



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
October 13, 2009

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that the owner and employees of HKMDA, LLC, the company hired by the Buffalo Municipal Housing Authority (“BMHA”) to operate Marine Drive Apartments, engaged in a pattern of self-dealing by contracting and leasing with companies owned by themselves or members of their families, in violation of NYS Division of Housing and Community Renewal (DHCR) regulations. Specifically, Richard Hutchens, an owner of HKMDA, leased commercial space from Marine Drive Apartments to a company which he owned for the operation of a deli/store, and used a nephew’s friend as a front. In addition to the obvious conflict of interest, the deli never paid any rent even though a reduced monthly lease payment had been negotiated on its behalf. Similarly, the Inspector General discovered that HKMDA contracted with another company owned by Hutchens to provide self-service laundry facilities, and no portion of those proceeds was ever provided to BMHA. The Inspector General also ascertained that another HKMDA employee arranged a commercial lease for a relative.

HKMDA’s malfeasances, however, went virtually undetected because, as the Inspector General’s investigation revealed, BMHA’s supervision and oversight were virtually non-existent. Specifically, Assistant Legal Counsel Russell J. Sciandra allowed HKMDA to control the contracting of commercial leases in Marine Drive Apartments.¹ Furthermore, BMHA allowed businesses to enter the premises prior to DHCR approval of the leases, and, when the leases were subsequently disapproved by DHCR, no actions were taken to remove the unapproved parties. If the parties had been required to wait for DHCR approval, the aforementioned conflict of interest violations may have been thwarted.

Based upon these findings, the Inspector General recommended that BMHA take the following actions: institute a policy that standardizes the requirements for commercial leases; establish a review process within BMHA that would prevent one person from disregarding its contracting/payment procedures; create an enhanced system of oversight

¹ Although in its response to this report BMHA states that it is in possession of all contracts related to Marine Drive Apartments, during the course of this investigation, Sciandra failed to provide the Inspector General with the relevant commercial leases in response to the Inspector General’s request.

between DHCR and BMHA with regard to the awarding of commercial leases; conduct a comprehensive audit of Marine Drive Apartments' financial records for the period that HKMDA managed the property; seek the \$11,550 for monies Hutchens owes BMHA from the Galley Deli commercial lease and calculate and seek monies owed on other commercial leases; and, conduct a comprehensive review of its current commercial leases at Marine Drive Apartments to ensure that all necessary approvals have been obtained and to indentify and address any conflicts of interest that may exist under the current management company.

In addition, the Inspector General recommended that DHCR conduct a full review of BMHA to ensure that the rampant abuses outlined in this report are addressed. Marine Drive Apartments is a "state project" subject to the powers set forth in Public Housing Law §16. And, Public Housing Law § 14 authorizes the Commissioner of DHCR to, among other things, "investigate into the affairs of authorities [such as BMHA] and into the dealings, transactions or relationships of authorities with third persons" and, subject to the powers of the state comptroller or of municipal comptroller, "to prescribe methods and forms for keeping accounts, records and books to be used by authorities" such as BMHA. Armed with this supervisory power, DHCR should implement preventive measures to avoid future similar transgressions.

ALLEGATIONS

On March 28, 2007, a complainant requesting confidentiality alleged to the Inspector General that HKMDA, the company hired by BMHA to operate Marine Drive Apartments, failed to provide BMHA with a percentage of the proceeds from laundry machines installed at Marine Drive Apartments. In addition, Hutchens allowed his nephew to run a deli/store on Marine Drive Apartments' property which never paid rent to BMHA. It was further alleged that HKMDA collected cash rents in violation of DHCR policy.

SUMMARY OF INVESTIGATION

Background

Marine Drive Apartments, a seven-building, 616-unit apartment complex on Buffalo's Lake Erie waterfront, is owned by BMHA and overseen by DHCR. BMHA is an autonomous public corporation formed under the state Public Housing Law to create housing for low income persons and families. Marine Drive Apartments was originally constructed as a public housing project by BMHA. BMHA then leased it, pursuant to the Limited Dividend Housing Companies Law, to Marine Drive Housing Company for a 40-year period which expired in 2004. The Limited Dividend Housing Companies Law (Article IV of the Private Housing Finance Law) provides for the creation of limited dividend housing companies, which are private corporations aided usually by a municipal tax abatement, also for the purpose of providing low-income housing. Upon the expiration of the lease in 2004, BMHA exercised its right of re-entry and decided that

Marine Drive Apartments would continue to be managed separately from BMHA's public housing developments, with a separate management company and maintenance staff, waiting list and tenant selection and assignment procedures.

BMHA solicited offers from private management companies to manage Marine Drive Apartments; the contract was ultimately awarded to HKMDA. HKMDA was a partnership formed by Richard Hutchens and Anthony Kissling. Both Hutchens and Kissling attested to the following facts. At the formation of HKMDA, Hutchens and Kissling believed that a possibility existed that BMHA would sell Marine Drive Apartments to private investors. Hutchens and Kissling hoped that managing Marine Drive Apartments would place them in an advantageous position to purchase it if BMHA ever decided to sell. Kissling only entered into this partnership to provide the capital to purchase Marine Drive Apartments if the opportunity ever presented itself. Kissling neither participated in the management of Marine Drive Apartments nor received any benefit from the management contract with BMHA. Ultimately, BMHA did not sell Marine Drive Apartments and Kissling disassociated himself from HKMDA.

HKMDA commenced management of Marine Drive Apartments on January 19, 2004. Hutchens assigned Thomas Bystryk as supervisor of Marine Drive Apartments and Julie Neumann as the on-site manager. During the time HKMDA managed Marine Drive Apartments, Gillian Brown was Legal Counsel and also, for most of the time, the Acting Director of BMHA. BMHA Assistant Legal Counsel Russell J. Sciandra was responsible for negotiating and drafting the leases for commercial tenants at Marine Drive Apartments and primarily interacted with Bystryk from HKMDA.

Contracting Irregularities and Conflicts of Interest

The Galley Deli

The Inspector General's investigation revealed that HKMDA leased a deli/store operation to Hutchens himself which Hutchens concealed by using a friend of his nephew as a front. In addition to obvious conflicts of interest raised by this illicit arrangement, the deli never made any rental payments.

According to Acting Director Brown, obtaining a deli/store at Marine Drive Apartments was a priority for BMHA in order to provide tenants with convenient accessible food shopping. However, when HKMDA assumed management of Marine Drive Apartments, no deli/store was operating in the complex. Both Brown and Sciandra had numerous conversations with Bystryk about finding a tenant to open a deli/store. At one point, Bystryk suggested to Brown that HKMDA operate the deli/store. Brown told the Inspector General that it was his understanding that HKMDA would run the deli/store and a contract would be negotiated between HKMDA and BMHA. This arrangement, however, never materialized. Instead, Bystryk informed Sciandra that he had found a tenant, Galley Deli, for the deli/store. Bystryk personally vouched for the owners' experience in running a deli and a lease was drafted simply on Bystryk's word. At Bystryk's request, Sciandra prepared the lease and forwarded it to Jeffrey Lang, the

purported owner of Galley Deli, for his signature. Sciandra never met Lang nor did he take any steps to confirm Lang's actual ownership of Galley Deli. The lease was executed on February 16, 2005.

Sciandra explained to the Inspector General that BMHA intentionally set a low rental range for the lease with Galley Deli because it wanted to encourage the opening of a deli/store in Marine Drive Apartments. To that end, Sciandra informed Bystryk of a low range of acceptable lease payments for him to negotiate with Galley Deli. Bystryk purportedly did so and informed Sciandra that Galley Deli could only pay \$750 per month. According to Sciandra, this amount was at the lower end of the range he had given Bystryk, although he could not recall the exact range. Bystryk acknowledged to the Inspector General that he had negotiated the lease with Galley Deli.

Sciandra originally drafted the lease to require that lease payments be paid directly to BMHA. Bystryk, however, argued successfully that the payments should be paid to HKMDA as the manager of Marine Drive Apartments. That arrangement notwithstanding, all commercial rental payments, as with tenant rental payments, were supposed to be forwarded to BMHA. Sciandra claimed that Cheryl McMillan, BMHA Director of Finance, authorized this payment arrangement. Contrary to this assertion, however, McMillan reported to the Inspector General that she knew nothing of the Galley Deli lease. She stated that at some point after Galley Deli opened, she heard about it and asked Sciandra if a lease had been executed. He never reported back to her. McMillan later reviewed both Marine Drive Apartments' financial reports and BMHA finance department records to determine whether either had records of rental payments from Galley Deli; McMillan advised the Inspector General that the review did not find "anything on the Deli at all."

John DiPasquale, Hutchens's nephew, operated Galley Deli. The true owners, however, were Richard Hutchens and Jeffrey Lang, a friend of DiPasquale's. Lang informed the Inspector General that he and Richard Hutchens were partners: his share was 29 percent and Hutchens's was 71 percent. However, no written partnership agreement existed. Rather, Lang's sole responsibility was to sign the loan papers and the lease and, in point of fact, only Lang's name appears on the lease. Lang admitted that he was never present at the deli, invested no money and was used merely as a front man for the contract by Hutchens. Indeed, it was Hutchens who obtained a bank loan for \$75,000 to open and operate the store, and to purchase the necessary equipment from the prior store tenants. Furthermore, as noted later in this report, it was Hutchens who paid for the renovations to the deli/store. Bystryk never informed Sciandra that Hutchens had an ownership interest in Galley Deli; rather, efforts were made to conceal this direct and improper self-dealing.

DiPasquale operated the Galley Deli for approximately 12 months. At some point, Sciandra noticed that the deli had closed and contacted Julie Neumann, HKMDA's on-site manager, to check on its status. According to Sciandra, Neumann told him that the deli/store operator was having some trouble, but would reopen it soon. Sciandra stated that, at that time, Neumann revealed that Galley Deli had never paid rent. Sciandra

attempted to contact Bystryk regarding this situation, but Bystryk refused to return his calls or respond to his letters. In a letter dated May 3, 2006, Sciandra advised HKMDA that BMHA calculated that Galley Deli owed a total of \$11,550 in back rent.

During this same conversation, Neumann also revealed that DiPasquale was a relative of Hutchens. Sciandra advised the Inspector General that this was the first he became aware of Hutchens's connection to Galley Deli. He added that he "flipped out" when informed of this relationship because BMHA had not solicited bids for the deli/store. DHCR regulations require that housing companies and their managing agents make every reasonable effort to avoid entering into contracts or other transactions for materials and services which may involve a possible conflict of interest, and, where such interest exists, they must comply with DHCR's identity of interest regulations codified at 9 NYCRR §§ 1725-2.5 and 1729-1.4.

During their interviews, the Inspector General advised both Sciandra and Brown that Hutchens had an ownership interest in Galley Deli. They both denied prior knowledge of this fact. Sciandra told the Inspector General that if he had known that DiPasquale was a relative of Hutchens he would not have authorized the lease. Brown similarly stated that had BMHA been aware that Galley Deli was run by a relative of Hutchens, BMHA would not have allowed Bystryk to negotiate the contract. Sciandra conceded that neither he nor anyone else at BMHA checked to see who actually owned Galley Deli. Sciandra also stated that Hutchens's ownership interest created a clear conflict of interest. He acknowledged that by allowing Bystryk to negotiate the lease, Hutchens was, in effect, negotiating with himself as to the lease amount. He added that had he known of Hutchens's interest, he would not have allowed the lease arrangement to proceed.

Lois Rudderman, DHCR Senior Housing Management Representative, advised the Inspector General that BMHA was required to submit Marine Drive Apartments' commercial leases to DHCR for approval.² BMHA did provide the Galley Deli lease to DHCR, but allowed Galley Deli to move into the premises pending approval. DHCR disapproved the lease because, among other reasons, the corporation was not listed on the New York State Department of State Website and the names of the principals of the business were not provided. DHCR advised BMHA that Galley Deli was on the premises without an approved lease. BMHA, however, took no action to remove Galley Deli. Rudderman also stated that DHCR was aware of the relationship between Hutchens and the operator of Galley Deli but reported that removal of an unapproved commercial tenant was the responsibility of BMHA, not DHCR.

TaRico Brothers

The Inspector General found that while working at HKMDA, Bystryk arranged for TaRico Brothers Construction (TaRico), a contracting company partly owned by

² The Owner/Agent Agreement between BMHA and HKMDA section 7.5(e) entitled "Leasing (commercial)" states, in pertinent part: "All leases for commercial space shall be submitted to DHCR for approval . . ." Furthermore, 9 NYCRR § 1727-6.2 requires DHCR approval for commercial leases.

Hutchens and partly owned and operated by Bystryk's son, Thomas Bystryk Jr., to work on a number of projects at Marine Drive Apartments. HKMDA did not solicit bids any of these projects, in direct violation of the management contract signed by BMHA and HKMDA.³ Furthermore, a written contract was never executed between BMHA and TaRico.

Initially, Bystryk arranged for two workers from TaRico to be available on "stand by" when HKMDA first commenced management of Marine Drive Apartments. While Marine Drive Apartments paid TaRico \$360 for this "standby service," there is no indication that any work was actually performed by TaRico during this period. Bystryk also arranged for TaRico to perform painting at Marine Drive Apartments at a cost of \$1,892. Bystryk further arranged for Marine Drive Apartments to purchase tile flooring and lumber from TaRico. When questioned by the Inspector General, Bystryk claimed HKMDA did not bid these projects or seek quotes from other contractors/vendors because there was not enough time to do so.

In addition, TaRico renovated the deli/store area for Galley Deli at Bystryk's insistence. According to DiPasquale, Bystryk pressured Galley Deli to hire TaRico to renovate and TaRico charged an "astronomical amount." The job included installing counters, a bathroom, a sink, and electrical work. TaRico billed Galley Deli \$21,306. Galley Deli, however, did not pay for these renovations. Tellingly, when TaRico commenced a legal action, it was Hutchens who eventually paid the bill.

Hutchens advised the Inspector General that, after HKMDA was removed as the management company for Marine Drive Apartments, he terminated his affiliation with TaRico because it was "inappropriate." Hutchens explained that his other projects are governed by federal Housing and Urban Development (HUD) law. Hutchens stated that HUD has very strict guidelines for improvement projects on their properties and HUD would consider it a "conflict" if a construction company of which he was part owner conducted business with properties he managed. Hutchens maintained that he also terminated Bystryk because, without his knowledge, Bystryk granted maintenance contracts to TaRico at housing projects funded through HUD.

The Inspector General asked Hutchens if a similar conflict of interest existed in HKMDA's dealings at Marine Drive Apartments to which Hutchens responded, "I don't know." Hutchens's purported ignorance as to the existence of any conflict of interest is belied by a June 22, 2006 DHCR performance evaluation which noted that HKMDA had failed to comply with the requirement that it annually disclose any direct or indirect interest with respect to contracts into which it had entered. Clearly, Hutchens, as a principal of HKMDA, had been provided this report. Furthermore, Hutchens certainly was aware of his majority ownership interest in Galley Deli. His statement to the Inspector General that he dealt with residential property contracts and relied on Bystryk to handle the commercial contracts is disingenuous at best given his efforts at

³ Section 7.3(d)(2) states, "[the Agent shall] solicit bids in accordance with the rules and regulations of DHCR . . ."

concealment, most notably his utilization of Lang as a straw man to hide his improper conduct concerning Galley Deli.

Laundry Services

Further exemplifying Hutchens's inveterate self-dealing in regard to Marine Drive Apartments, the Inspector General found that Hutchens again, rather than solicit bids for laundry services at Marine Drive Apartments, created his own company to negotiate for and profit from the laundry services and then operated it without an approved lease. Furthermore, BMHA did not receive any portion of the proceeds from the laundry services.

After HKMDA began management of Marine Drive Apartments, the contract to supply self-service laundry facilities to the residents at Marine Drive Apartments expired. Hutchens told the Inspector General that he "knew the washer and dryer business" from his other properties and "wanted" this contract at Marine Drive Apartments. Hutchens then created HRWC, LLC, for the purpose of negotiating a contract for the laundry services at Marine Drive Apartments. Hutchens purchased laundry machines and, unsurprisingly, hired TaRico to install the machines. Bystryk advised the Inspector General that he negotiated the contract for the laundry facilities on behalf of Marine Drive Apartments. When asked with whom he negotiated, Bystryk replied "Richard Hutchens." Bystryk admitted that he was employed by Hutchens at the time. When asked if he saw a problem negotiating on behalf of a company owned by Hutchens with Hutchens himself, he responded, "Yes, I do."

Bystryk identified an unexecuted contract between HRWC and BMHA as the contract he supposedly negotiated. The unexecuted contract states that the licensee agrees to furnish, install, maintain and operate at its own cost and expense 31 washers and 31 dryers. The contract additionally states that the "split" for monies collected from the washers and dryers would be 65 percent to BMHA and 35 percent to HRWC. Despite this arrangement, BMHA never received any revenue from the laundry. Hutchens was the sole owner of HRWC, and the monies collected from the machines were placed into an account established in HRWC's name.

By letter dated June 15, 2008, Hutchens's attorney, Mark Longo, advised BMHA that Hutchens had collected \$99,360 from the machines during HKMDA's tenure. He acknowledged that HKMDA owed BMHA 65 percent of this amount (\$64,584). He, however, also claimed that BMHA owed Hutchens a total of \$100,686 for management fees owed, plus the cost of the washers and dryers (\$33,000) and the cost of their installation (\$10,000).

Hutchens provided this unexecuted contract to the Inspector General. Neither Hutchens nor BMHA was able to provide an executed copy of this agreement and BMHA had no record of ever transmitting it to DHCR for approval. It is unlikely that this agreement was ever executed, because the contract required the signature of a DHCR

representative, and, an examination of documents pertinent to this investigation provided by DHCR to the Inspector General did not include a copy of any contract, executed or otherwise. Brown stated that HKMDA “was not very good at giving BMHA money for anything.” When shown the unexecuted contract, Brown said that he had never seen it before. Brown added that the contract looked as though “it was locking the barn door after the horses got out.”

Cheryl McMillan, the Director of Administration and Finance for BMHA, confirmed that HKMDA never provided BMHA with a share of the revenue from the laundry facility. She added that the Administration and Finance Department was never told there was an agreement whereby BMHA was supposed to receive a percentage of the income from the laundry. When DHCR became aware that HKMDA purchased laundry machines for the facility, DHCR requested a copy of the contract. HKMDA did not respond, and DHCR never received a copy of the contract.

BMHA’s internal auditor, Vincent Barrile, initially told the Inspector General that as far as he knew, BMHA was receiving money from the washer and dryer proceeds. Barrile later retracted that statement and claimed that the lack of an executed contract prevented BMHA from establishing a monetary amount owed it. Barrile also maintained that there was never a laundry contract for HKMDA; there was, however, a “gentleman’s agreement” between former Acting Director Gillian Brown and Hutchens. Barrile asserted that “Gillian Brown, the former BMHA Director and HKMDA had a verbal contract that HKMDA would purchase the washers and dryers and not pay BMHA any percentage of the income made from the washers and dryers until they made enough money to pay off the loan taken out for the washers and dryers.” Barrile added that part of the “verbal contract” was that ownership of the machines would revert at “some point in time” to BMHA.

Brown acknowledged discussing the laundry facilities with Hutchens and Bystryk. He, however, denied entering into any “verbal contract” on behalf of BMHA. He explained that, as an attorney, he would not have agreed to an oral contract. He also said that he expressly told HKMDA that the state requires a written contract setting forth, among other things, the percentage of proceeds allotted to both parties. According to Brown, he never had an agreement that Hutchens would collect the money until the machines were paid off. He also said that he delegated to Sciandra the negotiating and handling of commercial leases.

Express Spa Services

The Inspector General found that another commercial tenant at Marine Drive Apartments, Express Spa Services, benefitted another member of HKMDA’s staff while it, too, failed to pay any rent.

Express Spa Services was owned and operated by Robin Gibbons. Sciandra again did not negotiate the lease with Express Spa Services; rather, he allowed Julie Neumann, the on-site manager for HKMDA to negotiate it. Neumann told Sciandra that she knew

someone in the business who wanted to rent the space. Neumann, however, failed to mention that Gibbons was her daughter.

Neumann eventually informed Sciandra that Gibbons was unsuccessful and was vacating the premises. At that time, she also informed him that Gibbons was her daughter. Sciandra admitted that he did not know if Express Spa Services actually made lease payments because the lease — as with Galley Deli — provided for the money to be collected by HKMDA and then forwarded to BMHA. McMillan, once again, reported that the Administration and Finance Department was never made aware of any lease agreement with Express Spa Services nor was her department able to find any evidence that Express Spa Services had made any lease payments.

BMHA provided a copy of the lease agreement with Express Spa Services to DHCR, but, as with Galley Deli, allowed Express Spa Services to move in pending approval. DHCR also disapproved of this lease and so notified BMHA. However, Sciandra denied knowledge of the disapproval despite a notation to that effect on the DHCR performance evaluations of HKMDA that were provided to BMHA.

The Removal of HKMDA

DHCR regulations require that housing companies and their managing agents make every reasonable effort to avoid entering into contracts or other transactions for materials and services which may involve a possible conflict of interest, and, where such interest exists, they must comply with DHCR's identity of interest regulations codified at 9 NYCRR §§ 1725-2.5 and 1729-1.4. The aforementioned transactions involved clear conflicts of interest and violated these DHCR regulations. HKMDA not only failed to comply with the requirement that it annually disclose direct or indirect interests they had in existing contracts, but also affirmatively took steps to conceal its involvement in these transactions.

DHCR advised BMHA of Marine Drive Apartments' management deficiencies in numerous reports during HKMDA's tenure. Brown told the Inspector General that DHCR was at Marine Drive Apartments "all the time" inspecting HKMDA and Marine Drive Apartments. Brown acknowledged that Marine Drive Apartments under HKMDA received "horrible" reviews in DHCR's inspection reports. Brown said that these reports were used to eventually remove HKMDA from its management of Marine Drive Apartments in December 2006. Lois Rudderman of DHCR said that BMHA told her it was going to remove HKMDA but took a long time to do so.

While DHCR's reports noting HKMDA's deficiencies began in the summer of 2005, BMHA did not remove HKMDA from its management position until the end of 2006, despite the expiration in December 2005 of HKMDA's management agreement. After December 2005, HKMDA was permitted to continue managing Marine Drive Apartments on a month-to-month basis until the end of 2006. Brown conceded to the Inspector General that these events were BMHA's "fault" because neither he nor BMHA paid much attention to Marine Drive Apartments. Brown stated that HKMDA took

advantage of the lack of supervision. Brown added that Hutchens and Bystryk were “bound and determined to get everything they could out of Marine Drive Apartments.”

To date, BMHA has failed to take any action to recover the \$11,550 owed by Galley Deli, and its owner, Richard Hutchens, despite action by Hutchens seeking payment from BMHA for unpaid management fees and the cost of the laundry machines.

Misappropriation of Cash Rental Payments

DHCR policy and procedure require that a management company working at state-funded housing facilities, such as Marine Drive Apartments, only accept rents in the form of a personal check or money order.⁴ HKMDA, nonetheless, accepted and even encouraged tenants to pay rent in cash. According to an Interim Audit Report dated November 27, 2006 prepared by Barrile of BMHA, HKMDA received approximately \$25,000 dollars a month in cash from rents, in violation of DHCR policy and procedure. HKMDA also failed to make daily deposits of the cash, as required, until directed to do so by BMHA in October of 2006.⁵

Erin Kelly and Charles Picone, employees at Marine Drive Apartments during HKMDA’s tenure, stated that Julie Neumann and Linda Mann, another HKMDA employee, encouraged tenants to pay rent in cash. Kelly stated that thousands of dollars were kept in the back office. Kelly also stated that Mann, Mann’s boyfriend and James Mulvey (Hutchens’s grandson), frequently borrowed money from the cash/rent proceeds. She did not know if they ever paid the money back. When asked about the collection of rent in cash, Bystryk told the Inspector General that he never directed Julie Neumann to encourage tenants to pay only in cash, but did instruct her to accept cash if presented.

Kelly also reported to the Inspector General that there was a theft of approximately \$1,500-\$2,000 from the safe inside the HKMDA office at Marine Drive Apartments. Kelly stated that Neumann neither filed a report with the police nor told Hutchens. Kelly stated that Neumann recouped the missing funds by charging a fee of \$33 per day to prospective tenants who wanted to move into an apartment before their approved move-in date. Both Julie Neumann and Linda Mann refused to speak with the Inspector General when contacted to discuss this issue.

DHCR repeatedly advised HKMDA not to accept cash and noted this continuing problem in their reports to BMHA. Cheryl McMillan, of BMHA Administration and Finance Department, also advised the Inspector General that HKMDA was responsible

⁴ The Management Plan states, under Rent Collection Policy that “All rent shall be payable in advance, together with all additional rent when due and payable, if any, on or before the first calendar day of the month by check or money order.”

⁵ Section 7.4 of the DHCR HM-47 Owner/Agent Agreement states, in pertinent part: “Agent shall collect all rent or carrying charges and all surcharges and other fees and charges in accordance with DHCR procedures. All monies collected shall be deposited daily into the DHCR approved Project Administration Account with the source of such monies clearly identified.” The Management Plan echoes this requirement: “The office will maintain only a small petty cash fund on the premises. All other monies will be deposited daily in the project accounts with a bank insured by FDIC.” (Monetary Practices, p.7).

for providing financial reports to her department. She, however, had difficulty obtaining accurate reports from HKMDA. The reports were generally incomplete and frequently late. The Inspector General attempted to determine by review of financial documents whether monies were missing or redirected. A conclusive determination was not possible, however, because HKMDA failed to maintain adequate records as to which apartments were rented and even whether rents were paid.⁶

FINDINGS AND RECOMMENDATIONS

The Inspector General found that Richard Hutchens and his employees engaged in pervasive self-dealing while they managed the Marine Drive Apartments. They contracted, on behalf of Marine Drive Apartments, with companies owned by themselves or members of their families, in direct violation of DHCR regulations regarding conflicts of interest. Furthermore, they took advantage of these conflicts of interest by obtaining other benefits for themselves and their families. Specifically, Thomas Bystryk, Hutchens's employee, negotiated the terms of the commercial leases for both the operation of the deli/store and the self-service laundry facilities. Despite negotiating these arrangements at very favorable terms for Hutchens, the lease payments were never paid and the proceeds from the laundry facilities were never provided to BMHA. Julie Neumann, another employee of HKMDA, also negotiated a commercial lease with her daughter for space at Marine Drive Apartments and rental payments were never made on that space as well.

The Inspector General also found that HKMDA collected rent in cash and failed to make required daily deposits into a bank account, both in violation of DHCR policy. HKMDA also failed to maintain adequate financial records.

The Inspector General further found that virtually non-existent supervision and lax policies at BMHA facilitated the abuses by HKMDA. Specifically, Assistant Legal Counsel Russel J. Sciandra allowed HKMDA to control the contracting of commercial leases in Marine Drive Apartments. This absence of supervision and oversight allowed Hutchens to freely contract with himself and relatives undetected. Furthermore, BMHA allowed businesses to enter the premises prior to DHCR approval of the leases, and when the leases were subsequently disapproved by DHCR, no actions were taken to remove the unapproved parties. If the parties had been required to wait for DHCR approval, the aforementioned conflict of interest violations may have been thwarted.

The Inspector General recommended the following remedial measures:

(1) BMHA should implement a policy that standardizes the requirements for commercial leases. A prospective commercial tenant should be required to provide intake

⁶ Vincent Barrile, BMHA's internal auditor, also reported to the Inspector General that BMHA never conducted a complete and thorough audit of Marine Drive Apartments during HKMDA's tenure. Barrile stated that only a quick "exit audit" was done prior to a new company taking over management operations at Marine Drive Apartments.

information that would aid BMHA in determining whether conflicts of interest exist. Furthermore, a system of review within BMHA should be instituted to ensure that existing policies are followed and contract provisions enforced.

(2) An enhanced system of oversight should be established between DHCR and BMHA with regard to the awarding of commercial leases.

(3) BMHA should conduct a comprehensive audit of Marine Drive Apartments' financial records for the period that HKMDA managed the property. BMHA should seek the \$11,550 for monies Hutchens owes BMHA from the Galley Deli commercial lease. An exact amount should be determined and sought as to the other defaulted leases as well.

(4) BMHA should conduct a comprehensive review of its current commercial leases at Marine Drive Apartments to ensure that all necessary approvals have been obtained and to identify and address any conflicts of interest that may exist under the current management company.

The Inspector General also recommended that that DHCR conduct a full review of BMHA to ensure that the rampant abuses outlined in this report are addressed. Marine Drive Apartments is a "state project" subject to the powers set forth in Public Housing Law §16. And, Public Housing Law § 14 authorizes the Commissioner of DHCR to, among other things, "investigate into the affairs of authorities [such as BMHA] and into the dealings, transactions or relationships of authorities with third persons" and, subject to the powers of the state comptroller or of municipal comptroller, "to prescribe methods and forms for keeping accounts, records and books to be used by authorities" such as BMHA. Armed with this supervisory power, DHCR should implement preventive measures to avoid future similar transgressions.

The Inspector General also forwarded these findings to BMHA in order to review the actions of BMHA staff and take appropriate disciplinary action.

The Inspector General further provided these findings to the Mayor of Buffalo, who appoints five of the seven board members of BMHA, for his review.

Responses of the Buffalo Municipal Housing Authority and the Division of Housing and Community Renewal

Buffalo Municipal Housing Authority

The Buffalo Municipal Housing Authority advised the Inspector General of the following actions in response to this report's findings and recommendations:

-- BMHA will review current commercial lease practices and develop standardized procedures to ensure adherence to state regulations and to identify potential conflicts of interest.

-- BMHA will work with the Division of Housing and Community Renewal to establish a system of enhanced oversight in regard to the awarding of commercial leases, and will work with DHCR to expedite lease approvals to maximize revenue.

-- BMHA, through its internal audit department and outside auditors, has conducted a comprehensive audit of Marine Drive Apartments' financial records for the period HKMDA managed the property. BMHA will retain the services of a forensic accountant to perform a more detailed analysis of the financial records for this period. BMHA will determine the amount owed on defaulted commercial leases and seek payment. BMHA also will consider other claims it may have against HKMDA and its principals and will take appropriate action.

-- BMHA has conducted a review of current commercial leases at Marine Drive Apartments to ensure that all necessary approvals have been obtained and identify possible conflicts of interest involving the current management company.

Division of Housing and Community Renewal

The Division of Housing and Community Renewal advised the Inspector General that commercial leases at Marine Drive Apartments will be subjected to greater scrutiny; more specifically, that DHCR in conjunction with BMHA will ensure that such leases are reviewed prior to their becoming effective. DHCR also advised that it will examine general internal commercial leasing procedures and practices at BMHA.