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Amy Davies
Treasurer, Livingston County
6 Court Street
Geneseo, NY 14454

Report Number: 2022-C&T-4

Dear Treasurer Davies:

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 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 examination findings.

Pursuant to the New York State Constitution, Article V, Section 1 and further authority granted to the State Comptroller by Articles 2 and 12 of New York State Finance Law and Section 42 of New York State Executive Law, we examined certain records and reports for the County's court and trust funds for the period January 1, 2017 through June 17, 2022.

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 money 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 circumstances² 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 Treasurer, County Clerk and Surrogate's Court. 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. The scope of our review does not constitute an audit under generally accepted government auditing standards (GAGAS).

Results

Pursuant to New York State Finance Law Section 184, the Treasurer is required to submit a report on an annual basis to the State Comptroller accounting for all money, securities and other properties deposited into a court and ordered into the Treasurer's custody.

We reviewed the Treasurer's, County Clerk's and Surrogate Court's processes, procedures and records for the receipt and management of court and trust funds, as well as estates in the Treasurer's custody. We found that the Treasurer did not establish adequate procedures that ensured all court and trust funds were received, accounted for and properly reported. Specifically, we found that reconciliations were not timely performed among the Treasurer, County Clerk and Surrogate's Court, and annual disbursements of interest were not made per court order.

Upon receiving notification of our impending review of court and trust funds on February 18, 2022, the Treasurer and County Clerk reconciled their records and found that the Treasurer did not receive surplus money from a referee after the sale of foreclosed property on April 1, 2017, totaling \$87,849. After repeated requests to County officials and multiple confirmations sent to the referee and lien holder, we were able to determine all money from the sale of the foreclosed property totaling \$176,000 was paid directly to the lienholder. However, had the Treasurer performed timely reconciliations, this discrepancy could have been identified sooner, instead of five years after the sale occurred.

We also found that the Treasurer did not report all court and trust fund transactions as required. Specifically, the Treasurer did not report surplus funds received and disbursed during 2017 totaling \$23,461.

Finally, we found the records maintained by the County Clerk and Surrogate's Court were up to date and complete.

We would like to thank County officials and staff for the courtesies and cooperation that were extended to our examiners.

Recommendations

The Treasurer should:

1. Perform an annual reconciliation of court and trust funds with the County Clerk and Surrogate's Court.
2. Ensure that all court-ordered funds, including related interest, are received and disbursed properly.
3. Report all court and trust fund transactions annually.

Sincerely,

Elliott Auerbach
Deputy Comptroller

cc: Andrea Bailey, County Clerk
Honorable Jennifer M. Noto, Surrogate's Court Judge
Honorable Kevin G. Van Allen, Surrogate's Court Judge
Mr. Daniel Johnson, New York State Unified Court System, Chief Internal Auditor