrator has established a comprehensive computerized ledger of non-cash assets similar to the ledger used for cash assets.

Recommendations

1. Track open estates to verify that property belonging to the estates is collected, liquidated, and credited in a timely manner. Maintain a central record for each estate of all of the personal and real property owned by the decedent.
2. Hold more-frequent auctions of estate assets.
3. Establish written procedures relating to the recording of assets.

ESTATE-RELATED EXPENSES

Public Administrators have the authority to pay all reasonable and proper expenses relating to the estates being administered. We noted several estate disbursements made by the Kings County Public Administrator that appear to be inappropriate. In some cases, the disbursements had not been documented properly. The Public Administrator needs to improve controls to ensure that only appropriate expenses are paid. Our review revealed the following:

- The Public Administrator paid \$500 on October 16, 2000, for a memorial plaque honoring a decedent. However, there was no evidence that the decedent requested such a plaque. The Public Administrator also paid a total of \$4,000 on this same date for the purchase of similar plaques for decedents from eight other estates. Some of these individuals had been deceased several years at the time the plaques were purchased. (The Public Administrator advised us that the Office no longer purchases memorial plaques.)
- The Public Administrators may assess each estate a fee for administrative services. The Administrative Board allows the Kings County Public Administrator to assess a fee of up to two percent of an estate's gross assets. We found that the Public Administrator had charged an estate more than the permitted amount. Based on the estate's gross assets of \$892,756, the corresponding maximum administrative assessment should have been \$17,855. But the Public Administrator assessed the estate \$20,715 which was \$2,860 more than the permitted amount. The overcharge had not been detected because the Public Administrator has no written procedures for verifying the accuracy of estate-related expenses.

When this same decedent's house was sold on September 15, 2000, the Public Administrator paid the closing costs, including a New York City transfer tax expense of \$23,650. However, we noted that the decedent's estate had been overcharged \$5,400

because the abstract company that calculated and collected the transfer tax had incorrectly used the commercial property rate on this residential property. Furthermore, the Public Administrator did not verify that the abstract company had actually paid the \$23,650 to New York City.

- On April 16, 2002, the Public Administrator paid a nursing home \$5,022 on behalf of a decedent for services five years earlier from April 1997 to June 1997. We found that the Public Administrator did not verify the accuracy of the billing statement the nursing home submitted. We believe the Public Administrator should have confirmed the stay, and verified that the stay had not already been paid for by decedent or the decedent's family.
- An advertising firm had charged an estate \$1,698 to place a death announcement in a local newspaper. We learned that the newspaper's staff would have charged just \$840 for the same service if they had dealt directly with the Public Administrator. We found five other instances in which the Public Administrator dealt with the advertising firm rather than contacting the newspapers directly to place death announcements. Direct contact regarding the six death announcements might have saved the estates a total of \$4,324. As a result of our audit, the Public Administrator now deals directly with the newspapers.

The Administrative Guidelines require Public Administrators to maintain an accounting system that includes the invoices or other documentation supporting estate-related disbursements. Our review disclosed that the Kings County Public Administrator does not always maintain adequate supporting documentation for estate-related disbursements. For example, insufficient supporting documentation had been maintained for one estate, which had paid \$3,800 on May 11, 1999 for cleaning out a decedent's residence, and \$10,593 on September 13, 2000 for closing costs related to the sale of a decedent's residence. There was no invoice supporting the first payment and no documentation supporting the method used to calculate the closing costs for the second payment.

Because the Public Administrator does not always ensure that all of the estate expenses are related to the settling of decedent

estates or that the expenses are reasonable and correct, the estate assets may not have been fully preserved.

Recommendations

4. Verify that the disbursements for the estates reviewed in our audit were directly-related to the settling of the estates.
5. Establish written procedures for verifying the propriety, reasonableness, and accuracy of estate-related expenses.
6. Verify that the expenses charged to the estates we reviewed were calculated correctly and supported by sufficient documentation.
7. Verify that tax payments related to the estates we reviewed were transmitted to government agencies.

LEGAL SERVICES

The Act requires that any legal fees allowed by the court must be supported by an affidavit of legal services setting forth in detail the services rendered, the time spent, and the method or basis by which requested compensation was determined. The Kings County Public Administrator must ensure that its Counsel submits affidavits of legal services that comply with the requirements set forth in the Act and that the fees paid are commensurate with the legal services provided.

For eight of the ten estates in our sample, we found that the affidavits of legal services did not specify in detail the amount of time the Public Administrator's Counsel spent on the estate; nor did they state the method or basis of setting the compensation. Furthermore, there was no affidavit for one estate, even though counsel was paid \$1,500 for work on this estate. There was no affidavit for the remaining one estate because the Public Administrator had not yet paid Counsel for any services related to this estate. The Public Administrator told us that all legal fees are now supported by the required affidavit of legal services.

The Act also states that decedent estates may be charged reasonable costs for legal services. Because the affidavits of legal services maintained by the Public Administrator did not always contain the necessary information about the legal services rendered, or descriptions of the method used in determining compensation, it was not possible for us to determine whether the legal fees charged were reasonable.

Recommendations

8. Verify that affidavits of legal services for estates are being prepared for all work performed by the Public Administrator's Counsel and that they are complete.
9. Verify that the legal fees charged to estates are reasonable and commensurate with the services provided.

SELECTION OF VENDORS

The Administrative Guidelines authorize Public Administrators to hire outside vendors when their services are needed, and require annual advertisements for them. Based on the response to the advertisement and the Public Administrator's knowledge of previous vendor performance, a list of available vendors is to be prepared. The list currently used by the Kings County Public Administrator includes 68 vendors. We found that the Public Administrator does not always comply with the vendor-selection provisions of the Administrative Guidelines. We also believe the Administrative Guidelines should be enhanced to encourage the use of competition in selecting vendors.

Administrative Guidelines for Procurement

The use of a competitive selection process can help secure services of adequate quality at reasonable prices, and can help guard against favoritism and fraud. We believe the Administrative Guidelines should be enhanced to incorporate some of the requirements followed by City agencies, including an expanded advertisement for vendors, the use of Requests for Proposals, and a documented and objective process for evaluating vendor responses.

One area of possible enhancement is the advertisement process. The Public Administrator is required to advertise in a local newspaper, even though that may not always attract a sufficient number of potential vendors. Advertising in newspapers with greater circulations, as well as specialized publications such as *The City Record*, might reach more vendors. For example, the Public Administrator advertised on September 9, 2002, in the *Brooklyn Courier-Life* newspaper group for vendors that could provide a variety of services. The Public Administrator's actions satisfied the requirements of the Administrative Guidelines. We noted that a response date was not stipulated. Just 11 vendors responded to the advertisement, 2 in 2002 and the remainder in 2003. Considering that the advertisement had asked for vendors in 24 service areas, this total constitutes a low response rate.

The current Administrative Guidelines are vague and do not expressly require the advertisement to ask vendors to submit qualifications, prior experience, fee schedules, or recommendations. Also, the Guidelines do not require Public Administrators to use Requests for Proposals, which would ask for detailed information about each applicant's capabilities and would provide a precise description of the proposed services and comprehensive cost information. In addition, the Guidelines do not require Public Administrators to formally evaluate the vendor responses and document the process or reasons for selection. As a result, there is less assurance that the lowest-priced, best-qualified vendor is selected. For example:

- The Kings County Public Administrator has been using the same certified public accounting firm for more than six years. According to the Public Administrator, this firm was selected because it charged lower rates and was available and willing to accommodate the needs of the Public Administrator's office. However, we learned that the Public Administrator had received two proposals from other certified public accountants in 1997. We found no formal evaluation of the fee schedules or technical ability of either of these firms or the one that has been used. In 2002, the latter firm was paid \$92,225 in fees.

The Administrative Guidelines require Public Administrators to prepare a list of outside vendors based on the response to the annual advertisement and their knowledge of the vendors. They also state that Public Administrators may not employ as an outside vendor any employee of their own offices. We noted instances in which the Kings County Public Administrator did not comply with the requirements set forth in the Administrative Guidelines. For example:

- The Public Administrator uses a particular firm for publication services such as placing death notices in local newspapers. We found that neither of the advertisements for vendors placed by the Public Administrator in 2001 or 2002 included a request for vendors providing such a service. Further, the Public Administrator could not explain how it had selected this vendor, which was paid \$150,665 in 2002. The Public Administrator indicated that it would add publication services to the vendor categories listed in its future annual advertisements for vendors.

- The Public Administrator uses the employee in charge of its warehouse as an outside vendor to transport estate assets. The Public Administrator explained that moving companies charge high rates and sometimes do not want to deal with small estates. In 2002, the Public Administrator paid the employee a total of \$5,100 for 14 moves, which it said was less than another company would have charged.

The practice of not selecting vendors through a competitive process or by selecting them through a process that lacks fundamental safeguards supporting competition raises questions about whether the Public Administrator has selected the most-qualified vendors at the lowest price.

Recommendations

To the Administrative Board:

10. Revise the Administrative Guidelines that pertain to the selection of outside vendors. Require the expanded use of advertising for vendors, as well as the use of a Request for Proposal process that includes a well-documented evaluation of all vendor responses.

To the Public Administrator:

11. Discontinue using an employee as a vendor.

ANNUAL AUDIT

The Act requires Public Administrators to be audited annually by an independent certified public accountant. Within six months of receipt of the audit report, the State Comptroller and Attorney General must report to the appropriate Surrogate Judge and Public Administrator their comments relating to the audit as well as any performance and operational recommendations.

However, there have been no annual audits of the Kings County Public Administrator. As a result, the State Comptroller and Attorney General have not been able to report to the appropriate Surrogate Judge and Public Administrator any performance and operational recommendations that could lead to better and more-efficient handling of decedent assets.

On March 25, 2002, the Office of the State Comptroller sent a letter to the Kings County Public Administrator, requesting copies of any independent audits that had been conducted to date. The Public Administrator responded on April 18, 2002, indicating that the City of New York had not provided the funds necessary to initiate this mandated audit.

Recommendation

12. Continue to ask the City of New York to provide sufficient funds for the annual audit of the Kings County Public Administrator, as required by the Surrogate's Court Procedure Act.

MAJOR CONTRIBUTORS TO THIS REPORT

William Challice

Stanley Evans

Barry Mordowitz

Gene Brenenson

Ira Lipper

John Ames

Marticia Madory

Public Administrator

Marietta Small
Commissioner
Public Administratrix

Joel Ganzman
Deputy Commissioner
Deputy Administrator



County of Kings

Louis R. Rosenthal, Esq.
Counsel
1-718-855-5100

File No.
Estate of
Attention

November 24, 2003

State of New York
Office of the State Comptroller
123 William Street
New York, New York 10038
Attn: William P. Challice

Re: Response to Audit 2002-N-11 of the Kings County
Public Administrator's Office

Dear Mr. Challice:

Attached is the Kings County Public Administrator's response to the above-mentioned
Audit Report.

If you have any questions regarding this response, please contact me at (718)-643-3106.

Very truly yours,

Marietta Small
Public Administratrix
Kings County

Attachments

cc: Barry Mordowitz
Administrative Board for the Offices of the Public Administrators

Supreme Court Building
360 Adams Street, Room 144, Brooklyn, New York 11201-3712
1-718-643-3032 / 1-718-643-3033 Fax 1-718-522-4475

Public Administrator Kings County

*Response to New York State
Comptroller Audit
2002-N-11*

*Administrative Board for the Offices of the Public
Administrators*

**Public Administrator of Kings County
Response to Audit #2002-N-11**

Property Collection

Although, on occasion, estate assets may be liquidated or collected after an initial distribution has been made, it is not reasonable to conclude that estate assets are not being distributed to rightful beneficiaries nor can it be said that commissions or expenses are being understated. Estate assets liquidated or collected after distribution are credited to the estate and distributed in accordance with the Decree of the Surrogate's Court to the rightful beneficiaries. Furthermore, any additional commissions or expenses are charged against the assets. Thus, neither New York City Department of Finance nor the Public Administrator's suspense account suffer any losses. A decedent's estate is not concluded or closed simply because a Decree has been issued by the Surrogate or because a distribution has been made. Each estate is unique and rigid rules cannot be applied as to when a particular estate should be completely closed. For example, it may be prudent to proceed to Decree and distribution although some assets are not collected. This may occur where the beneficiaries are elderly and it is likely that the collection or liquidation of one or more assets would be a lengthy process. Also, periodically the Public Administrator is made aware of assets belonging to an estate, which has been "closed" for a year or more.

The Public Administrator has been working internally and in conjunction with Computrust on creating a workable central database for the entry of non-cash assets. This database shall share the same software as is currently used for the cash assets. Thus, the office expects to have a master central record database in the near future.

The Public Administrator holds several auctions of decedent's household goods annually. However, jewelry auctions are held less frequently because of the copious amount of items and the painstaking work involved with appraising individual pieces of jewelry, creating lots, and logistics involved with the actual sale. The Public Administrator has made arrangements with a qualified jewelry appraiser to make periodic appraisals. Due to the budget crisis our small agency consisting of eleven employees has been reduced by one and we have two retirements that OMB will not allow our agency to fill. We require seven or more employees to work auctions for a total of four to five days, which involve viewing auction, pick-up, and payment of property.

Property Collection

New York State Comptroller Recommendations

1. Track open estates to verify that property belonging to the estates is collected, liquidated, and credited in a timely manner. Maintain a central record for each estate of all the personal and real property owned by the decedent.
2. Hold more frequent auctions of estate assets.
3. Establish written procedures relating to the recording of assets.

* Note 1

**Kings County Public Administrator
Agency Response to Recommendations 1, 2, and 3**

1. The Public Administrator is in the process of establishing a comprehensive computerized ledger of non-cash assets similar to the ledger used for cash assets. Thus, the office expects to have a master central record database in the near future.

2. As previously stated, the Public Administrator holds several auctions of decedent's household goods annually. However, jewelry auctions are held less frequently because of the copious amount of items and the painstaking work involved with appraising individual pieces of jewelry, creating lots, and logistics involved with the actual sale. The Public Administrator has made arrangements with a qualified jewelry appraiser to make periodic appraisals. Due to the budget crisis our small agency consisting of eleven employees has been reduced by one and we have two retirements that OMB will not allow our agency to fill. We require seven or more employees to work auctions for a total of four to five days, which involve viewing auction, pick-up, and payment of property.

3. The Public Administrator maintains a written procedure relating to the recording of assets.

*
Note
2

Estate-Related Expense

Memorial Plaques

Pursuant to the Surrogate's Court Procedure Act, Article 11, the Public Administrator has the authority to handle all aspects of a decedent's estate. Thus, it is erroneous for the New York State Comptroller's auditors to make this statement. Additionally, the other plaques purchased were not intended to settle the decedent's estates. They were purchased in accordance with Jewish Law.

Memorial plaques are in the same category of funeral expenses as clergy honorarium, funeral mass, headstone placement or inscription, viewing of the remains, gravesite plantings and perpetual care of graves. If one takes a harsh and cold approach to the settlement of an estate, it can be said that these expenses are unnecessary. However, these expenses are morally and traditionally justified. In fact, if the Public Administrator routinely denied these expenses she would be open to criticism for not providing a decedent burial under her charge. The practice of providing memorial plaques for decedents of the Jewish faith and providing for perpetual religious prayers for other decedents dates back to the 1950's in the office of the Kings County Public Administrator. The Public Administrator has the authority to authorize all expenditures that are reasonable and customary. It is important to note that all these types of expenses are clearly stated on the judicial accountings filed by the Public Administrator

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Note
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* See State Comptroller's Notes, page 39

with the court. All interested parties are given notice of these expenses and afforded the opportunity to object their payment.

- ❖ Attached herewith is a letter from the President of New York Board of Rabbis, Inc. explaining the customs of the Jewish faith.

- ❖ The attachment was not included in this Appendix, but is available for review at the Office of the State Comptroller.

Counsel to the Public Administrator makes every effort to avoid mathematical errors when preparing estate accountings. Rarely, an error is overlooked as it was in this case. This isolated mathematical error cannot logically be used to bolster an argument that the Public Administrator does not have adequate procedures to verify the accuracy of estate-related expenses. No pattern of errors has been established.

*
Note
4

The statement in the audit to the effect that the estate overpaid New York City Transfer Taxes is an obvious error on the part of the auditors. The estate paid the proper amount of transfer tax, as the property was NOT a one, two, or three family house. The premises was a professional office with two apartments. Therefore, it was subject to a tax rate of 2.65% (attached is a copy of the New York City Real Property Transfer Tax instructions). The instructions are clear and do not provide for any variation or apportionment for mixed-use properties. Attached is a copy of the Certificate of Occupancy for the premises showing the property to be a Doctor's Office and Two Family Dwelling. As is accepted practice, all transfer taxes are paid to the title company at the closing. It is the title company's responsibility to make sure all transfer taxes are paid. No deed could be recorded without paying all transfer taxes immediately. Therefore, sufficient safeguards are in place to make sure transfer taxes are paid by title companies. It is absurd to require the Public Administrator to verify that transfer taxes are paid after each real estate closing.

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Note
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Note
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The audit report alleges that the Public Administrator's office took insufficient steps to verify the claim of a nursing home. On the contrary, the following steps and reviews were done before payment of the claim:

- A. The claim was logged in by the Public Administrator's Office.
- B. Prior to preparing the judicial Accounting, Counsel for the Public Administrator reviewed the claim and determined that it was a valid claim against the estate.
- C. The claim was not paid at that time, but was listed on the Accounting as an Allowed but Unpaid Claim.
- D. The Accounting was filed with the Court and all interested parties are given notice of the allowed claim and afforded the opportunity to object its payment.
- E. The Accounting and the claim were reviewed by the attorney for the decedent's daughter and made no objection to the payment of the claim.
- F. A Guardian ad Litem was appointed by the Court to protect the interests of the decedent's unknown next of kin. The Guardian ad Litem reviewed the Accounting and the claim and made no objection to payment.
- G. The nursing home in question is audited by the Comptrollers office of the State of New York.

*
Note
7

* See State Comptroller's Notes, page 39

In the course of business, the Public Administrator’s Office deals with many different vendors. Every effort is made to make sure that fees charged are reasonable. Unfortunately, one advertising firm charged a higher rate for publications and is no longer being used as a vendor. It would be too burdensome to deal with each newspaper individually when making court ordered publications which must be accomplished in strict accordance with statute, must be tracked by date and proofs of publications, and filed with the court. Therefore, the Public Administrator has negotiated with a new advertising firm who has agreed to charge no fees above the actual publication costs charged by the newspapers.

It should be noted the Kings County Public Administrator requires supporting documentation with every estate related disbursement.

However, as the files are worked on frequently by many individuals and some invoices and documentation may become detached. All closing costs are always reviewed by counsel at the closing and are supported by a written invoice.

The statement of the Comptroller’s office referencing estate expenses as not related to the settling of decedent’s estate or that they are not reasonable or correct is blatantly untrue.

*
Note
8

The Public Administrator’s office always takes steps to make sure that all estate expenses paid are related to settling decedents estates and are reasonable and accurate all interested parties to these estates including the New York State Attorney General are given notice of these expenses and afforded the opportunity to question them or object their payment.

Estate-Related Expenses

New York State Comptroller Recommendations

- 4. Verify the disbursements for the estates reviewed in our audit were directly-related to the settling of the estates.
- 5. Establish written procedures for verifying the propriety, reasonableness, and accuracy of estate-related expenses.
- 6. Verify that the expenses charged to the estates we reviewed were calculated correctly and supported by sufficient documentation.
- 7. Verify that tax payments related to the estates we reviewed were transmitted to government agencies.

Kings County Public Administrator
Agency Responses to Recommendation 4, 5, 6, and 7

- 4. All estate disbursements are reviewed and verified that they are directly related to the settling of the estates.

* See State Comptroller's Notes, page 39

5. Claims:
 - (a) Claim must be submitted within seven (7) months of issuance of Letters of Administration.
 - (b) Must be notarized.
 - (c) Must have supporting documentation.
 - (d) Determination should be compared against market value for services rendered.
 - (e) Check calculation for accuracy.
 - (f) If all above is satisfied, claim should be sent to counsel. They will file it as "allowed, but unpaid".
 - (g) If all above is not satisfied, claim should be sent to counsel. They will send "rejection of claim".
6. The expenses charged to estates have been reviewed and found to be correctly calculated and supported by sufficient documentation. One mathematical error was found and corrected.
7. Verification of payment is shown by checks.



See Attached:



The attachment was not included in this Appendix, but is available for review at the Office of the State Comptroller.

Legal Services

As stated before all legal fees are supported by an affidavit of legal services. Counsel for the Public Administrator of Kings County charges fees in accordance with the guidelines promulgated by the Administrative Board of the Offices of the Public Administrators of New York. Detailed affidavits of legal services, including hours, are filed in every estate including those under \$20,000 in value. These affidavits are accepted by the Surrogate’s Court and Attorney General as sufficiently detailed.

*
Note
9

All legal fees are disclosed in full on estate accountings filed with court. The accountings are reviewed by the alleged next of kin, their attorneys, the court appointed Guardian ad Litem and the Attorney General of the State of New York . All interested parties are given notice of the legal fees and afforded the opportunity to object their payment. The final authority regarding the reasonableness of legal fees charged in an estate matter is the Surrogate’s Court.

*
Note
10

It is not appropriate for the Comptroller’s auditors to second-guess the judgment of the interested parties and the Surrogate regarding the reasonableness of legal fees. The audit report states, “it was not possible for the auditors to determine whether the legal fees charged were reasonable”. This equivocal statement confirms that the auditors lacked the knowledge to accurately gauge the reasonableness of the legal fees have been charged in their sampling of estates.

*
Note
11

New York State Comptroller Recommendations

- 8. Verify the affidavits of legal services for estates are being prepared for all work performed by the Public Administrator’s Counsel and that they are complete.
- 9. Verify that the legal fees charged to estates are reasonable and commensurate with the services provided.

Kings County Public Administrator Reponses

- 8. Affidavits of legal services for estates are prepared for all work rendered by the Public Administrator’s counsel and they are complete and detailed.
- 9. Legal fees charged to estates are verified to be in compliance with the guidelines promulgated by the Administrative Board.

Selection of Vendors

New York State Comptroller Recommendations

- 10. Discontinue using an employee as a vendor

**Kings County Public Administrator
Agency Response to Recommendation 10**

* See State Comptroller's Notes, pages 39 & 40

In this respect we feel that the use of an employee as a vendor is justified. Our warehouseman performs the service of transporting small amounts of household contents. It would not be in the best interest of the estate to use another vendor and pay a substantially higher amount nor would it constitute proper fiduciary responsibility.

Proposals given to the Comptroller's Office for the same service rendered would have resulted in charges far in excess of those charged and not in the best interest of the estate.

Annual Audit

New York State Comptroller Recommendation

11. Continue to ask the City of New York to provide sufficient funds for the annual audit of the Kings County Public Administrator as required by the Surrogate's Court Procedure Act.

Kings County Public Administrator
Agency Response to Recommendation 11

We have been and will continue to do so.

* Note 12

* See State Comptroller's Notes, page 41

State Comptroller's Notes

1. Our audit found that controls over estate distributions and the calculation of commissions due to New York City needed to be improved. For example, in January 2003, we identified assets totaling \$84,000 that had not been credited to an estate. The Public Administrator had become aware of these assets on June 2, 1999. The Public Administrator did not consider the \$84,000 when the assets were distributed and the commission paid to the New York City Department of Finance on April 27, 2001.
2. During the course of our audit fieldwork, we were not provided with any written procedures for the recording of assets.
3. We recognize that honoring a decedent with the placement of a memorial plaque is a customary practice of the Jewish tradition. However, the timing of the purchase several years after the burial, raised the question of whether these expenses could be considered as burial-related. In fact, one of the decedents died five years previous to the Public Administrator purchasing the plaque for her. We note that the Public Administrator is no longer purchasing such plaques.
4. The error cited in our report cost an estate almost \$2,860. We believe this is supportive of the need to verify the accuracy of calculations for expenses.
5. The Real Property Transfer Tax Return signed by the Public Administrator on September 15, 2000 indicates that this property is a 1-3 family house.
6. As with any vendor, the Public Administrator, who hired the title company to perform a service, has a responsibility to ensure that the vendor provided the required services.
7. We saw no evidence that specific steps were taken to verify that the decedent had been in the nursing home in question, five years earlier for the days billed. In addition, there was no documentation confirming that the decedent, Medicare, Medicaid or other insurance had not already paid the bill.
8. Without adequate documentation, the reasonableness of expenses cited in the audit was not readily verifiable.
9. The Administrative Board did not issue guidelines on fees for legal services until October 3, 2002. None of the estates we reviewed were subject to these limits. The affidavits we examined did not specify, in detail, the amount of time the Public Administrator's Counsel spent on each estate. There was no affidavit of legal services for one estate for which Counsel was paid \$1,500.

10. The accountings filed with the court list the fees paid to all estate vendors and creditors. They do not disclose the nature of the services provided.
11. We were unable to gauge the reasonableness of the legal services provided because there were no records disclosing the details of the services provided and the amount of time Counsel spent on each estate. Furthermore, the affidavits of legal services did not disclose the method used by Counsel to determine compensation.
12. The guidelines established by the Administrative Board preclude public administrators using their own employees as outside vendors.