

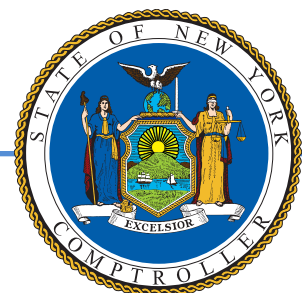
New York City Department of Housing Preservation and Development

Physical and Financial Conditions at Selected Mitchell-Lama Developments

Report 2023-N-2 | September 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine whether Mitchell-Lama developments supervised by the New York City Department of Housing Preservation and Development are being maintained in a manner that protects the health and safety of residents, and whether funds at these developments are being used for intended purposes. Our audit covered the period from January 2019 through February 2024.

About the Program

The Mitchell-Lama Housing Program (Program) was created in 1955 to provide affordable rental and cooperative (co-op) housing to middle-income families. The New York City (City) Department of Housing Preservation and Development (HPD), the nation's largest municipal housing preservation and development agency, is charged with promoting the quality and affordability of the City's housing and the strength and diversity of its many neighborhoods. There are both City-supervised and State-supervised Mitchell-Lama developments. As of February 22, 2024, there are 93 HPD-supervised Mitchell-Lama rental and limited-equity co-op developments, with approximately 46,902 units.

Owners of City Mitchell-Lama developments enter into written management agreements with agents for management services; these agreements must be approved in writing by HPD. The managing agents of Mitchell-Lama developments are required to maintain developments in an economically viable manner, in good physical condition, and in compliance with current Mitchell-Lama rules. This audit is based on a sample of three developments: Arverne/Nordeck (Queens), Arlington Terrace/North Shore (Staten Island), and York Hill (Manhattan).

Key Findings

Our audit found that HPD does not adequately oversee the physical and financial conditions at the sampled developments. Management at all three sampled developments failed to provide a safe and clean living environment for residents, and they misspent funds.

- Across the three developments, we observed hazardous/unsafe physical conditions, including façade damage, non-working self-closing/fire doors, and units with mold, water damage, collapsed walls and ceilings, peeling paint, and broken doors and windows.
- Even though HPD utilizes the City's Housing Development Corporation (HDC) to perform physical inspections of certain Mitchell-Lama developments, we found a number of hazardous conditions previously observed and reported by HDC inspectors that either remained uncorrected or persisted.
- We found approximately \$1.6 million in transactions for the period from January 2019 through August 2023 that were either unrelated to normal operations or inadequately supported. Included in the \$1.6 million are:
 - \$1,134,563 in unsupported transactions, including \$578,840 in various capital improvements, \$71,697 in payroll expenses, and a \$300,000 payment to one vendor for which we could not determine what services were provided.
 - \$392,038 in salaries where the general ledgers did not include the employees' names. As salaries were listed with the employees' titles only, we had no assurance as to whom salaries were paid.

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- \$43,630 in bonuses despite numerous hazardous/unsafe conditions identified at the sampled developments.
 - \$28,699 for parties, meals, and gifts, including a \$9,037 Rolex watch provided as a retirement gift for a building superintendent.
 - We found \$620,000 in contracts with no evidence of competitive analysis and/or bidding and written HPD approval.
 - We estimated that managing agents were unable to collect over \$1.5 million in unrealized rental income from apartments that remained vacant for more than 120 days.

Key Recommendations

- Improve monitoring of the three developments, including but not limited to:
 - Verifying that managing agents maintain the developments in a manner that preserves the properties and protects the health and safety of residents by ensuring annual individual unit inspections are conducted, related reports are completed, and deficiencies are corrected; and routinely checking to verify that all self-closing/fire doors are fully operational.
 - Coordinating with HDC, when applicable, to ensure physical inspection reports are provided to HPD and the managing agents in a timely manner.
 - Ensuring that immediate corrective action is taken when hazardous/unsafe conditions are identified.
- Ensure managing agents operate the developments in a fiscally sound manner by:
 - Adequately reviewing transactions for appropriateness of expenses and sufficiency of supporting documentation during annual reviews.
 - Developing and implementing policies and procedures regarding bonus and gratuity payments.
 - Periodically reviewing a sample of contracts and expenses to identify payments to vendors and service providers that, in the aggregate, equal or exceed \$100,000 in any fiscal year to ensure they are approved by HPD and that contracts at \$100,000 or more were competitively bid and approved by HPD.
 - Promptly filling vacant units.



Office of the New York State Comptroller Division of State Government Accountability

September 30, 2024

Adolfo Carrion, Jr.
Commissioner
New York City Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Dear Commissioner Carrion:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Physical and Financial Conditions at Selected Mitchell-Lama Developments*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

Contents

- Glossary of Terms**..... **5**
- Background**..... **6**
- Audit Findings and Recommendations**..... **7**
 - Hazardous/Unsafe Physical Conditions..... **7**
 - Recommendation..... **15**
 - Inadequate Oversight of Financial Conditions..... **15**
 - Recommendations..... **21**
 - Other Matters..... **22**
 - Recommendations..... **24**
- Audit Scope, Objectives, and Methodology**..... **25**
- Statutory Requirements**..... **27**
 - Authority..... **27**
 - Reporting Requirements..... **27**
- Agency Comments and State Comptroller’s Comments**..... **28**
- Contributors to Report**..... **38**

Glossary of Terms

| Term | Description | Identifier |
|---------------------|---|---------------------------------------|
| HPD | New York City Department of Housing Preservation and Development | <i>Auditee</i> |
| | | |
| Arverne Development | Arverne/Nordeck Mitchell-Lama Development in Queens Mitchell-Lama property | <i>Development</i> <i>Key Term</i> |
| DOB | New York City Department of Buildings | <i>Agency</i> |
| HDC | New York City Housing Development Corporation | <i>Agency</i> |
| IPNA | Integrated Physical Needs Assessment | <i>Key Term</i> |
| Managing agent | Agent that manages a Mitchell-Lama development | <i>Key Term</i> |
| North Shore | Arlington Terrace/North Shore Mitchell-Lama Development in Staten Island | <i>Development</i> |
| Program | Mitchell-Lama Housing Program | <i>Program</i> |
| Property manager | On-site manager of a Mitchell-Lama development | <i>Key Term</i> |
| Rules | Rules of the City of New York, Title 28: Housing Preservation and Development, applicable to Mitchell-Lama properties | <i>Regulations</i> |
| York Hill | York Hill Mitchell-Lama Development in Manhattan | <i>Development</i> |

Background

The Mitchell-Lama Housing Program (Program) was created in 1955 to provide affordable rental and cooperative (co-op) housing to middle-income families. In exchange for low-interest mortgage loans and real property tax exemptions, the Program requires owners to comply with limitations on profit and income limits for residents. There are both New York City (City)-supervised and State-supervised Mitchell-Lama developments. City Mitchell-Lama developments are under the supervision of the New York City Department of Housing Preservation and Development (HPD), and State Mitchell-Lama developments are under the supervision of Homes and Community Renewal's Division of Housing and Community Renewal. HPD, the nation's largest municipal housing preservation and development agency, is charged with promoting the quality and affordability of the City's housing and the strength and diversity of its many neighborhoods. As of February 22, 2024, there are 93 HPD-supervised Mitchell-Lama rental and limited-equity co-op developments, with approximately 46,902 units.

Owners of City Mitchell-Lama developments enter into written management agreements with agents for management services; these agreements must be approved in writing by HPD. The managing agents of Mitchell-Lama developments are required to maintain developments in good physical condition and in compliance with current Mitchell-Lama Rules, which are the Rules of the City of New York, Title 28: Housing Preservation and Development (Rules).

This audit is based on a judgmental sample of three developments (see table below for development details).

Sampled Developments

| Development | Location | Number of Buildings | Number of Units | Current Managing Agent | Property Type |
|-------------------------------|---------------|---------------------|-----------------|--------------------------|---------------|
| Arverne/Nordeck | Queens | 6 | 342 | Prestige Management | Cooperative |
| Arlington Terrace/North Shore | Staten Island | 4 | 535 | RY Management | Rental |
| York Hill | Manhattan | 1 | 296 | FirstService Residential | Cooperative |

Audit Findings and Recommendations

As the oversight agency of the City's Mitchell-Lama Program, HPD is responsible for ensuring that managing agents provide residents with a safe and clean living environment, and that development funds are spent for intended purposes.

We determined that HPD officials are failing to adequately monitor the developments' managing agents to ensure developments are being maintained in a manner that protects the health and safety of their residents. We observed conditions that included crumbling building façades, collapsed ceilings, pest infestations, mold, and self-closing/fire doors that did not close and latch automatically. Many of these issues are class C violations, or "immediately hazardous," which must be rectified as soon as possible; instead, they persisted for multiple years.

The City's Housing Development Corporation (HDC) performs physical inspections of certain Mitchell-Lama developments. HPD relies on these inspections to determine whether developments are being maintained as required. Both HPD officials and the developments' managing agents stated they have not been receiving the inspection reports from HDC, asserting they are not notified of physical inspection issues unless the issues are severe. Without proper oversight, hazardous/unsafe physical conditions at the developments could go undocumented and uncorrected for long periods of time, ultimately jeopardizing the health and safety of residents and employees.

Further, management at all three developments did not adhere to the Rules related to the proper use of funds, as evidenced by our findings of inappropriate expenses, lack of support for expenditures, and lack of required competitive bidding. Notably, two of the three developments (Arverne and York Hill) operated at a net loss, before depreciation, for the fiscal year ended 2022.

Hazardous/Unsafe Physical Conditions

According to the Rules, each housing company shall maintain its structures, grounds, elevators, boilers, and other equipment in a manner that preserves the property, protects the health and safety of the residents and employees, and provides for economical operation of the development. In addition, the Rules state:

All developments are subject to physical inspection. HPD may retain a third party to make inspections or may rely on inspections made by others. The inspector shall carry out his or her inspection together with a representative of the housing company. HPD or its designee shall issue a written inspection report which shall be sent to the owner or the President of the Board of Directors and the managing agent.

HPD officials also reserve the right to conduct a physical inspection of each development at any time. To determine whether the developments were being maintained as required by the Rules, we visited the developments to verify current conditions and reviewed HDC's inspection reports to determine the status of issues identified.

Detailed below are our observations of the hazardous/unsafe physical conditions at each of the three sampled developments we visited.

Arverne

We conducted three site visits at Arverne—on June 15, July 28, and August 3, 2023—and found that hazardous/unsafe conditions existed throughout the development. Additionally, we found safety conditions were not addressed although they were previously noted in physical inspection reports prepared by HDC.

On June 15, 2023, we judgmentally selected and visited six vacant units from a current vacancy report provided by Prestige Management that showed 21 vacancies. We revisited the development on July 28, 2023 and received an updated vacancy report showing 23 vacancies. We attempted to visit all 23 vacant units but could not view six of them at the time because one was involved in an ongoing police investigation and the remaining five, according to the building superintendent, were recently turned over to applicants on the waiting list.

We observed the following conditions in one or more of the 17 vacant units we visited:

- Collapsed ceilings and wall due to water damage (see Figures 1, 2, and 3)
- Black soot on kitchen floor that appeared to be coming from a vent
- Exposed nails and possible mold
- Peeling paint



Figure 1 - Collapsed wall in kitchen of an Arverne unit.



Figure 2 - Collapsed ceiling in a bathroom of an Arverne unit.

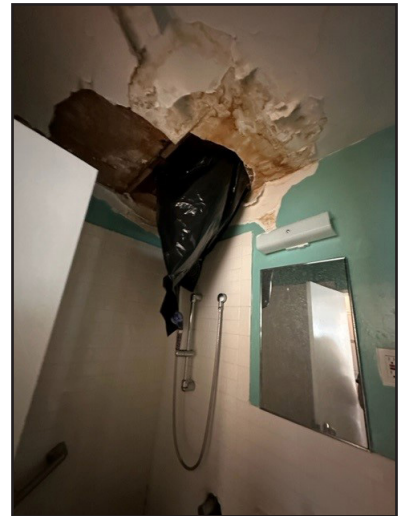


Figure 3 - Collapsed ceiling in a bathroom of an Arverne unit.

On June 15, 2023, we also visited seven occupied units and found the following hazardous/unsafe physical conditions in one or more units:

- Cracks in ceilings due to water damage
- Water bubbles on bathroom walls and a rusting bathtub
- Peeling paint

We also observed cracks in the foundation of Building 353 as well as a missing egress window in the basement, which created an opening where unwanted animals, water, and people could enter. Further, we observed a hole in the concrete of the courtyard where residents congregate and walk to and from buildings.

Click [Arverne Interior](#) and [Arverne Exterior](#) for additional photos.

North Shore

We conducted four site visits at North Shore—on June 29, July 18, and August 22, 2023 and February 15, 2024. We found hazardous/unsafe physical conditions, some of which were previously noted in physical inspection reports prepared by HDC for 2019, 2020, 2021, and 2022.

We requested and received a vacancy report that listed a total of 57 vacant units as of June 29, 2023. We visited all 57 units—30 units on June 29 and 27 units on July 18—and observed hazardous/unsafe conditions in 22 of the 57 vacant units. For example, one or more units had the following:

- Missing stairs leading to the second floor (see Figure 4); we could not access the second floor and therefore could not verify what physical conditions existed above.
- Holes in bathroom walls (see Figure 5), peeling and chipped paint, and water bubbles and cracks on the walls.
- Missing floor tiles, window guard, and doorknob, and cracked windows.
- Exposed electrical wires and pipes as well as broken bathroom sinks and kitchen cabinets.
- Bulging ceiling.
- Water leaks from one balcony onto the balcony below.
- Possible mold in a bathroom ceiling, in a living room closet, and in a hallway ceiling (see Figure 6).
- Insect infestation (roaches dead and alive) as well as bird feathers and feces.



Figure 4 - Missing steps in a North Shore townhouse.



Figure 5 - Holes in a bathroom wall in a North Shore townhouse.



Figure 6 - Mold on the wall in a North Shore townhouse.

In addition to visiting all 57 vacant units, we visited 26 occupied units on August 22, 2023. We observed hazardous/unsafe physical conditions in 12 of the 26 occupied units, including:

- Mold on a bathroom ceiling and a staircase wall.
- Missing pieces of façade from a balcony and a balcony door that could not be closed.
- Water bubbles and other damage on bathroom, bedroom, and living room walls.
- Detached baseboard and kitchen counter trim.
- A unit with mold in the living room. This unit was flooded during a hurricane and a rainstorm in October 2022. The resident informed us that they contacted the managing agent amid the flood in 2022 and was told that, because of the COVID-19 pandemic, nothing could be done at that time. The resident stated that, while waiting for the unit to be fixed, the mold conditions have persisted, which is hazardous to her and her two young children currently living in the unit.

We also observed poor conditions in North Shore's common areas. We found the hallways and staircases in some of the buildings had peeling paint, water bubbles and leaks, exposed electric wires, possible mold, and a cracked window. We also found peeling paint, missing ceiling tiles, and an open hole next to a washing machine in the laundry room. In addition, we observed exposed pipes and garbage piled on the floor of a trash compactor room. The security room also had missing floor tiles, a broken window covered by wood, and cracks in the walls. We noted significant debris, including glass bottles, on the roof of one building. When we visited the community room, we saw signs of a live roach infestation, a collapsed ceiling, missing floor tiles, and brown water coming from the bathroom pipe. Further, we found that the ground floor self-closing/fire doors leading to the staircases in

one of the four buildings did not latch or self-close. Having a malfunctioning ground floor door that allows unfettered access to a building’s staircase and residents’ units creates a safety and security risk for residents. We also observed the outdoor playground’s rubber flooring was breaking apart. There was also a pole protruding from and an indentation in the playground floor.

Additionally, we saw significant damage, including missing concrete, several cracks, leaks, and corrosion in the façades of Building 55 (see Figure 7) and Building 65. Moreover, we noted there was no safety equipment to mitigate the associated risks (e.g., falling façade/debris) posed to residents, visitors, and employees. In fact, a sidewalk shed was not erected until we notified HPD officials of the hazardous/unsafe conditions. We also noted that the managing agent had posted a notice for residents to remove handles from their balcony doors to prevent them from accessing their balconies, thereby creating a safety hazard for residents if they need to exit via their balconies during a fire or other emergency. When we notified HPD officials of these deficiencies in September 2023, they advised us they were unaware of these façade issues.

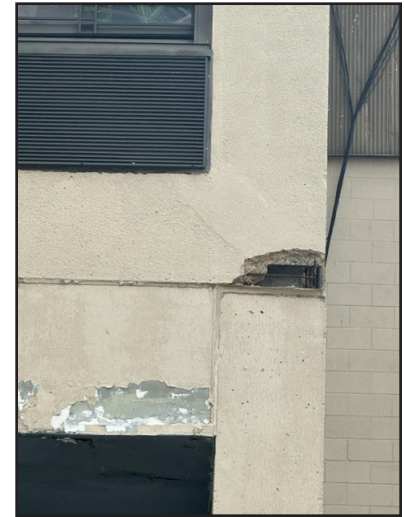


Figure 7 - Façade damage on North Shore Building 55.

In response to our preliminary findings in March 2024, HPD officials stated that North Shore’s buildings are classified as “fire-proof,” and balconies are not required egress points under building or fire codes. HPD further stated that management reported they began proactively restricting balcony access in preparation of anticipated orders from the New York City Department of Buildings (DOB) restricting balcony access due to façade conditions. Although we observed these hazardous/unsafe exterior conditions during our initial visit to North Shore on June 29, 2023, it is unclear how long they existed.

Click [North Shore Interior](#) and [North Shore Exterior](#) for additional photos.

York Hill

We conducted five site visits to York Hill—on August 31, September 28, and October 1, 2023 and January 10 and February 7, 2024. During the October 1, 2023 visit, we observed rusting, cracks, and peeling paint on the façade of a building that was surrounded by a sidewalk shed. The property manager told us they were in the process of remediating the façade to comply with Local Law 11 (1998).¹

To select a sample of units to visit, we requested York Hill’s rent rolls from the property manager and were provided with the September 28, 2023 rent roll, which listed eight vacant units. However, we were told that the rent roll did not list four additional units that were recently vacated. We visited the 12 vacant units on

¹ Local Law 11 (1998) states owners of properties higher than six stories must have exterior walls and appurtenances inspected every 5 years and must file an examination report with the DOB. Property owners must repair dangerous conditions within 30 days of filing the report. Not identifying and correcting such issues could result in major structural damage as well as injuries and/or fatalities.

September 28 and observed the following hazardous/unsafe physical conditions in two of the 12 vacant units:

- Mold in a bathroom
- Water leak in a cabinet
- A rusting windowsill

We next visited 11 occupied units on October 1 and encountered a unit that was occupied by an elderly resident. According to York Hill's superintendent, the resident has consistently refused to grant management access to her unit. However, during our visit, we were able to access the unit after explaining to the resident who we were. We found extensive mold growing on the ceiling throughout her living room, kitchen, bathroom, and hallway (see Figure 8). Mold is an environmental hazard that can cause serious health problems, especially for an elderly resident, if left untreated. We informed HPD officials of our observation; they subsequently affirmed that, since our visit, management has obtained assistance for the resident via Adult Protective Services.

Residents did not respond when we rang the doorbell at three other allegedly occupied units, while residents at the seven remaining occupied units reported no issues.

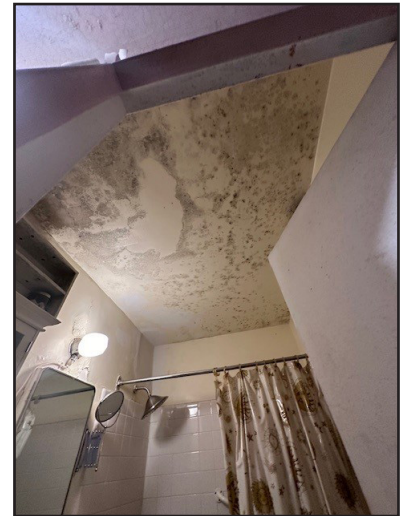


Figure 8 - Mold on the ceiling of a bathroom in York Hill.

Click [York Hill](#) for additional photos.

Overall, we determined that HPD officials are failing to adequately monitor the developments' managing agents to ensure developments are being maintained in a manner that protects the health and safety of their residents. Moreover, the risk to health and safety only increases when lengthy neglect leads to further deterioration in the developments' physical condition, thus making them more costly to repair.

In response to our preliminary findings, HPD officials noted that hazardous/unsafe physical conditions, such as those we observed at the three developments, will require significant funding to evaluate and remediate. They provided Integrated Physical Needs Assessments (IPNAs) for North Shore and York Hill; these IPNAs, conducted in February 2024 and October 2023, respectively, evidenced that HPD is in the process of securing a subsidy of approximately \$47 million for North Shore and approximately \$7.5 million for York Hill for necessary repairs. HPD officials also indicated that Arverne is scheduled to receive subsidy assistance to fund capital repair work, including façade and foundation repairs, lobby and elevator upgrades, and resiliency measures to mitigate flooding risk. HPD did not provide an IPNA for Arverne but provided an engineering proposal for façade work that is estimated to cost approximately \$34,500.

Hazardous/Unsafe Physical Conditions Not Timely Addressed

We asked HPD officials to provide us with HDC’s physical inspection reports for the three developments for our scope period of January 2019 through February 2024. We were provided with Arverne’s reports for October 2019, September 2020, and July 2021 and North Shore’s reports for May 2019 and September 2020, 2021, and 2022. No reports were provided for York Hill. Our review of the reports indicated that HDC inspectors found several hazardous/unsafe physical conditions that required corrective action—a number of these were repeat items reported in previous years’ physical inspection reports. When we conducted site visits to Arverne and North Shore—more than 2 years after the last HDC physical inspection reports were issued—we found certain issues and conditions cited in the 2019, 2020, and 2021 HDC reports still existed.

For example, in HDC’s North Shore 2022 physical inspection report, the managing agent was directed to repair the deteriorating ceilings for all exterior lobby entrances (see Figure 9). However, when we visited in June 2023, we observed that repairs had not been made in Buildings 35, 55, and 65. Consequently, we question whether HPD officials’ monitoring of physical inspection reports ensures conditions are rectified in a timely manner.

According to the New York City Administrative Code, multiple dwelling buildings are required to be equipped with self-closing/fire doors, and owners of buildings must keep and maintain such doors in good repair. Moreover, unit and hallway doors are required to automatically close and latch by themselves after being opened so that, in the event of a fire, the closed doors would prevent the smoke and fire from spreading. Not properly maintaining self-closing doors could cause fires and smoke to spread faster,² resulting in damage to the development and injury or death to its residents, and allow access by unwanted/unauthorized individuals. Any owner who fails to keep and maintain self-closing doors is liable for a class C violation (immediately hazardous). Property owners must correct most of these issues within 14 days of receiving a Notice of Violation.



Figure 9 – Deteriorating ceiling in Building 55.

At two of the developments, Arverne and North Shore, we observed several malfunctioning self-closing doors. For example, on our August 3, 2023 visit to Arverne, we found the fire doors on the second and sixth floors of Staircase A in Building 324 did not latch and self-close. HDC’s physical inspection report for 2019 noted that Arverne should repair or replace the fire doors in Staircase A’s second and third floors so they would self-close and latch, repair the door handle on the fifth floor of Staircase A, and replace the missing “gut” for the second-floor fire door in

² On January 9, 2022, a fire at Twin Parks North West, a 19-floor high-rise building in the Bronx, claimed the lives of 17 residents—most of whom died from smoke inhalation. The fire started in a third-floor apartment. Apparently, several self-closing/fire doors in the building were not functioning as intended, thereby allowing deadly smoke to rapidly spread to stairwells and other floors.

Staircase B, all in Building 321. When we conducted our site visit at Building 321, we found that Staircase A's second-floor fire door still did not self-close and latch, and the "gut" for the door on Staircase B's second floor was still missing. According to Arverne's management, they did not receive these reports from HDC or HPD for the period from July 2019 through February 2024 and therefore were not aware of the physical conditions that were cited or needed to be corrected.

Similarly, during our August 22, 2023 visit to North Shore, the fire doors on the third floor of Staircase B and the fourth floor of Staircase A in Building 35 as well as the fire door on the fifth floor of Staircase B in Building 65 did not close or latch properly, even though HDC's 2020 and 2022 physical inspection reports directed North Shore's managing agent to repair them. Additionally, we found the 2019, 2020, 2021, and 2022 physical inspection reports stated that North Shore's managing agent needed to repair the non-working elevator indicator buttons (UP and DOWN arrows) on all floors in Buildings 35 and 55. When we visited in August 2023, we observed that the conditions still existed. Moreover, we found that the elevator in Building 55 was out of service for about 5 months according to the building superintendent.

Managing agents must also conduct annual inspections of all units for the purpose of identifying unreported electrical appliances or other equipment issues (air conditioners, freezers, washing machines, and dryers), observing the physical condition of the units, and ascertaining compliance with the rules and regulations of the development. Managing agents should report these findings in writing to the owner and HPD.

We requested individual apartment inspection reports from the three developments' managing agents, but none were provided. In response to our preliminary findings, HPD officials noted that North Shore's management stated individual unit inspection reports were completed and are available on site. However, as of May 16, 2024, we have not received the individual unit inspection reports from HPD. In the absence of such reports, HPD has no assurance that individual unit inspections are being completed or units are being maintained in accordance with the Rules, and therefore is not aware of any hazardous/unsafe physical conditions.

We also found that, as of February 23 and February 26, 2024, there were 154 and 83 open violations listed on HPD Online for Arverne and North Shore, respectively. Of Arverne's 154 violations, 16 were class C violations; of North Shore's 83 violations, 23 were class C violations. These are required to be rectified within 24 hours of the service of the Notice of Violation. However, we noted that a class C violation for mouse infestation at Arverne has been outstanding for over 4 years. We also determined that another class C violation for a broken/defective lock at a front entrance door has been outstanding for over a year.

Recommendation

1. Improve monitoring of the three developments, including but not limited to:
 - Verifying that managing agents maintain the developments in a manner that preserves the property and protects the health and safety of residents by ensuring annual individual unit inspections are conducted, related reports are completed, and deficiencies are corrected; and routinely checking to verify that all self-closing/fire doors are fully operational.
 - Coordinating with HDC, when applicable, to ensure physical inspection reports are provided to HPD and the managing agents in a timely manner.
 - Ensuring that immediate corrective action is taken when hazardous/unsafe conditions are identified.

Inadequate Oversight of Financial Conditions

Based on our review of sampled transactions at Arverne, North Shore, and York Hill, HPD officials should improve their oversight of financial conditions at the developments. In total, we found approximately \$1.6 million in transactions that were either unrelated to normal operations or inadequately supported. In addition, we did not find competitive analysis and/or bidding and written HPD approval for \$620,000 in contracts. Finally, we estimated approximately \$1.5 million in loss of rental revenue for vacant apartments.

In accordance with the Rules, “managing agents must maintain an office or place of business where they will keep all books, records, bills, and other documents pertaining to the housing company. These records will be available for inspection and review by the owner, HPD or other interested parties as permitted by statute or rules of HPD.” Additionally, development funds should be used prudently and for business related to the development.

HPD has failed to adequately review supporting documentation to ensure expenses are valid and appropriate. Lack of such review can result in the developments’ management misusing and wasting funds and issuing checks to inappropriate parties. Further, HPD does not have policies and procedures that address the payment of bonuses—and officials told us that such payments are neither condemned nor condoned. However, bonuses are generally awarded for good performance. Consequently, developments are not prevented from paying bonuses while operating at a loss—even though such payments may result in maintenance increases to residents as well as the inability to address hazardous/unsafe conditions. Additionally, HPD officials do not have policies and procedures in place related to gratuity payments, so developments are not prevented from paying gratuities while operating at a loss. Moreover, management at the three developments seem to lack training on or awareness of good governance and of their financial responsibilities, as evidenced by the use of funds for unnecessary purposes in the face of financial losses.

Unsupported/Inappropriate Expenses

Arverne

To determine whether managing agents used Arverne’s funds for their intended purposes, we judgmentally selected for review a sample of 73 transactions, totaling approximately \$1.4 million out of \$35.4 million, from the general ledgers for the 3 fiscal years ended March 31, 2022. (Note: During our audit scope, Arverne was managed by FirstService Residential until July 2022 and subsequently by Prestige Management.) For the 73 transactions, we requested corresponding contracts, invoices, receipts, and check images. We were only provided with sufficient supporting documentation for 40 of the 73 selected transactions. For the remaining 33 transactions, totaling approximately \$1.2 million, the managing agent provided either no support or inadequate support despite our multiple requests, as follows:

- No supporting documentation for 26 transactions, totaling \$1,134,563, including \$578,840 in various capital improvements, \$71,697 in payroll expenses, and a \$300,000 payment to one vendor for which we could not determine what services were provided
- No canceled checks for four transactions, totaling \$19,557, for supplies, hardware, plumbing, and legal fees
- Invoices but no canceled checks for three transactions, totaling \$4,907

As of May 16, 2024, the requested documentation for the 33 transactions had not been provided, and we therefore could not determine if these expenditures were appropriately related to the operations of the development or paid to the correct parties.

During the period managed by Prestige Management, we found that the managing agent used development funds to pay \$1,050 in gratuities, which were recorded on the general ledger as “gratuity to maintenance staff.” HPD disagreed with the premise that gratuities to maintenance staff, especially in the modest total amount of approximately \$1,000, is an “unnecessary payment,” and noted that deferring such payments could lead to staff departures, negatively impacting operations and conditions for residents. We maintain that the necessity of such payments should be carefully weighed when developments are in need of repair and are operating at a loss.

Arverne operated at a net loss, before depreciation, of \$189,875 in the fiscal year ended March 31, 2022. If Arverne continues to make unnecessary payments and purchases while operating at a net loss, it may result in maintenance cost increases, the inability to address hazardous/unsafe conditions, and/or other negative consequences to residents.

North Shore

To determine whether North Shore's funds were being used for their intended purposes, we judgmentally selected a sample of 138 transactions, totaling \$2.3 million out of \$238 million, for the 4 calendar years ended December 2022 and 6 months ended June 30, 2023. We were provided with documentation for just 106 of the 138 transactions selected. Based on our review of the documentation that was provided, including contracts, invoices, receipts, and check images, we found 31 of 106 transactions, totaling \$37,746, were either unrelated to normal operations or inadequately supported.

We identified the following expenses as not being business or operation related:

- \$25,800 in staff bonuses, \$17,500 of which was paid to the property manager
- \$5,688 for Christmas parties and staff gifts, alcohol (vodka), a luncheon, and gratuities for the mail carrier and sanitation workers
- \$5,907 for a family day and Christmas events
- \$278 under "miscellaneous," comprising \$171 for a staff appreciation lunch for maintenance staff enduring resident abuse (as described on the invoice) and \$107 for refreshments for HDC inspectors
- \$72 in refreshments for Wells Fargo inspectors

We also requested supporting documentation for salaries totaling \$392,038 (\$90,227 in 2019, \$210,621 in 2020, and \$91,190 in 2021) because North Shore's general ledgers did not include the employees' names. As salaries were listed with the employees' titles only, we had no assurance as to whom salaries were paid. As of June 2024, the managing agent has not yet provided documentation/reports to support the salary amounts and to indicate to whom they were paid.

We also requested supporting documentation for \$28,744 listed in the 2019 general ledger under "capital improvement." North Shore's managing agent did not provide any documentation to support this expenditure; therefore, we could not determine what improvements were done, where they were done, and by whom.

York Hill

We reviewed a sample of 211 transactions, totaling about \$920,000 of about \$44 million in expenses, for the 4 fiscal years ended June 30, 2023 and 2 months ended August 31, 2023. We found 57 transactions, totaling \$44,347, that were either unrelated to normal operations or inadequately supported.

During our audit scope period, York Hill was managed by two different managing agents: Metro Management (January 1, 2019–January 31, 2022) and FirstService Residential (February 1, 2022–August 31, 2023). For our sample, we requested corresponding contracts, invoices, receipts, and check images. We were provided with some supporting documentation for 209 of the selected transactions. For two transactions—\$2,700 for special repairs and \$124 for plumbing—we did not receive

any supporting documentation. Consequently, we are/were unable to determine if the two transactions, totaling \$2,824, were paid to the correct parties or used for their intended purposes.

We identified the following expenses as not business or operation related:

- For 2019:
 - \$7,717 for items such as food catering, a DJ for a holiday party, decorations, and Christmas trees.
 - \$5,665 in bonus payments to the property manager and staff, reported as payroll and holiday expenses.
 - \$1,975 for replacement flooring reimbursed to a resident.
 - \$1,337 recorded as repairs and maintenance expenses; however, invoices show this included payments of \$1,163, which included \$675 (paid to the superintendent) for a Bluetooth speaker, and \$174 for baseboards for a tenant's unit (paid to the property manager).
 - \$450 paid to the building superintendent for garbage removal, with no invoice provided. We question whether garbage removal is not one of the superintendent's regular duties.
- For 2020:
 - \$9,037 in reimbursement to the property manager for a Rolex watch given to York Hill's superintendent as a retirement gift.
 - \$7,565 in holiday/COVID-19 bonus payments to staff in October and December 2020.
 - \$867 in reimbursement to the property manager for flooring for "Super's Room."
 - \$650 for a handwriting expert.
- For 2021:
 - \$4,600 in holiday bonus payments for staff, sanitation workers, and mail carriers.
 - \$572 for Amazon purchases—the receipts did not indicate the reason for the purchases.
- For 2022:
 - \$893 in reimbursements to shareholders for the purchase of a Christmas tree and alcohol.
 - \$195 for legal services that had no invoice to support the payment.

York Hill also operated at a net loss, before depreciation, of approximately \$112,000 in the fiscal year ended June 30, 2022. If York Hill continues to make unnecessary payments and purchases while operating at a net loss, it may result in maintenance cost increases, the inability to address hazardous/unsafe conditions, and/or other negative consequences to residents.

Lack of Supporting Documentation, Contracts for Services, and Required Competitive Bidding

According to the Rules, “contracts for building services, repairs, replacements, redecorating or improvements and supplies shall be let on the basis of lowest cost compatible with quality of performance, material, and workmanship ... on the basis of no less than three competitive bids ...[and] contracts over \$100,000 shall be submitted for HPD written approval.” The Rules also require that all contracts for building services or maintenance of the buildings’ equipment on an annual or time basis that require HPD approval shall be submitted to HPD for written approval before execution by the housing company and prior to the expiration of any previous contract. We did not find competitive analysis and/or bidding and written HPD approval for \$620,000 in contracts (North Shore).

Arverne

We requested all contracts, HPD approvals, and evidence of competitive bidding for goods and services over \$100,000 from Arverne’s managing agents for our scope period; however, as of May 16, 2024, managing agents did not provide the requested information. We analyzed general ledgers and found that payments, in the aggregate, for plumbing services during 2019 were approximately \$120,000. In some cases, multiple payments were made on the same day. For example, on February 28, eight payments were made totaling \$20,090, and on October 31, two separate payments were made totaling \$25,659. Breaking up payments in this manner allows for the circumvention of the Rules. Further, we requested all contracts from \$5,000 to \$100,000 to determine whether the contracts were let on the basis of lowest cost and in accordance with the Rules. As of May 16, 2024, we did not receive any supporting documentation.

North Shore

North Shore’s managing agent contracted with a security company to perform security services at its development for approximately \$10,000 per week, totaling approximately \$520,000 per year. We requested evidence that the work was competitively bid. The managing agent did not provide any bid documentation and stated that “all contracts currently in effect were renewals with vendors that have been servicing the complex with good service and have historical knowledge of the property, which is invaluable.”

North Shore’s managing agent also provided the \$100,000 social service program contract we requested; however, we could not verify the contract was competitively bid or approved by HPD. According to the managing agent, the contract was sought by the development’s owners. Further, we found that the contractor’s name differed from the one used in North Shore’s general ledger for expense payments. We requested the contractor’s contact information from the managing agent; however, it was not provided.

York Hill

We requested from Metro Management all contracts valued at over \$100,000, along with evidence of competitive bidding. Metro Management did not provide us with any contracts or competitive bids, stating that all documentation remained on site at York Hill when the development changed managing agents to FirstService Residential. Based on our analysis of Metro Management's general ledger, it appears that two vendors had payments that accumulated to over \$100,000: a security contractor—paid over \$154,000 in 2019, over \$204,000 in 2020, and over \$230,000 in 2021; and a mechanical contractor—paid over \$113,000 in 2019. Therefore, a contract and HPD approval should have existed for these services. HPD notes that the requirement for three competitive bids does not apply to individual contracts scoped to less than \$100,000, even if cumulative payments exceed that threshold. However, because no support was provided, we have no assurance that there was competitive bidding or HPD approval.

We also requested similar documentation from FirstService Residential for the period it managed the development and received two contracts totaling more than \$100,000. We were provided with competitive bids for one contract, but for the other contract—for which FirstService Residential made security contract payments totaling over \$105,000 from March 1, 2023 through August 31, 2023—a contract for that period was not provided.

Without the contracts, we cannot determine whether they were awarded based on the lowest cost compatible with quality of performance, material, and workmanship as required by Section 3-07 (2) of the Rules, nor can we be certain that the development is not spending its limited funds on inappropriate or superfluous expenses. There is also a risk that managing agents may select unqualified vendors, family, and friends.

Loss of Rental Revenue for Vacant Apartments

The Rules state that a quarterly vacancy report must be sent to HPD within 30 days of its preparation. According to an HPD directive, if a unit remains vacant for more than 120 days, management must include a written explanation for the excessive vacancy period and a plan of action to resolve the matter causing the delay in reoccupying the unit. At the three developments we visited, we found that several of the vacant units had been empty for extended periods. Having units remain vacant for such long periods not only results in a loss of income for the development but can also lead to further deterioration in their physical condition, thus making them more costly to repair. We estimated that managing agents were unable to collect over \$1.5 million in unrealized rental income from apartments that remained vacant for more than 120 days.

Arverne

At the time of our visit on June 15, 2023, we requested a list of vacant units from Arverne officials. We received a list that had 21 vacant units, all of which were vacant

for 120 days or more. We calculated that the managing agent was unable to collect \$459,744 in unrealized rental income for the 21 units.

Several of the vacant apartments have been vacant for over 3 years. Further, development officials told us that five of the vacant units were deemed uninhabitable because of damage to the façade; these five units have been vacant for an average of about 2 years.

North Shore

At the time of our visit on June 29, 2023, we requested a list of vacant units from North Shore officials. We received a list that had 57 vacant units, of which 42 were vacant for 120 days (4 months) or more. We calculated that the managing agent was unable to collect over \$1 million (\$1,045,373) in unrealized rental income for the 42 units.

According to North Shore officials, one reason for the increased vacancies is HPD's continuous delays in inspecting and approving vacant units. North Shore officials asserted that, by the time HPD inspects and approves vacant units, some residents are no longer interested, requiring the resident-vetting process to restart, further delaying receipt of needed rental income. HPD officials stated that turnovers involving Section 8 recipients will almost universally take longer, as the process of placing a qualified Section 8 resident into a unit is subject to time-intensive federal requirements. However, we found that 31 of the 42 vacant units that were move-in ready have been vacant for an average of 1 year, 5 months. With the development in poor physical condition, filling these vacancies timely can generate the necessary resources to address defects and provide for potential upgrades.

York Hill

At the time of our visit on September 28, 2023, we requested a list of vacant units from York Hill officials. We received a rent roll that had eight vacant units, of which six were vacant for 120 days or more. We calculated that the managing agent was unable to collect \$43,104 in unrealized rental income for the six units.

Recommendations

2. Develop and implement policies and procedures regarding bonus and gratuity payments.
3. Monitor managing agents and the developments' Boards (where applicable) to ensure they:
 - Operate the developments in a fiscally sound manner, with HPD providing training if necessary.
 - Promptly fill vacant units.
4. Adequately review transactions for appropriateness of expenses and sufficiency of supporting documentation during annual reviews.

-
5. Periodically review a sample of contracts and expenses to identify payments to vendors and service providers that, in the aggregate, equal or exceed \$100,000 in any fiscal year to ensure they are approved by HPD and that contracts at \$100,000 or more were competitively bid and approved by HPD.

Other Matters

Excessive Resident Arrears

The Rules state that it is the responsibility of the managing agent to collect rent/carrying charges as well as to take the necessary actions to collect past-due rent/carrying charges. Uncollected rents can negatively impact a development's finances. In total, the three developments reported approximately \$3.7 million in arrears.

Arverne

We reviewed financial statements for our audit scope period as well as an Aged Delinquency Report dated July 2023, and found approximately \$1.6 million in rental arrears, \$1.4 million of which was past due for more than 90 days. We found one resident who owed more than \$69,000 and another who owed more than \$65,000.

North Shore

North Shore's Aged Delinquency Report dated June 30, 2023 showed rent arrears of approximately \$2.2 million, of which \$1.7 million was more than 90 days overdue. We found three residents with arrears of \$98,129, \$56,721, and \$54,205, respectively, that were more than 90 days old.

York Hill

We requested York Hill's resident arrears report from the managing agent on February 13, 2024, but as of May 16, 2024 have not received the information. Subsequently, we reviewed York Hill's financial statements and found that the development reported \$162,000 in tenant arrears for the year ended June 30, 2022.

According to HPD officials, North Shore sends notices to residents when they become 2 months delinquent on rent payments. Legal action is initiated if a resident fails to pay their rent in response to the notice. Officials also indicated that, since the pandemic, the legal processes for collecting delinquent payment have been unusually slow.

Absent Property Manager: North Shore

Of our three visits to North Shore in 2023—on June 29, July 18, and August 22, 2023—the property manager was only present on June 29. When we visited North Shore on August 22, an RY Management employee/contractor told us that the property manager was rarely on site. One resident told us they had not seen the

property manager on site since the pandemic. The resident further stated that when issues arise at the development, the staff in the managing office are usually of no help, and typically respond to the residents by saying, “What do you want us to do?” We requested an employee contract and/or job duties for the property manager from RY Management but did not receive a response. We also requested the property manager’s on-site schedule for the development; however, this information was never provided. A review of the management contract between the managing agent and North Shore does not specify on-site office hours for the property manager.

When we visited the development on February 15, 2024, we met with an individual who indicated she was the current full-time property manager and had assumed that role on February 12, 2024. She told us that she had not yet met her predecessor but was informed by office staff that the individual worked on a part-time basis—on Saturdays—and was tasked with training her. However, no training had yet been provided even though her predecessor’s last day on the job was scheduled for March 1, 2024. The prolonged absence of the prior property manager potentially contributed to the poor physical conditions of the development.

Vacant Commercial Unit: Arverne

During our August 3, 2023 site visit, we observed that the commercial space located on the ground level was vacant and had holes in the ceiling and walls, exposed electrical wires hanging from the ceilings, and stained ceiling tiles. According to Arverne’s managing agent, the commercial space has been vacant since 2019. HPD should increase its oversight of the managing agent to ensure necessary repairs to vacant space are made in a timely manner. By not repairing the commercial space and leaving it vacant for approximately 5 years, Arverne officials are contributing to the development’s current operating loss.

Possible Subletting: York Hill

In accordance with the Rules, no resident/cooperator shall have the right to sublet without prior written approval of HPD and the housing company, which only shall be given in exceptional circumstances.

When we conducted our site visit to York Hill on October 1, 2023, we attempted to visit various units. During the visit, we became aware of three shareholders from three different units, who, according to neighbors, had not been seen for some time. The neighbors informed us it was their belief that at least one of the three units was being sublet. We interviewed the managing agent and were told of an additional five shareholders who were suspected of subletting their units. We reviewed the shareholders’ files for the possible subletters and found indications that the units are not being used as the shareholders’ primary residences or are being sublet. In one case, a shareholder appeared to live in a home she owned in New Jersey; another shareholder was linked to an address in Mount Kisco, New York. A report provided by the managing agent showed that the shareholder with the New Jersey address had surrendered her New York State driver’s license to the state of New Jersey in 2019,

the same year she obtained the unit at York Hill. In another shareholder's file was a report listing an address in Maryland. We noted that these shareholders had not filled out the required annual income affidavits.

With HPD not ensuring that the development is conducting the required annual individual unit inspections, they have no assurance these units are not being sublet. Further, shareholders appear to be inappropriately subletting units and charging a rent that is higher than what they are paying for maintenance charges, thus pocketing the difference. HPD officials stated that they are aware of the issue and have been working diligently with management and through the legal system to address it.

Recommendations

6. Monitor managing agents to ensure rent arrears are collected in a timely manner.
7. Ensure that management plans between the managing agent and housing development include a policy regarding deployment of personnel, including the property manager's working days and on-site hours.
8. Ensure vacant commercial spaces are promptly repaired and filled to generate income.
9. Improve monitoring of the developments to ensure the shareholders use their units as their primary residence and that managing agents obtain and enforce income affidavits.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether Mitchell-Lama developments supervised by HPD are being maintained in a manner that protects the health and safety of residents, and whether funds at these developments are being used for intended purposes. Our audit covered the period from January 2019 through February 2024.

To accomplish our objectives and assess related internal controls, we reviewed the Rules of the City of New York, local laws, and HPD's policies and procedures, including HPD's fiscal audits and physical inspection reports. We met with HPD officials to obtain an understanding of their rules, policies, and procedures, as well as their oversight of the developments, and met with development residents to obtain their testimony regarding development conditions. We also obtained lists of vacant units at each development and visited them to evaluate their condition. We did not verify the reliability of these lists, as they are the lists management uses to monitor their vacancies.

We used a non-statistical sampling approach to provide conclusions on our audit objectives and to test internal controls and compliance. We selected judgmental samples. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations. Our samples, which are discussed in detail in the body of our report, include:

- A judgmental sample of three developments (Arverne, North Shore, and York Hill) from a list of 93 HPD-supervised Mitchell-Lama developments provided by HPD. Our sample was selected based on various factors, including development type, location, and complaint and violation data from HPD Online. We visited all three sampled developments to observe physical conditions, and met with the developments' managing agents and on-site property managers to obtain an understanding of how they oversee the developments' conditions and operations.
- To determine whether expenses were supported and used for business purposes, we selected and reviewed a judgmental sample of 447 transactions, totaling approximately \$4.8 million, from the three developments' general ledgers for the period from January 2019 through August 2023, which consisted of: Arverne – 98 transactions totaling approximately \$1.6 million; North Shore – 138 transactions totaling approximately \$2.3 million; and York Hill – 211 transactions totaling approximately \$920,000. The transactions selected were based on various factors, including dollar amount, vendor name, and transaction type.
- To evaluate physical conditions, we obtained vacancy lists for each development and visited the units we could access. We did not verify the reliability of these lists, as they are the lists management uses to monitor their vacancies. We also selected a judgmental sample of 44 units (seven Arverne, 26 North Shore, and 11 York Hill) that were occupied and had someone home when we visited to assess their condition. These samples were selected from the units at each development: Arverne – 342, North Shore – 535, and York Hill – 296.

For the three developments, we also reviewed HPD records, including the developments' certified annual financial statements, contracts, payroll records, invoices, general ledgers, and other relevant documents related to financial and physical conditions. We conducted office visits to each of our sampled developments' management companies and reviewed documentation such as invoices, contracts, and written HPD approvals related to the sample we selected. We calculated the unrealized rental income for units left vacant for more than 120 days based on the current rents without adjusting for changes in the rents during our scope period. In addition, for Arverne (which did not provide us with its rental schedule), we assumed the same monthly rent for all units regardless of size.

We determined that the data used to pull our samples and perform our analyses was sufficiently reliable for use in accomplishing our audit objectives.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from agency officials that all relevant information was provided to us during the audit.

Reporting Requirements

We provided a draft copy of this report to HPD officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. In their response, HPD officials generally agreed with most of the report's recommendations and indicated actions they have taken or will take to implement them. Our responses to certain HPD comments are embedded within HPD's response as State Comptroller's Comments.

Within 180 days after final release of this report, we request that the Commissioner of the New York City Department of Housing Preservation and Development report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments and State Comptroller's Comments



ADOLFO CARRIÓN JR.
Commissioner

Office of the Commissioner
100 Gold Street
New York, NY 10038

July 23, 2024

Mr. Kenrick Sifontes
Audit Director
Division of State Government Accountability
Office of the State Comptroller (OSC)
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: Audit of Physical and Financial Conditions at
Select Mitchell-Lama Developments – 2023-N-2

Dear Kenrick,

Thank you for the opportunity to respond to your Audit Report. We appreciate the OSC's interest in ensuring that housing in HPD's Mitchell-Lama portfolio is financially and physically sound.

As described to the auditors during their fieldwork, the maintenance of an aging housing stock presents a series of challenges that were only exacerbated by the pandemic and subsequent inflationary environment. The Mitchell-Lama portfolio faces distinct pressures, particularly given its age, and HPD has been working diligently to shore up the physical and financial health of this critical housing stock. Plans were already in place to address the capital needs at all three developments that are the focus of this audit, but additional support will be required from all levels of government to address the broader needs of the portfolio. As such, we agree with several of the recommendations, most of which HPD had implemented, or was in the process of implementing, prior to or in the course of the audit.

That said, the report also cites a number of issues for which HPD provided explanations during the audit that should have mitigated certain findings or, in many cases, rendered them moot. We have included some, but not all, of these explanations in our response.

State Comptroller's Comment – We fully considered HPD's explanations and information when preparing our report.

Once again, thank you for providing the opportunity to comment on the Audit Report, and for recognizing the Agency's commitment to sustaining this critical source of affordable housing.

Sincerely,

Adolfo Carrión, Jr.

Printed on paper containing 30% post-consumer material.

Agency Response:
New York City Department of Housing Preservation & Development
(HPD) to the Office of the New York State Comptroller (OSC)
Physical and Financial Conditions at Select Mitchell-Lama Developments
2023-N-2
Date of Response: July 23, 2024

Overview

The New York City Department of Housing Preservation and Development (HPD, or the Agency) is providing comments to the Office of the New York State Comptroller (OSC). These comments respond to the OSC's audit to determine whether Mitchell-Lama developments supervised by HPD are being maintained in a manner that protects the health and safety of residents, and whether funds at these developments are being used for intended purposes, per a draft audit report ("the report") issued to HPD on June 21, 2024.

The core of HPD's mission is housing safety, affordability, and community strength, which we demonstrate through our ongoing commitment to our Mitchell-Lama portfolio. Since 1955, the Mitchell-Lama program has been an invaluable source of affordable housing for low- and middle-income New Yorkers, as well as a path to homeownership for many who might not otherwise have had access to this opportunity. HPD is proud of its work to preserve these properties; in Fiscal Year 2024 alone, HPD closed on preservation financing for over 1,500 units of Mitchell-Lama housing.

In New York City, and across the nation, maintaining an aging building stock is an enormous challenge for every property manager, organization, and agency dedicated to housing quality. The COVID pandemic greatly exacerbated this challenge, and impacts in terms of rental arrears, delayed maintenance, and rising costs continue to affect buildings across the city. HPD is not deterred by these challenges, however, which serve only to make the Agency's mission more critical. HPD has long worked proactively to ensure the long-term stability of the Mitchell-Lama portfolio, and indeed, as explained to the OSC audit team, ***plans were already in place before this audit began to allocate preservation funds and project management efforts to all three of these properties for the purpose of making capital repairs and, in turn, shoring up their financial profiles.***

State Comptroller's Comment – While HPD officials explained plans were in place, they provided no evidence beyond a physical needs assessment for two developments.

While help is on the way for these properties, HPD faces severe resource constraints in attempting to address the physical and financial needs of this aging housing stock, which is why the Agency looks to

its partners at all levels of government to secure the tools and funding needed to shore up the health and affordability of this critical portfolio for generations to come.

Response to Findings

Notwithstanding the veracity of certain challenges related to those resource constraints, HPD disagrees with certain descriptions and characterizations in this report; in most cases, HPD brought data or explanations that mitigate or refute certain findings, but the findings remain included. For brevity, HPD will not describe or enumerate all instances in which the Agency's explanations did not appear or are not articulated fully; however, these examples serve to demonstrate what appear to be an imbalanced weighing of evidence against the Agency in various instances.

State Comptroller's Comment – We considered, and appropriately reflected in our report, the data and explanations HPD provided in response to our findings.

1) The report misleadingly describes inaccessible vacant units as “unsafe”.

OSC devotes a significant portion of this report to highlighting “unsafe” physical conditions in vacant units. But vacant units are just that: No one lives there, and the only individuals entering those units are those who are performing expert repairs or conducting audits. Moreover, a Mitchell-Lama housing company under HPD's supervision would never offer a unit to a prospective lessee/shareholder in the conditions of the vacant units described in this report. While HPD does not discount the finding that these units are not in habitable shape, the Agency reminds the readers of this report that capital work is planned, and that no one will live in these units until they are habitable.

State Comptroller's Comment – These units, while vacant, still pose a safety threat to neighbors and employees. The longer they remain vacant and in a state of disrepair, the more they deteriorate and become more costly to repair. Rehabilitating units in a timely manner renders them more readily available for rental, thereby mitigating the housing shortage while increasing developments' income stream. Moreover, a vacant unit with extensive mold or leaks can affect neighboring units and building occupants. Further, our report does not suggest that these units would be offered to prospective lessees/shareholders in the state we observed.

2) The report inaccurately cites rental arrears as a metric of financial oversight.

OSC cites a series of arrears figures as proof that the managing agents of these properties are managing collections poorly. However, the report uses point-in-time arrears figures for the properties, which do not reflect the policies, processes, and patterns intrinsic to rent collection, and which fail to account for the substantial collection challenges that property managers face. As HPD informed the auditors, the managing agents address rent arrears promptly and via established escalation. That residents remain in their units accruing arrears is a circumstance that often occurs by virtue of the required legal process for addressing non-payment and has been exacerbated by the pandemic.

State Comptroller's Comment – We factually present the excessive outstanding arrears for the three sampled developments in the “Other Matters” section of the report, as well as HPD's explanation

regarding when legal action is taken in response to residents' failure to pay their rent.

3) The report incorrectly counts offline units as vacant units.

Despite acknowledging that a large number of units are uninhabitable due to conditions requiring capital repairs, OSC refers to offline units when discussing the number of "vacancies" in these properties. As explained to the auditors, offline units cannot be turned over in the standard 120 days, and HPD does not have the expectation that they will. To include these offline units in a discussion of general vacancy inflates the true vacancy rate artificially and obscures the planned work to bring these units back online.

State Comptroller Comment – We did not acknowledge that a large number of units were uninhabitable. As our report noted, Arverne officials told us that five of their 21 vacant units were deemed uninhabitable at the time of our visit. While we understand that the standard 120-day turnover cannot be applied to these five apartments, we note that excluding these apartments has no impact on the vacancy rate we reported. In fact, if we exclude these five units, the average vacancy period remains about the same – approximately 2.2 years – for Arverne.

Other brief examples of HPD explanations excluded from the report appear below:

- o Regarding the unit at North Shore with reported mold, the managing agent strongly denies claiming that "nothing could be done". There exists no documentation of either the resident's complaint or the managing agent's response; however, the auditors included the former and not the latter in the report.

State Comptroller's Comment – Our report clearly notes that this is what the resident stated. Additionally, as we stated in the report, the property manager was generally absent during our site visits, and requests for general information from this property manager went unanswered. Further, we observed the existence of mold in this unit during our visit to the development.

- o Regarding the elderly resident at York Hill, HPD described this resident's repeated and adamant refusal of management's requests to access her apartment for the purpose of making repairs, due to issues with the resident that are now being addressed via Adult Protective Services. While the report mentions APS involvement, it leaves out management's reported consistent effort to obtain the resident's consent to make repairs.

State Comptroller's Comment – Management's reported consistent effort to obtain the resident's consent to make repairs was included on page 12 of our report, which states that, according to the development's superintendent, "the resident has consistently refused to grant management access to her unit."

- o Regarding bids for contracts under \$100,000, HPD explained that 1) there is no rule requiring managing agents to obtain competitive bids and HPD approval for contracts of less than \$100,000, and 2) HPD implemented a requirement in July 2023 requiring that managing agents

report to HPD and obtain approval when aggregate payments to a service provider exceed \$100,000 in any fiscal year. As such, the managing agents did not violate an existing policy, and the implied suggestion that there should be a policy that prevents incrementally exceeding the threshold for competitive bidding has already been addressed.

State Comptroller's Comment – Our report did not state that the managing agent violated a policy regarding bids but rather that our request for contracts for payments totaling \$5,000 to \$100,000 were not provided. We agree that in July 2023 HPD updated its policies to address incrementally exceeding the competitive bidding threshold.

- Regarding a “key finding” in the report of “a \$300,000 payment to one vendor for which [the auditors] could not determine what services were provided”, the payment was made to a General Contractor under contract for a capital project. This expenditure pre-dated the tenure of the current management company; HPD could have explained the reason for the expense during audit fieldwork, but the auditors did not ask HPD before citing it in the report. There is no missing or misleading evidence regarding this payment.

State Comptroller's Comment – The \$300,000 payment was part of the expenditures identified in our preliminary findings provided to HPD. HPD was given the opportunity to respond to these findings with evidence supporting and clarifying this expenditure but did not. Further, the support for this expense was provided by the management company in charge of the development at the time the expense was incurred, not the current managing agent. The managing agent should have been able to explain the reason for the expense but instead provided an invoice that showed a different vendor than the payee. Based on the conflicting evidence provided, we could not determine what services were provided for the \$300,000 payment.

Response to Recommendations

Recommendation 1: Improve monitoring of the three developments, including but not limited to...

1a) Verifying that managing agents maintain the development in a manner that preserves the property and protects the health and safety of its residents by ensuring annual individual unit inspections are conducted, related reports are completed, and deficiencies are corrected; and routinely checking to verify that all self-closing doors are fully operational.

As a general matter, HPD agrees that annual apartment inspections can be beneficial in identifying common conditions and potential issues. HPD will follow up with developments to press for adherence with the annual inspection requirement, and also to remind them of the importance of regularly inspecting self-closing doors to ensure their proper operation. However, HPD disagrees with the implication that deficiencies present in these properties (which, as discussed earlier, require significant capital investment) would have necessarily been addressed differently via an annual unit inspection practice.

State Comptroller's Comment – While it might not be possible to address all deficiencies present via an annual inspection, as HPD noted, annual apartment inspections can be beneficial. Further, based on our observations, some conditions such as mold, peeling paint, water bubbles due to leaks, cracks in walls, and exposed electrical wires, to name a few, would have been identified and possibly remedied.

1b) Coordinating with HDC, when applicable, to ensure physical inspection reports are provided to HPD and the managing agents in a timely manner.

HPD agrees with this recommendation and has already begun the process of implementing it; as of November 2023, HDC has resumed regularly copying HPD on the physical inspection reports it delivers to managing agents.

1c) Ensuring that immediate corrective action is taken when hazardous conditions are identified.

As a general matter, HPD agrees with the importance of immediate corrective action to hazardous conditions; the Agency will continue to apply its available resources to address such issues timely and to follow up with developments for action on hazardous conditions identified in HDC or HPD inspection reports, as it would have done no matter the outcome of the audit. However, HPD disagrees with the implication that, given the resources available, it is not pursuing prompt corrective action as quickly as possible when hazardous conditions are identified.

State Comptroller's Comment – We encourage HPD to improve its monitoring of the three developments, and work with managing agents to remedy hazardous conditions, such as malfunctioning self-closing doors/fire doors, as promptly as possible to comply with Housing Maintenance Code and ensure the safety of residents.

Recommendation 2: Develop and implement policies and procedures regarding bonus and gratuity payments.

HPD disagrees that a Mitchell-Lama portfolio-wide policy regarding bonus and gratuity payments is necessary, and maintains that privately-owned and managed developments should codify and regulate their own policies regarding such payments. As noted in the report, HPD's position is that annual gratuities to housing maintenance staff are customary, and that a rule restricting such payments could encourage staff attrition and result in negative impacts for the properties and their residents.

State Comptroller's Comment – Annual bonus and gratuity payments to housing maintenance staff may be customary but are not prudent when a development is operating at a loss and in need of repair. Moreover, as noted in our report, most of the bonus payments were made to development management officials, not maintenance staff. Further, bonuses are generally awarded for exceptional performance; however, our report highlighted numerous deficiencies that indicate development management needs to improve the way they oversee the developments. We encourage HPD to develop policies regarding bonuses and gratuities.

Recommendation 3: Monitor managing agents and the developments' Boards (where applicable) to ensure they...

3a) Operate the developments in a fiscally sound manner, with HPD providing training if necessary.

As a general matter, HPD agrees with the importance of developments operating in a fiscally sound manner and will continue to consistently encourage the prudent financial management of Mitchell-Lama developments, as it would have done no matter the outcome of the audit; HPD will also continue offering financial oversight training to co-op board members. However, HPD disagrees with the implication that it does not engage in this type of monitoring as a regular practice.

State Comptroller's Comment – Our report demonstrates that improved monitoring of managing agents and boards is necessary to ensure there is prudent spending of the developments' funds. For instance, developments in need of repairs and seeking subsidies should not be paying out bonuses and purchasing a \$9,000 watch as a gift.

3b) Promptly fill vacant units.

As a general matter, HPD agrees with the importance of promptly filling vacancies, and will continue to encourage managing agents to rehabilitate units as rapidly as possible without sacrificing safety or thoroughness, as it would have done no matter the outcome of the audit. However, HPD disagrees with the implication that Mitchell-Lama units are not being filled as promptly as reasonably possible. As discussed in the Response to Findings, HPD does not expect units with significant physical deficiencies requiring capital funding to follow the same prompt timeframe and process for unit turnover as a unit requiring standard rehabilitation.

State Comptroller's Comment – We agree that units with significant physical deficiencies would not follow the same prompt time frame and process as a unit requiring standard rehabilitation; however, as noted in our report, more than 73% of the vacant units at North Shore were move-in ready.

Recommendation 4: Adequately review transactions for appropriateness of expenses and sufficiency of supporting documentation during annual review.

HPD agrees with this recommendation and has resumed consistent periodic reviews of the books and records of selected developments as of late 2023 (having resolved a staffing shortage that precluded consistent reviews since the pandemic); the review of transactions for appropriateness and the sufficiency of supporting documentation is a part of this review.

Recommendation 5: Periodically review a sample of contracts and expenses to identify payments to vendors and service providers that, in the aggregate, equal or exceed \$100,000 in any fiscal year to ensure they are approved by HPD and that contracts at \$100,000 or more were competitively bid and approved by HPD.

HPD agrees with this recommendation and has resumed consistent periodic reviews of the books and records of selected developments as of late 2023 (having resolved a staffing shortage that precluded consistent reviews since the pandemic); part of this review involves identifying contracts of \$100,000 or more to ensure competitive bidding and HPD approval. Moreover, as mentioned in the Response to Findings, HPD implemented a requirement in July 2023 requiring that managing agents report to HPD and obtain approval when aggregate payments to a service provider exceed \$100,000 in any fiscal year.

Recommendation 6: Monitor managing agents to ensure rent arrears are collected in a timely manner.

HPD disagrees with the implication that managing agents are not currently collecting arrears as timely as possible; as described in the Response to Findings, developments reviewed as part of this audit already employ appropriate practices of escalating action for the non-payment of rent/maintenance charges, up to and including eviction proceedings.

State Comptroller's Comment – While HPD's Rules address the issue of arrears and collections, and HPD provided a status report as evidence that managing agents at Arverne and North Shore took legal action to collect arrears, we found that the status report did not include some of the largest outstanding arrears.

Recommendation 7: Ensure that management plans between the managing agent and housing development include a policy regarding deployment of personnel, including the property manager's working days and on-site hours.

HPD agrees with this recommendation and will follow up with managing agents to implement it.

Recommendation 8: Ensure vacant commercial spaces are promptly repaired and filled to generate income.

As a general matter, HPD agrees with the importance of promptly filling commercial vacancies and will continue to encourage managing agents to do so, as it would have done no matter the outcome of the audit. However, HPD disagrees with the implication that commercial spaces are not being filled as promptly as possible (an assessment based on a single vacant professional office at Arverne that has proven difficult to rent despite the quality of the space and the efforts of the managing agent).

State Comptroller's Comment – The commercial space discussed in the report has been vacant for about 5 years and was in a state of disrepair. Further, we saw no evidence that efforts were made by the managing agent to rent the space.

Recommendation 9: Improve monitoring of the developments to ensure the shareholders use their units as their primary residence and that managing agents obtain and enforce income affidavits.

As a general matter, HPD agrees with the importance of enforcing compliance with primary residency requirements and will continue to do so as it would have done no matter the outcome of the audit. However, HPD disagrees with the implication that the issue of three shareholders possibly subletting at York Hill is necessarily a condition of insufficient monitoring. As noted in the report, HPD officials “are aware of the issue and have been working diligently with management and the legal system to address it.”

State Comptroller's Comment – Our report noted that there was a total of eight shareholders, not just three, suspected of subletting their units at York Hill. Improved monitoring is needed to ensure units are used only as primary residences, in accordance with the Rules, and that shareholders do not continue this prohibited practice for long periods of time without being detected.

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