

**NEW YORK CITY  
DEPARTMENT OF INVESTIGATION  
INSPECTOR GENERAL DIVISION**

**TO:** File

**DATE:** December 2, 2004

**FROM:** Meera Joshi Cattafesta  
First Deputy Inspector General

**Re: CASE NAME:** Correction Foundation  
**CASE NUMBER:** 03/20  
**CACTIS NUMBER:** 03/03797

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**CLOSING MEMORANDUM**

**ORIGIN OF CASE AND NATURE OF THE ALLEGATION:**

Allegations appeared in a February 9, 2003 Daily News article ("Up in Smoke" by Russ Buettner) that over \$1,000,000 of cigarette rebate money had been funneled into a not-for-profit foundation, the New York City Correction Foundation (the "Foundation") which was comprised of high ranking members of the New York City Department of Correction ("DOC"). It was alleged that the rebate funds should have been deposited into the General Fund for the City of New York, because the City was the initial purchaser of the cigarettes and thus was entitled to the rebate. Additionally the article indicated that Foundation funds may have been used to cover personal expenses rather than to fund inmate programs.

The cigarettes were purchased by the City for only one agency, DOC and were sold by DOC to inmates in various DOC facility commissaries.

**INVESTIGATION:**

DOI opened an investigation into the Foundation and together with the Office of the United States Attorneys for the Southern District of New York, on February 13, 2003 subpoenaed the Foundation's records. Other business records were later obtained, including the Foundation's bank records and records from cigarette manufacturers. Additionally, bank records and telephone records for several past and present Foundation members were obtained. Several individuals directly and indirectly associated with the Foundation were interviewed.

**RESULTS OF INVESTIGATION:**

**Fraud on the Foundation by its President Frederick Patrick**

Based on review of Foundation bank records, DOI determined that from January 1997 through March of 2003 the Foundation paid MCI a total of \$107,374.99 and NYNEX a total of \$5,271 purportedly for "telecommunications services" yet the Foundation had no offices, fax machines or computer equipment that would warrant payment of such services. During this period the sole signatory for the Foundation's checking account was its Treasurer Frederick Patrick. During two separate tape recorded interviews with Patrick, one on June 16, 2003 and the second on June 25, 2003, Patrick admitted that the funds had been used to cover his own personal telephone bills. Since 1997 Patrick had frequently accepted collect calls from City and State inmates, and had paid for these calls with Foundation funds. Additionally, approximately \$6,000 in overpayments to MCI were refunded to Patrick and he did not return the funds to the Foundation.

In his interviews Patrick also explained that a May 1997 Foundation check for \$25,000 made out to cash was used to make a "loan" to retiring DOC Warden, Andrew Phoenix. The loan had nothing to do with Foundation business; it was purportedly used by Phoenix to start a security firm. Phoenix died in 2002, but in 2001 he repaid the \$25,000, plus an additional \$5,000 to Patrick and Patrick deposited the check for \$30,000 from Phoenix into his personal account at Fleet Bank.

In July 2003 Patrick was arrested and charged with two counts of mail fraud, he pled guilty to both counts and on June 24, 2004 was sentenced to a term of imprisonment of 12 months plus one day, three years supervised release and was ordered to pay restitution of \$142,733.99

Additionally, DOI's Investigative Audit Unit (the "Audit Unit") conducted a preliminary review of all other Foundation's payments and expenses from 1993 to 2003. All other payments/expenses appeared to be for legitimate services rendered. Based on these preliminary findings, the Audit Unit did not continue to investigate the Foundation's payments and expenses.

#### **Diversion of Rebate Funds from the City to the Foundation**

Based on review of the Foundation's bank records, DOI determined that from 1995 through 2000 the Foundation's primary funding source was rebates (in total approximately \$1.6 million) it received from cigarette manufacturers. Specifically, the Foundation received \$609,201 from Brown & Williamson, \$368,143 from Lorillard and \$85,110 from RJ Reynolds. Prior to 1995 rebate checks from tobacco companies were deposited in the City's General Fund. Based on DOI interviews, it appeared that in 1995 Frederick Patrick and John Cella (Director of DOC Financial Services, but not affiliated with the Foundation) made a decision to divert the rebate checks to the Foundation and DOC Commissary Consultant Edward Lepkowski instructed tobacco companies that going forward the payee on rebates checks was to be the NYC Correction Foundation, attention Frederick Patrick.

According to the Office of the Comptroller, the rebate money rightfully belonged to the City as it was the initial purchaser of the cigarettes. Specifically, in a Daily News article dated February 11, 2003; Jeff Simmons, a spokesman for William Thompson, the City Comptroller stated "[i]f there is a rebate and if the city is the purchaser, the city should have the benefit of the rebate."

In 2000 the rebate money began going back to the City's General Fund and in 2003 DOC ceased selling cigarettes to inmates.

#### **Dissolution of the Foundation**

After Patrick's arrest and plea, a decision was made to dissolve the Foundation and disperse its remaining assets, \$210,334.99. The Office of the New York State Attorney General, Charities Bureau advised that in accordance with NYS N-PCL § 1005(a)(2) and (3), the remaining Foundation funds must be used first to pay off liabilities. Furthermore, the Attorney General recognized the City as the Foundation's creditor, by virtue of the fact that it never received tobacco rebate money amounting to approximately \$1.6 million.

Accordingly, the remaining Foundation board members met and resolved to dissolve the Foundation and, in partial repayment of its \$1.6 million debt to the City: 1) transfer its remaining assets to the General Fund for the City of New York and 2) assign all future payments to the Foundation, including Patrick's restitution payment of \$142,733 to the General Fund of the City of New York.

#### **CONCLUSION AND RECOMMENDATION:**

DOI concludes that the allegation of misappropriation of Foundation funds is **substantiated in part**, in so far as the Foundation's former President and Treasurer used approximately \$150,000 of Foundation funds to cover personal expenses.

Based on DOI's preliminary review of all other Foundation payments/expenses from 1993 to 2003, DOI concluded that allegations of other misappropriations of Foundation funds were **unsubstantiated**.

Based on the Comptroller's opinion that cigarette rebate monies belonged to the City of New York, allegations that cigarette rebate monies were wrongfully diverted to the Foundation, were **resolved**, to the extent possible, by the transfer of all the Foundation's remaining and future assets to the New York City General Fund.

Submitted by: Meera J. Cattafesta Date 12/2/2004  
Meera J. Cattafesta  
First Deputy Inspector General

Approved by: Daniel Brownell Date 12/8/04  
Daniel Brownell  
Deputy Commissioner of Investigations