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January 16, 2015

P.J. Keeler
Columbia County Treasurer
15 North 6th Street
Hudson, NY 12534

Report Number: 2014M-353

Dear Mr. Keeler:

County officials are responsible for safeguarding court and trust funds in their care. This responsibility includes establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that resources are safeguarded against loss from unauthorized use or disposition, transactions are executed in accordance with court orders and/or statutory authorization and are properly recorded, appropriate reports are prepared and appropriate corrective action is taken in response to audit findings.

Pursuant to the State Constitution, Article V, Section 1 and further authority vested in the State Comptroller by Articles 2 and 12 of the New York State Finance Law and Section 42 of the New York State Executive Law, we examined certain records and reports for Columbia County's (County) court and trust funds for the period January 1, 2013 through January 1, 2014.

Background and Methodology

Pursuant to a court order, certain assets may be provided to the court and then delivered to the County Treasurer (Treasurer) for safekeeping. Payments made pursuant to court orders commonly involve surplus moneys from foreclosures and contract disputes resulting in a mechanic's lien.¹ These actions are recorded in the County Clerk's office when payments are deposited as required by court order. Additionally, in certain circumstances,² funds from estates are entrusted to the Treasurer for safekeeping by order of the Surrogate's Court. Together, the Treasurer, County Clerk and Surrogate's Court must develop sound procedures and processes which, when implemented properly and consistently, provide a system of internal controls to account for and safeguard these funds.

¹ Security interest in property filed to ensure payment for contracted services rendered on the property

² When the whereabouts of any person entitled to payment from the estate is unknown

Our objective was to determine whether County officials have established appropriate controls to safeguard and account for court and trust funds. We examined records maintained by the County Clerk, Surrogate’s Court and Treasurer for the period January 1, 2013 through January 1, 2014. We interviewed County officials and reviewed relevant financial and court records. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

Audit Results

Pursuant to New York State Abandoned Property Law, moneys that have remained in the hands of the Treasurer for a period of three years, together with all accumulated interest, less the Treasurer’s statutory fees, are deemed abandoned property. The Treasurer should, after public notice, pay all such abandoned moneys to the State Comptroller by the tenth of April of the next succeeding year.

We identified 15 actions totaling \$49,493 which have not been turned over to the State Comptroller as abandoned property even though the funds have been in the custody of the Treasurer for over three years, as follows:

| Action No. | Date of Origination | Abandoned Property Due Date | Title of Action | Amount |
|-------------------|----------------------------|------------------------------------|---|-----------------|
| 703 | 6/11/03 | 4/10/08 | Hudson City Court – Abandoned Funds | \$1,272 |
| 713 | 4/9/04 | 4/10/09 | Chase Manhattan Bank v. Albert Maske, et.al. | \$12,328 |
| 718 | 7/8/04 | 4/10/09 | Hudson City Clerk – Excess Bail | \$858 |
| 726 | 9/2/05 | 4/10/10 | Hudson City – Abandoned Bail Money | \$1,919 |
| 738 | 6/21/06 | 4/10/12 | Hudson City Court – Old Bail Abandoned | \$718 |
| 752 | 8/22/07 | 4/10/12 | Hudson City Court – Old Bail Abandoned | \$130 |
| 753 | 10/2/07 | 4/10/12 | Lemora Filiberti v. Gary Capetta, et. al | \$103 |
| 756 | 3/13/08 | 4/10/12 | Columbia County Jail – Abandoned Funds | \$4,052 |
| 757 | 3/13/08 | 4/10/12 | Wells Fargo Bank, N.A. v. Ernestine N. Welch, et. al. | \$841 |
| 758 | 4/30/08 | 4/10/12 | CitiMortgage, Inc. v. Dennis Marzahl, Donna Marzhal, et. al. | \$793 |
| 760 | 9/4/08 | 4/10/12 | Wells Fargo Bank, N.A. v. Richard F. Donovan Jr., et. al. | \$439 |
| 761 | 9/18/08 | 4/10/12 | Rapport, Meyers, Whitbeck, et. al. v. Estate of John Unger, et. al. | \$15,093 |
| 762 | 10/22/08 | 4/10/12 | PHH Mortgage Corp. v. Gerald L. Smith, Mary J. Smith, et. al. | \$345 |
| 764 | 1/7/09 | 4/10/13 | Estate of Florence G. Sheldon | \$505 |
| 766 | 6/24/09 | 4/10/13 | First Niagara Bank v. Mark E. Anderson, et. al. | \$10,097 |
| | | | Total | \$49,493 |

New York State County Law requires the County Clerk to maintain a register (Clerk's Register) of all moneys and securities paid, transferred or deposited, or ordered to be paid, transferred or deposited, to a court. Although the County Clerk maintains this record, it is inaccurate. The County Clerk has maintained a register of all files that mentioned the County's fiscal officer in the documentation and inappropriately recorded them in the Clerk's Register for court and trust funds. We identified 46 County Clerk office actions that were recorded in the Clerk's Register and found that only one action was a proper recording in the Clerk's Register. Of the other 45 recorded actions, we selected a sample of 15 to determine if they were proper court and trust fund actions. Of the 15, none were court and trust fund activities. As a result of the incorrectly recorded actions in the Clerk's Register, the Clerk was unable to readily identify all assets ordered to be paid into a court, and his records could not be used to verify that all court-ordered deposits had been properly received and deposited by the Treasurer.

Pursuant to the Surrogate's Court Procedure Act, the Surrogate's Court Clerk is responsible for keeping a court and trust fund register (Surrogate's Register). The Clerk must enter the following information into the Surrogate's Register:

- Reference to any proceeding in which the decree or order directs a deposit of money,
- The date,
- The amount to be deposited,
- The amount that has been deposited,
- Any receipt and
- The name of the person for whom the deposit is made.

The Surrogate's Court Clerk has not kept the required Surrogate's Register. As a result, the Surrogate's Court Clerk was unable to readily identify all assets ordered to be paid into a court, and her records could not be used to verify that all court-ordered deposits had been properly received and deposited by the Treasurer.

Recommendations

1. The Treasurer should ensure that all moneys deemed abandoned property are turned over to the State Comptroller in a timely manner.
2. The County Clerk should maintain an up-to-date Clerk's Register as required by law.
3. The Surrogate's Court Clerk should ensure that all court and trust fund actions are entered into the Surrogate's Register.

We would like to thank Columbia County officials and staff for the courtesies and cooperation that were extended to our auditors and encourage County officials to take corrective action.

Sincerely,

Gabriel F. Deyo

cc: Mr. Patrick M. Grattan, Chairman, Board of Supervisors
Ms. Holly Tanner, County Clerk
Hon. Richard M. Koweek, Family and Surrogate's Court Judge