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April 4, 2014

Terri L. Ross
Allegany County Treasurer
7 Court Street
Belmont, NY 14813

Report Number: 2014M-074

Dear Ms. Ross:

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 State Finance Law and Section 42 of the Executive Law, we examined certain records and reports for court and trust funds of the Allegany County for the period January 1, 2010 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, 2010 through January 1, 2014. We interviewed County officials and reviewed relevant financial and court records. We reviewed the County Clerk, Surrogate's Court, and Treasurer's processes, procedures and records for the receipt and management of court and trust funds. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

Audit Results

We found that the records maintained by the Surrogate's Court were generally up-to-date and complete, and we noted no material discrepancies.

However, we found that the County Clerk (Clerk) is not maintaining appropriate court and trust fund records. The County Law requires the Clerk to maintain a record of all moneys and securities paid, transferred or deposited, or ordered to be paid, transferred or deposited into a court. Although the Clerk maintains scanned copies of all court orders filed in his office, he does not make an entry into the court and trust fund register of the moneys ordered to be paid into a court. As a result, the Clerk was unable to readily identify 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. County officials told us they would address this issue.

We found that the Treasurer established adequate procedures, maintained appropriate records and properly reported the condition of court and trust funds to the State Comptroller as prescribed by statute. However, we identified funds which improperly remained in the Treasurer's custody and should have been turned over to the State Comptroller as abandoned property. Additionally, we found that the Treasurer had retained a fee in excess of the amount allowed by law when disbursing court funds.

Pursuant to the 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 year.

The following 12 actions, totaling \$17,461, were not properly turned over to the State Comptroller as abandoned property. After we brought these actions to her attention, the Treasurer agreed to take immediate corrective action.

Action No.	Date of Origination	Abandoned Property Due Date	Title of Action	Amount
877	12/15/2006	4/10/2010	Filmore CSD v. Hinz, Town of Hume, IRS	\$14,811
878	1/29/2007	4/10/2011	Joseph Tascone	\$21
879	1/29/2007	4/10/2011	Betty Lou Graves	\$142
880	1/29/2007	4/10/2011	Margurite Maxwell	\$377
881	1/29/2007	4/10/2011	Lillian Barnes	\$47
882	1/29/2007	4/10/2011	Peter Sinnott	\$84
883	1/29/2007	4/10/2011	Genesee Headwaters	\$21
884	7/20/2007	4/10/2011	Steven M. Emerson	\$75
885	7/20/2007	4/10/2011	Patrick Connell	\$94
887	10/26/2007	4/10/2011	National Fuel v. Cavagna, et. al.	\$54
888	10/26/2007	4/10/2011	National Fuel v. White	\$578
890	4/17/2008	4/10/2012	Charter One Bank v. DiCapua	\$1,157
Total				\$17,461

In accordance with the Civil Practice Law and Rules, the Treasurer is generally entitled to a fee of 2 percent on moneys she pays out of a court. However, we found that the Treasurer had been charging a fee of 3 percent when disbursing court funds.

In October 2010, the Treasurer received a court order to release funds totaling \$74,643, less her statutory fees. The funds had been held in her custody since November 2009 and should have resulted in a 2 percent fee totaling approximately \$1,493. Instead she retained a fee totaling \$2,236 (\$743 more than allowed), or approximately 3 percent. Although the Treasurer paid out only one court deposit during the period we reviewed, she stated that she had been charging a fee of 3 percent for more than 20 years and was not aware of the statute generally limiting this fee to 2 percent.

We discussed other minor deficiencies with County officials during our fieldwork.

Recommendations

1. The County Clerk should maintain a court and trust fund register as required by law.
2. The Treasurer should ensure that all moneys deemed abandoned property are paid to the State Comptroller in a timely manner.
3. The Treasurer should ensure that all fees retained are within statutory limits and should consult with the County Attorney regarding any prior fees that were retained.

We would like to thank Allegany 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: Hon. Thomas P. Brown and Hon. Terrence M. Parker, Allegany County Family and
Surrogate Court Judges
Mr. Robert L. Christman, County Clerk