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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 8, 2006

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
360 Adams Street, Room 144
Brooklyn, NY 11201

Re: Report 2005-F-11

Dear Chairman Holtzman and Ms. Small:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law, we have followed up on the actions taken by the Kings County Public Administrator to implement the recommendations in our audit report, *Administrative Board for the Offices of the Public Administrators, Kings County Public Administrator, Selected Aspects of Estate Administration* (Report 2002-N-11).

Background, Scope and Objective

Section 1001(8) of the Surrogate's Court Procedure Act (the Act) holds Public Administrators (PA) 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 an estate. Headed by a Public Administrator, the Office of the Public Administrator also administers an estate if neither the executor nor any eligible beneficiary named in the decedent's will is able or willing to serve.

A 13-member Administrative Board for the Offices of the Public Administrators (Administrative Board) sets the policies for Public Administrator activities. 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 Administrator 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 April 30, 2005, the Kings County Public Administrator reported a caseload of 1,475 open estates with a gross value of \$66.5 million.

Our initial audit report, which was issued on April 19, 2004, examined controls over selected aspects of estate administration at the Kings County Public Administrator to determine if the Public Administrator had complied with the Administrative Guidelines and the Act. Our report found that the Kings County Public Administrator needed to improve controls over the collection of decedent property and the crediting of that property to the estate. We also noted several estate disbursements that appeared to be inappropriate and were not documented properly. We concluded that because of these and other weaknesses there was less assurance that the operations of the PA’s office were carried out in accordance with the Act and Administrative Guidelines. The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of December 7, 2005, of the 12 recommendations included in our initial report.

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.

Summary Conclusions and Status of Audit Recommendations

The Kings County Public Administrator has made progress in correcting many of the problems we noted in the initial audit. Of the 12 audit recommendations in the initial report, 10 recommendations were implemented and 2 recommendations were partially implemented.

Follow-up Observations

Recommendation 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.

Status - Implemented

Agency Action - The PA provided us with procedures dated April 20, 2005, entitled *Inventory Management System*. This system is designed to track open estates to verify that property belonging to the estates is collected, liquidated, and credited in a timely manner. A master central record database has been set up to account for each estate, by account number, and asset types at appraised value.

Recommendation 2

Hold more frequent auctions of estate assets.

Status - Implemented

Agency Action - The PA held several auctions of estate assets in calendar 2004. During calendar 2004, three jewelry auctions were held (April 26, 2004, May 17, 2004 and December 6, 2004). The PA is trying, as staffing permits, to continue the auctions. The PA is still short staffed and must close down the office to conduct these auctions, so the other regular work suffers during these times. Household and furniture items were auctioned in March and June 2004. Real estate was auctioned in January, May and October, 2004, and automobiles in June 2004.

Recommendation 3

Establish written procedures relating to the recording of assets.

Status - Implemented

Agency Action - The PA provided a copy of procedures dated April 20, 2005 entitled *Inventory Management System*, designed to track open estates to verify that property belonging to the estates is collected, liquidated, and credited in a timely manner. A central record is maintained for each estate of all of the personal and real property owned by the decedent. A master central record database has also been set up. Procedures dated February 8, 2005 were also implemented to route incoming checks, a supplement to existing procedures.

Recommendation 4

Verify that the disbursements for the estates reviewed in our audit were directly-related to the settling of the estate.

Status - Implemented

Agency Action - We reviewed the exceptions identified in our initial audit and found the disbursements were documented and directly related to the settling of the estate. The PA assured us that it has always been their practice to review and verify disbursements for the sole purpose of determining that an estate is properly accounted for. Additional procedures for the routing of checks were implemented February 8, 2005 and the Inventory Management System on April 20, 2005. The Inventory Management System includes procedures for

entering inventory data, changing inventory data, and handling U.S. Savings Bonds and Stocks.

Recommendation 5

Establish written procedures for verifying the propriety, reasonableness, and accuracy of estate-related expenses.

Status - Implemented

Agency Action - The PA used existing written procedures that are a part of the Administrative Code of the City of New York and must be adhered to. The PA has also instituted additional guidelines to verify the propriety, reasonableness, and accuracy of estate-related expenses. The PA noted that the audit findings were not systemic. Officials believe that the additional information provided in response to the initial audit showed the PA was verifying the propriety of estate expenditures.

Recommendation 6

Verify that the expenses charged to the estates we reviewed were calculated correctly and supported by sufficient documentation.

Status - Implemented

Agency Action - We reviewed the expenses charged to the estates reviewed in the initial audit and found the calculations were correct and supporting documentation was on file.

Recommendation 7

Verify that tax payments related to the estates we reviewed were transmitted to government agencies.

Status - Implemented

Agency Action - We reviewed the estates from our initial audit and found that the taxes due to government agencies were paid. There was one estate where real property was sold. All documentation from the closing was in the estate's file, including cancelled checks. The agency verified that all payments were made to the appropriate agencies, and has implemented guidelines to become more involved in the verification process.

Recommendation 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.

Status - Implemented

Agency Action - The PA advised that affidavits are always prepared, and complete. They acknowledged that sometimes the staff may not put one in a folder, but pointed out that this does not mean that the affidavit was not prepared. Affidavits are online and always available. The PA has instituted additional guidelines to include a copy of the affidavits in the appropriate estate file. We reviewed several files and the affidavits were on file.

Recommendation 9

Verify that the legal fees charged to estates are reasonable and commensurate with the services provided.

Status - Partially Implemented

Agency Action - The PA stated that the Report and Guidelines of the Administrative Board of the Public Administrator pursuant to the Surrogate Court Procedure Act 1128 approved November 13, 1995, and revised October 3, 2002 established limits for fees charged by Counsel in any estate. At the closing conference on December 7, 2005, the PA indicated the agency accountant has been assigned the task of verifying that the fees charged to estates are reasonable and commensurate with the services provided.

Recommendation 10

To the Administrative Board

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.

Status - Partially Implemented

Agency Action - The process of revising the guidelines that pertain to the selection of outside vendors was started by some of the Administrative Board members. We reviewed a copy of the draft revised guidelines as of July 29, 2005. The final version of the guidelines will be presented to the 13-member Board* for their approval. As of December 7, 2005, the Board has not released the final document.

*The Comptroller's appointee to the 13-member Board worked on the draft guidelines.

Recommendation 11

Discontinue using an employee as a vendor.

Status - Implemented

Agency Action - On the recommendation of the Office of the State Comptroller, the Kings County Administrator's Office has stopped using the employee. We reviewed vendor disbursements from January 1, 2003 through August 2005 and verified that no payments were made to this employee.

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 Court Procedure Act.

Status - Implemented

Agency Action - The PA provided copies of letters dated in 1995, 1997 and 1999 to demonstrate that the Office has requested funds for the annual audit. In addition, we received a letter dated December 16, 2005, requesting additional funds for the audit because they have not been able to locate an independent certified account for the funds available. Although this request is after the closing conference date of December 7, 2005, we have accepted it as an effort to obtain sufficient funds for the annual audit.

The major contributor to this report was Lesley Padmore.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Agency for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: G. Davis, Mayor's Office of Operations