

THOMAS P. DiNAPOLI  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

July 3, 2024

RuthAnne Visnauskas  
Commissioner/Chief Executive Officer  
Homes and Community Renewal  
Hampton Plaza  
38-40 State Street  
Albany, NY 12207

Re: Division of Housing and Community  
Renewal: Physical and Financial  
Conditions at Selected Mitchell-Lama  
Developments Located Outside New  
York City – Sunnyside Manor:  
Unauthorized Bank Account  
Report 2024-S-12

Dear Commissioner Visnauskas:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have conducted an audit of Homes and Community Renewal's Division of Housing and Community Renewal (DHCR) to determine whether residents of Mitchell-Lama developments supervised by DHCR are provided safe and clean living conditions, and whether funds are properly accounted for and used for intended purposes.

Our audit covered the period from January 2019 through December 2022 at five developments located in counties outside of New York City. However, this report pertains solely to the existence and use of an unauthorized bank account by Sunnyside Manor's Board of Directors (Board). For findings and recommendations related to the other four developments and related to Sunnyside Manor outside of the unauthorized bank account, see the full report ([2022-S-46](#)).

### **Background**

The Mitchell-Lama Housing program (Program) was created in 1955 by the Limited Profit Housing Act to provide affordable rental and cooperative (co-op) housing to middle-income families. A total of 269 State-supervised developments with over 105,000 apartments were built under the Program. In exchange for low-interest mortgage loans and real property tax exemptions, the Program required limitations on profit, income limits for tenants, and supervision by DHCR. Mitchell-Lama housing is owned by private companies with independent authority to exit the Program under certain conditions. DHCR works with owners as they near the end of their 20-year affordability requirements to provide low-cost financing tools that help maintain developments while also extending their affordability. As part of the State's commitment

to increase and preserve the number of affordable housing opportunities for its residents, Homes and Community Renewal makes capital available for the preservation and improvement of these properties.

Often, owners employ a managing agent, a person or entity responsible for managing the developments. Pursuant to New York Codes, Rules and Regulations (Regulations), when they do so, they are required to enter into an annual agreement with the managing agent, which must include a DHCR-approved Management Plan. It is the responsibility of the owners to provide safe and habitable housing and to maintain the financial and physical integrity of the development, and it is the function of the managing agent to effectively and efficiently manage the development to ensure that the owner's responsibilities are carried out. Both the owner and managing agent must agree to manage the development in accordance with local codes and State rules and regulations. Each development has an assigned DHCR Housing Management Representative (management representative) who is responsible for monitoring and evaluating the development's management, as outlined in Title 9 of the Regulations. Management representatives are required to conduct yearly on-site assessments of the development's physical condition as well as fiscal reviews (site and office visits) and to provide the results – including recommendations – in a written report, DHCR Management Field and Office Visit Report (Field and Office Visit Report), to the development. DHCR requires the development's Board or managing agent to respond to the Field and Office Visit Report within 30 days describing the plan for corrective action.

### **Results of Audit**

According to Section 1728-2.4 of the Regulations, developments must open a bank account to deposit all rent receipts and other miscellaneous operating income and use this account to disburse all expenses for operations. In addition to Sunnyside Manor's operating account, we found the Board held a separate checking account – with a balance of \$14,888 as of March 31, 2022 (an average monthly balance of \$14,007 for the 3 fiscal years ended March 31, 2022) – that, according to the property manager, included deposits of community room rental income. DHCR officials informed us their review consists solely of accounts designated by Regulations and, therefore, they did not review this Board-held account.

In addition to the community room rental income deposits into this account, we identified nine transactions, totaling \$51,048, paid from Sunnyside Manor's operating account to the Board-held account. Bank statements for the Board-held account showed numerous questionable debit card transactions, including Amazon purchases (such as vitamins shipped to an Arizona address, a treadmill mat, a cooking apron, and toys) totaling \$2,512 and restaurant payments totaling \$1,723, including a single payment of \$1,149 at one restaurant.

This Board-held account appears to have limited oversight. It was not included on Sunnyside Manor's general ledger and audited financial statements, resulting in the development understating its income and its expenses. According to DHCR officials, this account was not provided to them as part of Sunnyside Manor's monthly reconciliations. Nevertheless, the \$51,048 in payments from the operating account to this Board-held account should have alerted DHCR officials to its existence. However, DHCR officials asserted that the \$51,048 transferred from the operating account falls below their review threshold and framed the issue as a "gray area" that requires additional clarification and review. They advised they will direct Sunnyside Manor officials to close out the Board-held account. Nevertheless, had DHCR officials adequately monitored fiscal conditions at the development, they could have identified this unauthorized account and taken appropriate action. As a result of DHCR's sporadic

monitoring of the development's fiscal conditions, funds may be used inappropriately without discovery by DHCR officials.

### **Recommendations**

1. Review the Board-held bank account at Sunnyside Manor for compliance with Regulations, and take appropriate action, including recouping funds, for transactions that are inappropriate or unusual.
2. Periodically review Sunnyside Manor's rent receipts and miscellaneous operating income, including community room rental income.
3. Issue guidance to all Mitchell-Lama developments related to the use of Board-held accounts and remind them of the Regulations for opening bank accounts and depositing rental income.

### **Audit Scope, Objectives, and Methodology**

The objectives of our audit were to determine whether residents of Mitchell-Lama developments supervised by DHCR are provided safe and clean living conditions, and whether funds are properly accounted for and used for intended purposes. Our audit covered the period from January 2019 through December 2022. This report solely addresses the existence and use of an unauthorized bank account by Sunnyside Manor's Board.

For this work (including evaluating the relevant internal controls at Sunnyside Manor over bank accounts), we reviewed the Private Housing Finance Law, the Regulations, and DHCR's policies and procedures. We met with DHCR officials and reviewed DHCR records to obtain an understanding of their oversight of Sunnyside Manor's bank accounts. We also met with the development's management about their bank accounts. In addition, we reviewed Sunnyside Manor's records, including financial statements, bank statements, general ledgers, invoices, Board meeting minutes, and other relevant documents related to its bank accounts.

### **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 II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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 during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these

duties do not affect our ability to conduct this independent performance audit of DHCR's supervision of selected Mitchell-Lama developments located outside New York City.

***Reporting Requirements***

We provided a draft copy of this report to DHCR 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, DHCR officials agreed with the report's recommendations and indicated actions they have taken or will take to implement them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Homes and Community Renewal shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Major contributors to this report were Diane Gustard, Aida Solomon, Joseph Gillooly, Leanna Dillon, Erik Dorfler, Xavier Mathew, Ethan Rosenrauch, and Mary McCoy.

We wish to thank the management and staff of Homes and Community Renewal for the courtesies and cooperation extended to our auditors during the audit.

Very truly yours,

Kenrick Sifontes  
Audit Director

# Agency Comments



KATHY HOCHUL  
Governor

Homes and  
Community Renewal

Division of Housing  
and Community  
Renewal

RUTHANNE VISNAUSKAS  
Commissioner/CEO

June 21, 2024

Mr. Kenrick Sifontes  
Office of the State Comptroller  
Division of State Government Accountability  
59 Maiden Lane - 21<sup>st</sup> Floor  
New York, NY 10038

Re.: Report 2024-S-12, Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments Located Outside New York City – Sunnyside Manor: Unauthorized Bank Account

Mr. Sifontes:

The Division of Housing and Community Renewal (“DHCR” or “Agency”) appreciates the opportunity to respond to the above-referenced audit and thanks the Comptroller’s staff for their professionalism and courtesy throughout the audit process. The Mitchell-Lama Program (“Program”) represents a critical source of affordable housing for New Yorkers across the State and DHCR appreciates the Office of the State Comptroller’s (“OSC”) interest in the program.

**Recommendation 1: Review the Board-held bank account at Sunnyside Manor for compliance with Regulations, and take appropriate action, including recouping funds, for transactions that are inappropriate or unusual.**

**Agency Management’s Response:** In May 2023, the Agency directed Sunnyside Manor Limited (the “Housing Company”) to close out any Board of Director held accounts at Sunnyside Manor and to transfer any funds held in such accounts to the Housing Company’s operating account. The Housing Company was further directed to provide the Agency with bank statements showing any such Board of Director held accounts had been closed with zero balances and showing that the funds had been transferred to Sunnyside Manor’s operating account. Counsel to the Housing Company subsequently responded in June 2023 providing documentation that the Board of Director held account had been closed and the funds had been transferred to the Housing Company’s operating account.

**Recommendation 2: Periodically review Sunnyside Manor’s rent receipts and miscellaneous operating income, including community room rental income.**

**Agency Management’s Response:** The Agency understands the importance of monitoring financial conditions and agrees that the review of housing company income is a necessary component of its oversight of the Mitchell-

Lama Program. DHCR's Office of Financial Operations reviews quarterly financials, certified annual financial statements, and budgets submitted by housing companies. The overall revenue of the housing company is reviewed as part of this process.

Furthermore, the Agency enforces compliance with its Mitchell-Lama regulations that provide for the review of contracts, purchases, and work exceeding \$100,000. Prior DHCR approval is not required for purchases and contracts less than \$100,000. This threshold was established in 2009 after completing an extensive rulemaking process under the State Administrative Procedures Act ("SAPA") that included the opportunity for all affected parties to provide input.

**Recommendation 3: Issue guidance to all Mitchell-Lama developments related to the use of Board-held accounts and remind them of the Regulations for opening bank accounts and depositing rental income.**

**Agency Management's Response:** In October 2023, the Agency issued Office of Integrated Housing Management Memorandum #2023-B-12 to all housing company owners, managing agents and site managers reminding them that 9 NYCRR Section 1728-2.4 requires housing companies to deposit all rent receipts and other miscellaneous operating income into FDIC-insured Administration Fund accounts from which shall be disbursed all expenses for current operations. All Mitchell-Lama housing companies are to follow the regulations at 9 NYCRR §1728-2 as to bank accounts held by each individual housing company. The project's annual financial statements will indicate the cash position of the project.

Please contact Sean Fitzgerald, Audit Coordinator, at (518) 473-3112 if you have any questions or require anything further.

Sincerely,



Jason Pearson  
Senior Vice President, Statewide Asset Management

Cc: RuthAnne Visnauskas  
Betsy R.C. Mallow  
Rebecca Koepnick  
Lauren McGill  
Melina Stratos  
Cathy Sparks  
Sean Fitzgerald