



THOMAS P. DiNAPOLI
STATE COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

December 2023

Kimberlee Enea
Treasurer, Herkimer County
109 Mary Street, Suite 2419
Herkimer, NY 13350

Report Number: 2023-C&T-2

Dear Treasurer Enea:

Herkimer County (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 Office of the State Comptroller (OSC) 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, 2021 through September 22, 2023.

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 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.

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

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 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 OSC accounting for all money, securities and other properties deposited into a court and ordered into the Treasurer's custody. New York State Codes, Rules and Regulations (NYCRR) Title 2, Section 70.12 further require that this report be filed by January 30th of each year. In addition, NYCRR Title 2, Section 70.11 requires the County's depository (bank) to pay interest on court and trust funds held by the depository and to provide the Treasurer and OSC with an annual certificate showing, among other things, the interest earned and amount held on deposit for each court and trust action.

We reviewed the Treasurer's, County Clerk's and Surrogate's 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 determined that the Treasurer generally established adequate procedures and maintained appropriate records. While the Treasurer filed an annual report with OSC showing court and trust fund actions for 2022, including beginning balances, receipts, payments and ending balances totaling \$50,700, the Treasurer did not file an annual report for activity in 2021. In addition, the County's depository did not pay any interest on the court and trust funds or provide the Treasurer and OSC with an annual certificate of cash balances, as required by NYCRR.

The accountability of funds belonging to court order recipients was impaired because the Treasurer did not submit an annual report to OSC showing the activity and balances for each court and trust fund action and the depository did not submit a certificate of the cash balances held for each action to the Treasurer and OSC as required. In addition, because court and trust fund money was not held in interest-bearing accounts as required, court-ordered recipients will not receive interest earned on the funds in the Treasurer's custody.

We determined that the records maintained by the County Clerk were up to date and complete and we noted no material discrepancies. We also reviewed the Surrogate Court's records. We determined that there were currently no open court and trust fund actions involving the Court.

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

Recommendations

The Treasurer should ensure that:

1. Annual reports are filed with OSC in a timely manner in accordance with statute.
2. The depository bank holding court and trust money submits an annual certificate of balances to the Treasurer and OSC.
3. Court-ordered money is deposited into an interest-bearing account and the interest earned for each action is properly accounted for and recorded.

Sincerely,

Randy L. Partridge
Assistant Comptroller

cc: James W. Wallace, Jr., County Administrator
Sylvia M. Rowan, County Clerk
Hon. John H. Crandall, Surrogate's Court Judge
Therese Soules, Surrogate's Court Clerk
Daniel R. Johnson, New York State Unified Court System, Chief Internal Auditor