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July 20, 2015

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capitol Building
Albany, New York 12224

Re: New York State Comptroller
Selected Financial Management and Administrative Practices
Office of the Nassau County Public Administrator
Audit: 2013-S-37

Dear Governor Cuomo:

In accordance with Section 170 of the Executive Law, The Office of the Nassau County Public Administrator has taken the following steps to implement the recommendations at set forth in the NYS Comptroller's Audit #2013-S-37, copy enclosed:

1. **Document the justification for the hiring of, and related payments to, employees financed by the NCPA suspense account.**

The NCPA currently maintains personnel files for its suspense account employees which include the justification for their hiring, as well as the justification for their pay rate increases.

2. **Develop and implement comprehensive policies and procedures for suspense account employees regarding lunch breaks and health benefits.**

As of July, 2014 suspense account employees were converted from hourly paid to salaried employees and have been included on the county's time record system, "In Time". The In Time system automatically deducts time for lunch and, accordingly, we are now in compliance with Section 162 of the State Labor Law.

The NCPA has now instituted a policy effective February 25, 2015 whereby any new full time suspense account employees would be required to complete six months of service prior to receiving health insurance benefits.

OFFICE OF THE STATE COMPTROLLER
THOMAS P. DINAPOLI
COMPTROLLER
JUL 23 2015

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3. Determine ways to minimize expenses associated with the suspense account.

The NCPA has instituted a number of internal procedures to secure against lost revenue in the suspense account by carefully screening potential cases to determine the value of the assets prior to petitioning for Letters of Administration. For those estates owning real property, the NCPA reviews the County Clerk files for outstanding mortgages, judgments and liens, as well as, contacting the Nassau County Treasurer to confirm that there are no outstanding taxes. This greatly eliminates the chance of accepting an estate where the liens exceed the value of the property.

With regard to the suspense account employees, upon taking office on January 1, 2011 the current Public Administrator became aware that many of the administrative functions, which should have been performed by the NCPA in his fiduciary capacity, were being performed by the former counsel to the Public Administrator and, that it was necessary and required for the Public Administrator's Office to assume these administrative duties. It is established law in NY that "services that are executorial or ministerial in nature are not subject to compensation as legal expenses because the fiduciary is compensated to perform those services out of commissions". See in this regard Matter of Cook, 2012 N.Y. Misc. LEXIS 4523; 2012 NY Slip Op 32400(U)

This prior practice from 2001-2010 resulted in additional legal fees being inappropriately billed to many estates.

Without the services provided by the suspense account employees, the NCPA would be unable to fulfill his fiduciary responsibilities as set forth in EPTL §11-1.1. Absent an increase in the NCPA's annual budget to provide for this personnel, these positions must continue to be funded from the suspense account.

4. Update the outside vendor list annually, justify the placement of each vendor on the list, and do not use vendors that have not properly applied.

Our vendor list is updated regularly; however, the office did not retain the year end vendor's list. We currently maintain these annual lists. Only vendors who have properly applied are on the current list and the NCPA currently maintains a log justifying vendor selection within certain categories as recommended.

5. Retain approval from the Surrogate's Court is a pre-Letters sale is warranted.

The NCPA will, in the future, secure written authorization from the Court to sell estate properties prior to Letters of Administration being issued as recommended.

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6. Prepare each Annual Report to the State Comptroller in compliance with the Regulation.

Prior to this audit, it was the longstanding interpretation of New York Codes, Rules and Regulations (NYCRR) Part 71.1 by the NCPA to include only those assets which had been collected or liquidated in the "Amount of Gross Estate" column on the annual report to The New York State Comptroller's Office. Having received clarification of the requirement of this regulation The NCPA has implemented a procedure by which all identified assets which have not been liquidated will be included at their appraised value and, in the case of bank and brokerage accounts, included at their date of death value in order to be in compliance with the regulation.

The Office of the Nassau County Public Administrator continues to implement the recommendations outlined in in the NYS Comptroller's Audit #2013-S-37.

Very truly yours,



Jeffrey E. DeLuca

Nassau County Public Administrator

Enc.

cc:

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