



# Report of Investigation

## DHHR Lease at Middletown Mall



Public Integrity  
and Fraud Unit

June 26

20  
18



## **EXECUTIVE SUMMARY**

In March 2018, the West Virginia State Auditor's Office discovered potential improper lease payments by the West Virginia Department of Health and Human Resources ("WVDHHR") for property the agency had vacated as of May 30, 2015. The leased property is located inside the Middletown Mall in Marion County, West Virginia, consisting of four suites, separated into two Lease Agreements (HHR-187 and HHR-190). The combined monthly payment for the two leases was \$30,907.34.

The Auditor's Office notified appropriate agency heads and individuals of the discovery, refused to process any further payments, and initiated an investigation into these lease payments. The investigation spanned several months, and expanded to include investigators with the United States Federal Bureau of Investigation ("FBI") in both the Northern and Southern Districts of West Virginia.

While some questions remain, the investigation has ultimately established the following findings:

**FINDING #1:** The State of West Virginia has paid nearly \$1 million since June 2015 for leased property that was vacated and not utilized.

**FINDING #2:** The West Virginia Department of Health and Human Resources had multiple control and oversight failures that lead to the wasteful spending.

1. DHHR failed to properly account for its property and tracking of monies being paid.
2. DHHR should not have been generating invoices on behalf of the landlord Pin Oak Properties.



3. DHHR should not have allowed a single employee to create an invoice for services and then approve them for payment without review by another individual.
4. DHHR employee should not have made unilateral payee changes based solely on a phone call request.
5. DHHR employee statement and utilization of Special Processing request was improper

**FINDING #3:** The West Virginia Real Estate Division had multiple control and oversight failures that lead to the wasteful spending

1. WVRED did not require signed copies of termination letters to be kept.
2. WVRED is unable to produce a signed, dated copy of the termination letter for the DHHR leases at the Middletown Mall.
3. WVRED did not properly ensure a termination letter was sent and appropriate parties were notified at DHHR or the Auditor's office.
4. WVRED disregarded notices and payee change notices after the property was vacated that could have stopped the payments earlier.

As more fully developed and discussed in this Report, the Findings necessitate corrective action to address the systemic failures in the DHHR and the Real Estate Division that allowed this waste of taxpayer dollars to happen over the course of the last three years. While it is our understanding some employees have been disciplined, their discipline alone does not correct or prevent the failures that allowed this waste to occur. Rather, new policies and better oversight need to be considered to prevent future waste from occurring.

With respect to the wasted monies, it is additionally recommended that the WVDHHR consult with legal counsel and/or the WV Attorney General to initiate steps to recover the payments that have been made over the past three years to various entities, including specifically BB&T, General Acquisitions, and Deitrich Fansler d/b/a Pin Oak Properties.

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## I. INTRODUCTION

During a random audit of contracts and leases in late March 2018, the Auditor's Office discovered discrepancies in a payment request by the West Virginia Department of Health and Human Resources ("DHHR") for office space it utilized at the Middletown Mall located in White Hall, WV. As Auditor employees looked deeper behind the payment history of the DHHR lease, additional concerns and "flags" became apparent. These concerns became further heightened when confirmatory calls and requests to the DHHR and the West Virginia Real Estate Division ("WVRED") were met with hesitation and an inability to produce expected paperwork.

In particular, following a series of initial calls, DHHR made the Auditor employees aware that it had vacated the office space at the Middletown Mall on May 31, 2015, and moved into the State Office Building located in Fairmont. DHHR furthered maintained that the lease agreement had been terminated nearly three years prior. However, a routine request by the Auditor's Office to the WVRED for a copy of the termination letter was met with hesitation and a delay until the Division Director of WVRED could return several days later. Even more concern was found when DHHR informed Auditor employees that DHHR self-generated the lease invoices for the Middletown Mall, and had, for the preceding months, requested that the check payments be personally picked up by DHHR employees instead of being mailed to the purported landlord of Middletown Mall.

Given the pending payment request by DHHR, the purported termination of the lease three years prior, and the absence of paperwork from the WVRED, State Auditor John B. McCuskey refused to process any further payments for the lease, and initiated an investigation into these lease payments by the office's Public Integrity and Fraud Unit.<sup>1</sup>

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<sup>1</sup> At this time, DHHR had approved and submitted for processing another invoice for Pin Oak Properties for the month of March 2018. This invoice was refused for payment by the Auditor.

The Auditor's investigation began on March 22, 2018, and has been ongoing for the past several months. As information was obtained and concerns remained, the investigation expanded to include investigators with the United States Federal Bureau of Investigation ("FBI") in both the Northern and Southern Districts of West Virginia.

Having reviewed numerous documents, researched court proceedings, and interviewed multiple individuals, the investigation has developed to the point that certain findings are able to be made. These findings are detailed in this Report, along with general background information, timeline of key activity, and recommendations for corrective action to be taken by various State agencies.

## **II. BACKGROUND**

At issue in this investigation is the DHHR's lease and monthly payments for office suites at the Middletown Mall. In order to understand the Findings contained in this report, some background information is warranted about the lease, the landlord of the office space (Pin Oak Properties, LLC), and other payees that received monies in place of the landlord over the past three years.

### **A. STATE LEASE OF PROPERTIES**

Under West Virginia law, if a state agency (e.g. DHHR) desires to lease office space as part of its statutory mission, it must utilize and comply with the rules and regulations of the West Virginia Real Estate Division ("WVRED"). A sub-unit of the Department of Administration, the WVRED is directed and managed by an Executive Director that is appointed by the Governor. Pursuant to W.Va. Code § 5A-10-2, the "executive director is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency or institution of state government[.]" The Code further provides that the WVRED has the following express powers and duties:

- (5) To establish and maintain a comprehensive database of all state real estate contracts and leases;
- (6) To develop policies and procedures for statewide real property management;
- (7) To maintain a statewide real property management system that has consolidated real property, building and lease information for all departments, agencies and institutions of state government;

#### W.Va. Code §5A-10-3

In short, the WVRED is responsible for entering into and overseeing the leases of the state agencies under its jurisdiction, including maintaining a database of all leases.<sup>2</sup> The oversight of these leases additionally includes the setting of the length of the leases, and, if necessary, the early termination of a lease.

[T]he Department of Administration, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor, such notice being given at least thirty days prior to the last day of the succeeding month;

#### W.Va. Code §5A-10-5(c)(1)

While the Code imposes a duty upon the WVRED to establish the lease, W.Va. Code § 5A-10-9 imposes a duty upon the individual state agency to account for and pay leases entered into by WVRED on the agency's behalf.

(a) All real property owned or leased by the state shall be accounted for by the state spending that owns, leases or is in the possession of the real property.

(b) **Each state spending unit shall** establish and maintain a record of each item of real property it owns and/or leases and **annually furnish its records to the Real Estate Division.**

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<sup>2</sup> W.Va. Code § 5A-10-2 exempts certain State Agencies from relying upon or utilizing the WV Real Estate Division for leases or other realty matters. WVDHHR is not exempted under this statute, and therefore subject to the WVRED rules and regulations.



As emphasized above, each agency is statutorily required to provide an annual accounting of active leases to the Real Estate Division.<sup>3</sup>

Accordingly, in summarizing the roles and responsibilities, the West Virginia Code places the duty to establish and terminate a lease with the Real Estate Division, and imposes a duty upon the state agency (e.g. DHHR) to pay the monthly lease and to keep an accurate accounting thereof.

## **B. DHHR LEASES AT THE MIDDLETOWN MALL**

Opened in the early 1970's, the Middletown Mall has historically been dubbed the first enclosed mall in West Virginia. Located in the Town of White Hall in Marion County, Middletown Mall is a shopping center comprised of retail and department stores. It also has historically leased out space to government agencies to serve as local offices. For many years, DHHR and at least two other State Agencies (Lottery and the DMV) leased office space at this location in order to provide local access and services for West Virginia residents.

With respect to DHHR, it began leasing property in Middletown Mall in April 2009.<sup>4</sup> The leased office space consisted of 4 suites, which were separated into two Lease Agreements (HHR-187 & HHR-190). The terms of the leases were five years, beginning on April 3, 2009 and ending on April 2, 2014. In 2014, DHHR exercised a renewal option and extended the leases, beginning April 3, 2014 and ending April 2, 2019. Under the terms of the extended leases, DHHR was required to pay to Pin Oak as follows:

- HHR-187, comprising 3 suites, a monthly payment of \$9,335.67.
- HHR-190, comprising one large suite, a monthly payment of \$21,571.67.

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<sup>3</sup> While required by statute, this has historically not occurred by DHHR or other agencies. Our investigation was unable to locate any annual reports submitted by the DHHR to the WVRED during the years in question.

<sup>4</sup> Pursuant to W.Va. Code §5A-10-7, the WV Real Estate Division entered into the lease agreement as "Leasee" on behalf of DHHR.

These payments were initially made as two separate payments each month, but over the years were later combined into a single check each month in the amount of \$30,907.34.

In 2015, a year into the extended lease, the State of West Virginia opened a new State-owned building in Fairmont. The building was intended to house all the State agencies in a centralized location for local services, with DHHR being one of the larger tenants. On May 31, 2015, DHHR vacated the office space at the Middletown Mall and moved into the State-owned office building with a start date of June 1, 2015.<sup>5</sup>

### **C. LESSOR OF DHHR LEASES**

Since at least 2009, the Middletown Mall has been owned by Pin Oak Properties, LLC (“Pin Oak”). Pin Oak is a limited liability company, organized in 2004 in the State of West Virginia, and whose principal place of business is located at 3120 Fairway Drive, Morgantown, WV 26508. The only known owner of Pin Oak is Dietrich S. Fansler.

With respect to the DHHR lease agreements, Pin Oak is identified as the lessor of the property, and Mr. Fansler signed as the “Manager” of Pin Oak. Pursuant to the agreements, DHHR made monthly payments to Pin Oak for the leased office space in the combined monthly amount of \$30,907.34. These payments were made via check with “Pin Oak Properties, LLC” as the named payee on the check.

### **D. OTHER PAYEES OF THE MONTHLY RENTS**

Over the course of the DHHR Leases, the recipient payee on the checks were modified several times by Pin Oak. According to records reviewed as part of this investigation, Pin Oak secured several loans over the last 9 years, utilizing the Middletown Mall property as collateral for the loan, and entered into bankruptcy at least twice.

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<sup>5</sup> The monthly rent for DHHR in the new State owned building, as of 6/1/15, was \$74,387.58.

## **1. THISTLE GROUP**

A month after the DHHR leases began, documents indicate that Pin Oak secured a loan from Somerset Trust Company on April 8, 2009, utilizing the rents and leases at the Middletown Mall property as collateral security for the loan. Documents further indicate that DHHR, as tenant, consented to the assignment on April 6, 2009. Thereafter, by letter dated February 9, 2010, Thistle Financial Group notified the WVRED that rental payments to Pin Oak Properties, LLC were to be directed to Thistle Financial Group on behalf of Somerset Trust Company.

Upon receipt of the letter, the WVRED sent a letter, dated February 11, 2010, to the State Auditor's Office and DHHR directing the monthly payment for Pin Oak Properties, LLC be sent to Thistle Financial Group. DHHR amended the monthly invoices for the DHHR leases to reflect that the payee shall be:

Pin Oak Properties, LLC  
c/o Thistle Financial Group, LLC

Per these instructions, checks were still in the name of Pin Oak Properties as payee, but directed to, and deposited by, Thistle Financial Group, LLC. These payments to Thistle Financial Group continued until 2014.

## **2. BB&T BANK**

By letter dated March 13, 2014, BB&T notified the WVRED that the loan to Somerset Trust Company had been satisfied, and that Pin Oak Properties, LLC had secured a different loan with BB&T. Per the BB&T letter, Pin Oak had utilized the rents, leases, and revenues at the Middletown Mall to secure the loan. The letter further directed that rental payments be made to BB&T.

Upon receipt of the letter, the WVRED sent a letter, dated March 23, 2014, to the State Auditor's Office and George Nicholson (with DHHR) directing the monthly payment for Pin Oak Properties, LLC be sent to BB&T. DHHR altered the monthly invoices for the DHHR leases to reflect that the payee shall be:

Pin Oak Properties, LLC  
c/o Branch Bank & Trust Company  
P.O. Box 533  
Charleston, WV 25322

Per these instructions, checks were still in the name of Pin Oak Properties as payee, but directed to, and deposited by, BB&T. The invoices for payment to BB&T continued until December 2016, however, there were multiple intervening matters that happened during this 2-year time period.

First, by letter dated April 22, 2014, the expired DHHR leases were renewed for another 5 year term. The leases were extended to April 2, 2019. The letter is from the WVRED to Pin Oak Properties, LLC, with copies going to DHHR and the Auditor's office.

Second, the DHHR vacated the property at the Middletown Mall as of 5/31/15.

Third, under the terms of the loan agreement with Pin Oak Properties, LLC, BB&T sought to foreclose on the secured property (e.g. Middletown Mall) in 2016. According to a letter dated July 22, 2016 from the law firm Tharp, Liotta & Yokum, LLP, notice of a Foreclosure sale of property was directed to multiple parties, including specifically to the WVRED on behalf of the DHHR. The foreclosure sale was set for August 30, 2016. The foreclosure sale, however, was canceled and did not occur. While the investigation did not determine the exact reason for the sale cancellation, a news article around this time period suggested that the loan note may have been sold to another bank or financier.<sup>6</sup>

Notwithstanding the foregoing intervening matters, including specifically DHHR vacating the property, DHHR continued to make monthly payments to "Pin Oak

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<sup>6</sup> "Tuesday's auction of Middletown Mall canceled" Times West Virginian (Aug 31, 2016)

Properties c/o BB&T” through December 2016. These monthly payments were accepted and deposited by BB&T.

### **3. GENERAL ACQUISITIONS LLC**

By letter dated March 1, 2017, General Acquisitions LLC (“General Acquisitions”) gave notice to the WVRED that Pin Oak had previously secured a loan from General Acquisitions, utilizing the rents and leases at the Middletown Mall property as collateral security for the loan.

According to records filed with the Secretary of State’s office, General Acquisitions LLC is a limited liability company, organized in 2016 in the State of West Virginia, and whose principal place of business is located at 6200 Mid Atlantic Drive, Morgantown, WV. Per the organizing records, the known owners/managers are Biafora Inc. and David Biafora.

The March 1, 2017 letter further stated that it was exercising a provision in the lease that allowed General Acquisitions to receive monthly rental payments on behalf of Pin Oak. The letter further directed that monthly payments be sent to General Acquisitions. Unlike prior payee changes, however, no change of address letter was sent to the Auditor’s office or the DHHR. Notwithstanding, documents reflect that DHHR unilaterally amended invoices to reflect the payee as follows:

Pin Oak Properties, LLC  
c/o General Acquisitions Group LLC  
6200 Mid-Atlantic Drive  
Morgantown, WV 26508

Interestingly, the first invoice reflecting this change was for January 2017. The invoice was created by DHHR, processed, approved and “certified” by DHHR directing payment to Pin Oak c/o General Acquisitions Group, LLC. According to payment records, the first check directed to General Acquisitions Group, LLC was on January 23, 2017, more than a month before the March 1, 2017 letter, and continued each month thereafter.

However, while monthly invoices reflecting payment to General Acquisitions continued until March 2018 (when the Auditor stopped payment), payments only went to General Acquisitions until June 2017. In July 2017, the payments were instead sent to a different recipient at the direction of the DHHR.

#### **4. SPECIAL PROCESSING**

Beginning in July 2017, DHHR executed a special request for the DHHR lease invoices. Although the DHHR invoice still directed payment to be paid to Pin Oak c/o General Acquisitions Group, LLC, a DHHR employee attached a “Request for Special Processing” form with the invoices. The Special Processing form requested that the check not be mailed by the WV State Treasurers office to the General Acquisitions Group LLC address, but instead be picked up by a DHHR employee.<sup>7</sup> In support of the request, the DHHR employee stated on the form:

“Requesting to receive this check because the vendor’s address has recently changed, but has not been updated in OASIS”

In accordance with the DHHR request, when the lease check was issued by the Treasurer’s office, a DHHR employee picked-up the check that the invoice directed to be sent to General Acquisitions. Our investigation revealed, however, that these monies were instead deposited into a different account than the prior General Acquisitions LLC payments.

This special processing occurred for the successive seven months until the Auditor’s office stopped payment and initiated this investigation. On each of the successive special processing forms, the DHHR employee utilized the same basis for the special handling: the vendor’s address has recently changed, but has not been updated in OASIS.

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<sup>7</sup> A Special Processing Request for personal pick-up is a common request utilized by numerous state agencies. While reasons vary, it typically is sought when a vendor either has moved addresses or desires an immediate payment.

## **E. BANKRUPTCY**

Since DHHR vacated the Middletown Mall, there have been two known bankruptcy proceedings affecting the leased office space. On October 5, 2016, Mr. Fansler filed a voluntary petition in the Bankruptcy Court for the Northern District of West Virginia, claiming the debts as primarily consumer debts. BB&T, as one of Fansler's creditors, believed the bankruptcy was filed to stop a foreclosure sale of his residence by The United Federal Credit Union that was scheduled for the following morning. According to bankruptcy records reviewed during the investigation, it is believed the proceeding were ultimately closed on or about March 29, 2017.

The second bankruptcy appears to have been initiated in June 2017 and is ongoing. The Petition was filed in the name of Pin Oak Properties, LLC, as debtor. Of significance in that proceeding, on July 18, 2017, a motion was granted that rental monies continue to be retained by Fansler, as managing agent in the ordinary course of business. Per the Order, rental payments previously going to General Acquisitions were now to go to Mr. Fansler. Also noteworthy, in April 2018, the bankruptcy court granted the Trustee's motion of the sale of real estate to General Acquisitions, with the Report of Sale believed to have been filed in May 2018.

## **III.**

### **TIMELINE OF KEY ACTIVITY**

Based upon documents and records, the following is a chronology of key activities and events that have occurred based upon our investigation.

**March 23, 2009:** Lease Agreements (HHR-187 and HHR-190) entered into between Pin Oak and WVRED (on behalf of WV DHHR) for office space located at Middletown Mall [**Attached as Exhibits #1 & #2**]



**February 9, 2010:** Thistle Financial Group letter to WV Real Estate Division regarding loan by Pin Oak and change of rental payment remittance [**Exhibit #3**]

**February 11, 2010:** WVRED letter to Auditor re: payee change (Thistle) [**Exhibit #4**]

**March 13, 2014:** BB&T letter to WVRED regarding a loan to Pin Oak and change of rental payment remittance [**Exhibit #5**]

**March 25, 2014:** WVRED letter to Auditor re: payee change (BB&T) [**Exhibit #6**]

**April 3, 2014:** Beginning of renewal term

**April 22, 2014:** WVRED Letter to Pin Oak for renewal terms sent for HHR-187 and HHR-190 [**Exhibit #7**]

**Jan.-Dec. 2015:** DHHR makes monthly invoices & payments of \$21,571.67 and \$9,335.67 to Pin Oak c/o BB&T [**Exhibits #8 and #9**]

**May 31, 2015** DHHR vacates office space in Middletown Mall

**June 1, 2015:** DHHR occupies office space in the new State-owned office building in Fairmont, WV

**Sept. 18-25, 2015:** Emails between DHHR and WVRED re: termination letter  
[**Exhibit #10 & Exhibit #11**]

**Sept. ??, 2015:** Purported Termination letter sent by WVRED to Pin Oak.  
NOTE: Copy of letter is undated and unsigned. [**Exhibit #12**]

**Sept. 25, 2015** Dated receipt for Certified Mail to Pin Oak Properties [**Exhibit #13**]

**Oct. 8, 2015** Copy of returned green card purportedly signed by Mr. Fansler [**Exhibit #14**]. *See also* [**Exhibit #15**- copy of green card with handwritten note]

**Jan.-Dec. 2016:** DHHR makes monthly invoices & payments of \$21,571.67 and \$9,335.67 to Pin Oak c/o BB&T **[Exhibits #16 & #17]**

**July 22, 2016** Letter from law firm to WVRED, et al re: foreclosure sale of Pin Oak Properties **[Exhibit #18]**

**Jan.-June. 2017:** DHHR makes monthly invoices & payments of \$21,571.67 and \$9,335.67 to Pin Oak c/o General Acquisition **[Exhibit #19]**

**Mar. 1, 2017:** General Acquisition letter to WV Real Estate Division regarding loan by Pin Oak and change of rental payment remittance **[Exhibit #20]**

**Mar. 6-7, 2017** Emails between DHHR and WVRED re: General Acquisition letter **[Exhibit #21]**

**June 7, 2017:** Pin Oak files for Chapter 11 Bankruptcy (ongoing)

**July 2017.-Feb. 2018:** DHHR makes monthly invoices, Special Processing Requests & payments of \$21,571.67 and \$9,335.67 to Pin Oak c/o General Acquisition **[Exhibit # 22]**

**July 18, 2017** Bankruptcy Court orders monthly rentals to be collected by Mr. Fansler as manager of Pin Oak **[Exhibit #23]**

**March 19, 2018:** DHHR submits monthly invoices, and Special Processing Requests for \$21,571.67 and \$9,335.67 to Pin Oak c/o General Acquisition. NOTE: This is refused by Auditor prior to issuance of check **[Exhibit #24]**

**March 22, 2018:** Auditor's Public Integrity & Fraud Unit begins investigation

**April 2, 2019:** End of purported renewal term

## IV. FINDINGS

Over the past several months, the State Auditor's Public Integrity and Fraud Unit has conducted a multi-agency investigation that included document review and witness interviews. Based upon the investigation, we are able to make the following findings. In rendering these findings, we are mindful that additional information might exist that we were neither provided nor privy to, including information from private individuals or entities outside of State government. While we do not anticipate it, the availability and/or review of information maintained by individuals or entities outside of State government may alter these findings.

**FINDING #1:    The State of West Virginia has paid nearly \$1 million since June 2015 for leased property that was vacated and not utilized.**

As of June 1, 2015, the DHHR had moved into and was utilizing the new State-owned office building in Fairmont. The DHHR had fully vacated the office space at the Middletown Mall and never returned after this date. Yet, DHHR employees continued to (1) generate invoices in the monthly amount of \$30,907.34 for the property, (2) certify the payment as approved, and (3) direct that payments be made to Pin Oak for 32 successive months.

While there were clear failures at the DHHR and WV Real Estate Division that allowed this to be perpetuated for so long, the fact still remains that DHHR paid \$989,034.88 for office space that it never utilized or occupied. No services were being rendered by Pin Oak Property LLC to DHHR, and there was no expectation that DHHR would return during the remaining term of the extended lease that ended in April 2019. DHHR had moved in to a new State-owned office building, and was under the belief that lease had been terminated. As such, DHHR's continued payment to Pin Oak Properties

LLC for use of office space that it had vacated and did not utilize was improper and wasteful.

**FINDING #2: The West Virginia Department of Health and Human Resources had multiple control and oversight failures that lead to the wasteful spending.**

The overriding question throughout this investigation has been how did this happen. The investigation revealed multiple failures, both at an individual employee level and at a larger Department oversight level. These failures collectively lead to the continued payment of monies, and could have been stopped at any time had there been closer oversight or management of property held by DHHR.

***1. DHHR failed to properly account for its property and tracking of monies being paid***

While recognizing that a state agency as large as DHHR may have matters and items that go unseen and unchecked, the investigation revealed that DHHR, including Senior Officials, were fully apprised of issues concerning questions about the termination of the lease and could have prevented these payments.

**a. DHHR questioned the absence of a termination letter in September 2015**

In the spring of 2015, DHHR was undergoing a major transition from the offices at the Middletown Mall to the State-owned building in Fairmont. The transition was being overseen by the Deputy Director of WVRED David Hildreth (employee with the Real Estate Division) and multiple DHHR employees, including specifically George Montgomery (Executive Director of Operations at DHHR).

Pursuant to W.Va. Code §5A-10-5(c)(1) and Section 23 of the lease agreement with Pin Oak Properties, the WV Real Estate Division (as leases) is responsible to provide 30-

day written notice prior to termination of a lease agreement. The investigation did not reveal any such notice or letter of termination prior to DHHR vacating the Middletown Mall on May 31, 2015. While there appear to have been questions and statements by DHHR to WVRED about terminating the lease, one did not occur prior to vacating the property on May 31, 2015. Indeed, it appears undisputed that a termination letter was not sent before May 2015, and was not sent in June, July or even August of 2015.

However, the investigation revealed that DHHR continued to ask about the termination of lease, and ultimately in a series of emails in September 2015, sought to make sure notice and termination occurred. [See email chains attached as Exhibit #10 & Exhibit #11]

While the emails reflect DHHR (and WVRED) diligently tried to make sure termination occurred, it also highlights that DHHR nonetheless never took steps to stop the payment from occurring or demanding proof of termination. Instead, the concern appeared to wane after these emails without proof or demonstration of termination. Nearly five months after vacating the property, there simply does not appear to have been a concern to preserve taxpayer money from continuing to be paid. Had there been, then DHHR officials should have demanded written proof, and also sought to stop further invoicing or payments. This did not occur.

Further, DHHR officials should have been more aware or expressed greater concern that they were still paying nearly \$31,000 a month for property that they were not using. The rent at the new State Building more than doubled the rent at Middletown Mall. Had the budget and finances been monitored, the increased expenditure line items for property should have caught someone's attention at DHHR. At the very least, someone should have had a better control of monies being paid to Pin Oak Properties after concern had been raised in September. An email or letter to necessary people (e.g. accounts payable, comptroller, Chief Financial Officer, etc.) should have occurred within DHHR to highlight that no further payments should be going to Pin Oak after this September 2015 email exchange. This did not occur.

**b. DHHR received the March 1, 2017 General Acquisitions request for payee change**

While it could be argued that officials in DHHR thought this matter was terminated as of September 2015, and then lost track of the issue during the change in administration in 2016, flags should have gone off in 2017 when the payee change request by General Acquisitions was received by DHHR.

Although DHHR did not produce a copy of the letter during our investigation, a copy of the March 1, 2017 letter from General Acquisitions LLC was found in the WV Real Estate Division's file. Importantly, the file copy of the letter has a stamp indicating it was received by DHHR.

The letter, which sought payments to be made to General Acquisitions on behalf of Pin Oak, should have drawn major questions and flags. At the very least, it should have prompted pointed communications to WVRED about the termination letter. More importantly, it should have prompted someone in DHHR to simply check if it was still paying Pin Oak.

Instead, an email exchange occurred in which DHHR employees forward the letter to George Montgomery (DHHR Executive Director of Operations), who passes it along without comment to David Hildreth (Deputy Director of WVRED). [See email chains attached as Exhibit # 21]. David Hildreth replies back:

"I'll reply stating the termination date of your lease at Middletown Mall. Thanks"<sup>8</sup>

The investigation did not reveal any communication by Hildreth with General Acquisitions. The investigation also did not reveal any further communication about the General Acquisitions letter or any activity by DHHR to look into or stop the ongoing payments. Rather, the opposite appears to have occurred.

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<sup>8</sup> See Exhibit # 21 (Email from David Hildreth to George Montgomery, et al. (March 7, 2017))

In January 2017, DHHR unilaterally amended the invoices to reflect payment to General Acquisitions. While the prior invoices reflected payment to BB&T, these new invoices were changed to General Acquisitions. There is no known documented evidence to support this change in payee that was produced by DHHR during the investigation. Further, DHHR did not produce any evidence that the any supervisor or senior official within DHHR was made aware of the amended invoice in January 2017.

Importantly, despite a Senior DHHR Official receiving a request for payee change for the Middletown Mall as late as last year, no action appears to have been taken. Other than forwarding an email to WVRED, there is documentation that a review was conducted or request for clarification by Hildreth, or even a request to see the termination letter. Rather, it appears as if it was simply forwarded on and disregarded thereafter.

Overall, had officials at DHHR placed a higher concern or provided better oversight on the DHHR Leases at the Middletown Mall, these payments could have been avoided and/or stopped by DHHR. There were multiple opportunities for this to have been discovered and/or stopped, but that failed to occur.

## ***2. DHHR should not have been unilaterally generating invoices on behalf of the landlord Pin Oak Properties***

One of the reasons precipitating these payments for nearly three years was that employees within the DHHR Finance section were unilaterally generating the invoices on behalf of Pin Oak. Unlike other agencies that require invoices to be sent in from the vendor for payment, DHHR employees were creating one for the vendor for the property they were leasing. While this is a control deficiency, it also expressly contradicts the lease agreement with Pin Oak.

As stated in the lease extension letter sent by WVRED in 2014, Pin Oak was directed to submit “revised invoices to the Department of Health and Human Resources to ensure proper payment.” This did not appear to occur. Rather, DHHR generated the invoices, including those with differing payees. These self-generated invoices were used

to direct the payment and perpetuated the ability of the landlord to continue getting paid even though the property had been vacated.

This is especially true with respect to the payments beginning in January 2017 to General Acquisitions LLC. There is no documented address change request to have pay remitted to General Acquisitions as c/o for Pin Oak. Yet, in January 2017, DHHR changed the invoices to reflect payment to General Acquisitions. No change in payee letter was sent out to the Auditor (as was done with Thistle and BB&T), nor cross-reference made to WVRED. Rather, DHHR simply created new invoices and then certified them for approval.

***3. DHHR should not allow a single employee to create an invoice for services and then approve them for payment without review by another individual.***

On a larger control scale, DHHR failed to properly segregate duties of its employees as to the payment. The investigation into this matter revealed that employees of the DHHR Finance section were unilaterally generating the invoices, and then certifying them as approved to be paid. The process should be separated such that employees are not able to create an invoice and also approve it for payment. Notwithstanding the current payment issue with Pin Oak, the lack of segregation of duties allows an employee to create a false invoice and approve it for payment for an improper purpose (e.g. embezzlement or personal use) without an independent review by a separate employee.

Further, from a segregation of duties perspective, DHHR should not authorize the same individual creating the invoice to also be able to request a special handling that gives the check to the same person creating the invoice. Under the current practices and procedures, a single employee in DHHR has the ability to create an invoice, approve the invoice, and then direct special pick-up of a check for delivery to the same person. These conditions are a recipe for serious misuse/embezzlement of public funds. While the investigation did not find such embezzlement or personal misuse in this matter, DHHR



nonetheless needs to correct this lack of segregation of duties to prevent something from happening in the future.

Finally, DHHR should ensure that its employees charged with certifying approval of an invoice actually take steps to certify the validity of the invoice. Since the same employee was both self-generating and certifying their own the invoice, there was an absence of a step that could have caught the terminated lease. However, the premise still exists that the employee actually looks into the invoice to determine its validity. Had the employee that was certifying approval for payment of the invoice actually contacted someone else within DHHR to confirm the payment, then these payments could have been discovered and stopped much earlier.

*4. A DHHR employee should not be allowed to make payee changes based solely on an undocumented phone call*

One of the concerns generating the investigation was the Special Processing Request in contravention of the stated invoice in July 2017. Per the July 1, 2017, the invoice stated that payment was to be made to General Acquisitions. Checks had been directed and deposited by General Acquisitions for the preceding six months. However, beginning in July 2017, a DHHR employee requested that the payment not be made to General Acquisitions, but instead be picked up by a DHHR employee. This continued until March 2018, when the Auditor stopped further payment. Early in the investigation, it was discovered that these personal pick-up checks were not deposited in the same General Acquisition account as the prior six months. This raised significant flags as there was no written documentation suggesting the reason or authority for such a change in invoice or change in recipient payee.

The investigation later revealed that a DHHR employee sought the special handling request after speaking with Mr. Deitrich Fansler, manager of Pin Oak Properties, LLC, by telephone. According to the employee, Mr. Fansler contacted the

employee by phone, and stated that the checks were to be sent to him and not to General Acquisitions.

Based solely on the phone call from Mr. Fansler, the employee directed the check to be picked up and mailed to an address Mr. Fansler provided. Putting aside the lack of knowledge that the employee was actually talking to Mr. Fansler or someone pretending to be Mr. Fansler, the employee took unilateral action to divert a check in contravention of the invoice based solely upon a verbal telephone request. The employee additionally told her supervisor of the oral request, and the supervisor also took action based upon the telephone request.

Per the known instructions and invoice at the time, the check should have gone to General Acquisitions. DHHR maintains it has no documents in its possession to support this alteration or basis for the special process request. Rather, the employee took a verbal request by phone and proceeded to re-direct payment in contravention of the invoice for over eight successive months. The employee's supervisor also relied upon the verbal request, and certified the payment approval and authored the special processing request for the check. Such action based solely on a telephone call should not have occurred or be allowed to occur.

##### *5. DHHR employee statement and utilization of Special Processing request was improper*

Another concern at the outset of this investigation was the repeated basis for the special handling. Beginning in July 2017, and for each month thereafter, a DHHR employee stated the reason for the personal pick-up was as follows:

Requesting to receive this check because the vendor's address has recently changed, but has not been updated in OASIS

This Special Processing Request directed that the payment check be picked up and delivered to the DHHR employee requesting the special handling instead of going to the

address listed on the invoice. Notwithstanding that this information was based upon a telephone call, DHHR employees failed to look into or check on the veracity of the statement. The invoice reflected that payment was to be directed to General Acquisitions. The March 1, 2017 from General Acquisitions directed that money be paid to them at the specified address of 6200 Mid-Atlantic Drive. This address and prior payments were all in the system and comported with the generated invoice. Hence, the statement was incorrect in saying the recipient's address had changed and not been updated in the OASIS system. The address in OASIS was correct, insofar as it relates to General Acquisitions.

What should have been done by the DHHR employee was a payee change form. Instead, the DHHR employees sought to get around the formal change and simply did a special request to personally pick up the check. The employees then sent the check to a different person at a different address than the invoice. It is uncertain why DHHR did not execute a payee change or amend the invoice to reflect the new recipient. Rather, the employees attempted to circumvent the OASIS system by doing a special processing request for eight successive months. This was improper and allowed the monthly payments to be diverted and paid for many months to Mr. Fansler personally, instead of General Acquisitions.

IN SUMMARY, there were control and oversight issues at DHHR that caused these payments to occur for nearly three years after DHHR had vacated the office space at the Middletown Mall. There were opportunities that should have caught someone's attention at DHHR and been acted upon. There were also segregation of duties problems that further contributed to these payments being made. Finally, there were individual employee errors that should not have occurred that may have prevented these payments or allowed it to be stopped sooner.

**FINDING #3: The West Virginia Real Estate Division had multiple control and oversight failures that lead to the wasteful spending**

Similar to the findings against the DHHR, the investigation revealed multiple failures, both at an individual employee level and at a larger division oversight level. These failures collectively lead to the continued payment of monies, and could have been stopped had there been closer oversight or management.

***1. WVRED did not require signed copies of termination letters to be kept***

During the early part of this investigation, the Auditor's office was informed by the Division Director of WVRED that there was no requirement in 2015 that signed copies of a termination letter be kept after it was sent. When inquired about the absence of such a requirement, WVRED maintained that original drafts of the letters were kept on the office computer system, but copies of certified mailing receipts and returned green cards were kept in the file.

While the investigation did reveal copies of a certified mailing receipt and a returned green card in the DHHR lease files, the non-requirement that a signed copy of a termination notice be maintained is deficient. The termination notice is expressly required under W.Va. Code §5A-10-5(c)(1), as well as an express provision of the lease agreements. More importantly, it is the primary evidence of termination, and is a key piece of evidence to rebut a challenge being brought by a Lessor.

The absence of an express requirement also breeds inconsistency. The investigation revealed that the other two entities (Lottery and the DMV) leasing property at the Middletown Mall had signed, dated copies of termination letters in their respective lease files. While only one of the letters contained the certified mail number within the body of the letter, both contained references that copies of the termination be sent to the Auditor's office, the state agency that used the property, and to the WVRED lease file.

Overall, the failure to have an express policy or requirement that signed copies of termination letters included in the file is a control deficiency that needs to be corrected.

***2. WVRED is unable to produce a signed, dated copy of the termination letter for the DHHR leases at the Middletown Mall.***

Notwithstanding the absence of a policy or requirement, WVRED is unable to produce a signed, dated copy of the termination letter to Pin Oak Properties, LLC for the DHHR Leases. Rather, WVRED only has an unsigned, undated draft copy of the letter that was purportedly on the WVRED computer system. Noticeably, the letter does not contain any reference for copies of the letter to be sent to the Auditor's office, DHHR, or the lease file. Additionally, the letter erroneously states that "no payments have been made since [DHHR vacated the property on May 31, 2015]."

While the Auditor's office makes no finding or opinion as to veracity of the letter or whether it was actually sent, the absence of a signed, dated copy of the letter is a significant deficiency. Typically, this deficiency can be overcome with copies from other offices (e.g. the Auditor's office and DHHR). However, the investigation revealed that neither the Auditor's Office nor DHHR had a copy of the termination letter to Pin Oak in their possession, or that either actually received a copy of such termination later.

However, WVRED's lease file for DHHR did contain a copy of a paid certified mail receipt dated September 25, 2015 by the U.S. Postal Service. The receipt further reflects that the mail was to go to Pin Oak Properties, LLC at a Morgantown, WV address. More importantly, the lease file also included a returned green card reflecting receipt of mail that was purportedly signed by Mr. Deitrich Fansler. The green card contained a US Mail processing date of October 8, 2015. Notably, handwritten on the green card is a statement that the cancellation notice for both DHHR leases went in the same certified mail.

While there is an absence of a signed, dated termination letter, there is some corroborating evidence in the file that a letter was sent to Pin Oak Properties in September 2015. Yet, the absence of the letter is still a deficiency of the obligations of the WVRED.

Pursuant to W.Va. Code §5A-10-3, the WVRED is expressly responsible to:

- (5) To establish and maintain a comprehensive database of all state real estate contracts and leases;
- (6) To develop policies and procedures for statewide real property management;
- (7) To maintain a statewide real property management system that has consolidated real property, building and lease information for all departments, agencies and institutions of state government;

The lack of a termination letter in the file, or even a policy to require such letter in the file, clearly deviates from the duties and responsibilities of the WVRED. The WVRED is supposed to maintain a statewide property management system. The system should be such that it is accurate and update. The management system should also include signed copies of termination letters and other important documents. Having undated, unsigned letters stored in draft format on an office computer system is deficient, and potentially costly if the State is unable to demonstrate it terminated the lease because it doesn't have a copy to support its position.

***3. WVRED did not properly ensure a termination letter was sent or that appropriate parties were notified at DHHR or the Auditor's office***

Related to the prior point, there seems to have been a less than aggressive desire to ensure termination. While the September 2015 email chain tends to corroborate that a termination letter may have been sent, it also highlights again the absence of care that all parties are appropriately notified (e.g. the State Auditor and DHHR). Despite the assurance expressed in the email, the file still does not contain a copy of the letter. There is also no evidence copies were ever sent to the Auditors office or DHHR. If the WVRED Deputy Director is so worried about not looking as if he "dropped the ball", then one would expect a confirmatory email to DHHR with a copy of the signed termination letter.<sup>9</sup> The email chain clearly reflects concern that the author of the termination letter

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<sup>9</sup> See Exhibit # 10 (Email from David Hildreth to Anthony Signorelli (Sept. 22, 2015).

may not satisfactorily perform the task. Yet, there is no clearly double-check of the file after the fact by the Deputy Director because the absence of a copy of termination letter would have been noticed.

This lack of verification, and failure to notify the DHHR and the Auditor's office of the termination were significant oversight and control deficiencies by WVRED.

***4. WVRED disregarded notices and payee change notices after the property was vacated that could have stopped the payments earlier.***

As with the DHHR, the investigation found several instances where WVRED was apprised of a potential issue and disregarded the notice.

**a. March 1, 2017 letter form General Acquisitions**

As referenced earlier in this report, there were a string of emails in March 2017 following the receipt of the General Acquisitions. The conclusion of that email chain was a statement by the WVRED Deputy Director that he would respond with the termination date.

As with DHHR, this should have been a flag of concern for WVRED, and WVRED should have looked into the letter rather than simply disregarding the letter. General Acquisitions letter was very clear in its intent, and desire to have monies paid to it. Even if WVRED was secure that a termination letter had gone out, a copy of the letter should have been sent to General Acquisitions. Instead, the Deputy Director states the he will send them the date of termination.

Relatedly, there should have been questions by WVRED as to why General Acquisitions would even send such a letter nearly two years after the property was vacated. At the very least, it should have prompted to make sure WVRED was correct in their position before send a response to this letter request for a change in recipient payee.

While the notice last year should alone have set-off questions, the investigation revealed that WVRED had received at least one other notice since the purported termination of the leases.

**b. Notice of Foreclosure sale in July 2016**

By letter dated July 22, 2016, the law firm Tharp, Liotta & Yokum, LLP gave notice specifically to the WVRED of a foreclosure sale of the Middletown Mall property. The foreclosure sale was set for August 30, 2016. Upon receipt of the notice, WVRED should have at least checked to ensure that termination had occurred, and that they were not affected. While the notice does appear to list numerous entities, it is easy to disregard such a notice. Especially since there was a belief that the property was vacated and the lease is terminated.

However, the impact of this notice bears directly on the March 1, 2017 General Acquisitions. By virtue of this notice, WVRED was aware of attempts to sell the property. Then, nearly eight months later, WVRED receives a letter stating that monthly rent payments are to be directed to General Acquisitions. While the lack of concern may be understandable with the notice, there should have been significant concern with the March 1, 2017. Yet, there appears to have been none.

Whether it was the September 2015 email chain, the July 2016 notice of sale, or the March 1, 2017 letter, there many opportunities for WVRED to examine the file, and to have sent written assurance (with copy of a termination letter) to DHHR, the State Auditor, and potential recipient payees. The investigation revealed that simply did not occur.

IN SUMMARY, there were control and oversight issues at WVRED that caused these payments to occur for nearly three years after DHHR had vacated the office space at the Middletown Mall. There were opportunities that should have caught someone's attention at WVRED and been acted upon. There were also clear deficiencies in the management system, including the absence of requiring copies of signed termination



letters. Finally, there were individual employee errors that should not have occurred that may have prevented these payments or allowed it to be stopped sooner.

## V. RECOMMENDATIONS

Over the course of this investigation, it has become clear that multiple state agencies failed to act in accordance with statutory requirements or expected protocol. While it may be easy to simply discipline individual employee conduct, there are larger control and oversight issues that need to be examined and fixed to prevent this type of waste of taxpayer money from occurring again.

Accordingly, the following recommendations are proposed:

**RECOMMENDATION #1:** As the named lessee, the WVRED, in consultation with the DHHR, should consult with Department of Administration legal counsel and/or the WV Attorney General to examine legal remedies, if any, for the recovery of the monies paid since termination. In that regard, utilizing the purported termination letter of September 2015 (which constitutes 30-day notice), the following entities appear to have improperly received the following amounts post-termination:

|                      |                          |               |
|----------------------|--------------------------|---------------|
| BB&T                 | (Nov. 2015 to Dec. 2016) | \$ 432,702.76 |
| General Acquisitions | (Jan. 2017 to June 2017) | \$ 185,444.04 |
| Deitrich Fansler     | (July 2017 to Feb. 2018) | \$ 247,258.72 |

**RECOMMENDATION #2:** The DHHR should perform an immediate accounting of its real property, including review of leases and contracts. This review should also ensure that termination letters exist for every vacated property over the last ten years, as well assurance that the vendors are not still being paid. Upon completion of this review, DHHR should make a formal report to the WVRED as contemplated by W.Va. Code § 5A-10-9. Lastly, upon receipt of this report, WVRED should equally review its files to confirm and report back that the WVRED records reflect the same active properties or any differences. Pursuant to § 5A-10-9, this report should be annually filed by DHHR with WVRED, and WVRED should equally review and provide assurance to DHHR of the accuracy or inaccuracy of the real estate assessment report.

**RECOMMENDATION #3:** The DHHR needs to end the process of self-generating invoices. If such procedure is necessary, controls need to be established, including written documentation and evidence of service from vendors, as well as routine reviews to ensure the underlying services and payment amounts are accurate.

**RECOMMENDATION #4:** The DHHR should provide greater controls and segregation of duties within its Finance section. A single employee should not be allowed to generate an invoice, certify and approve that invoice, and then direct a special handling request to send the check back to that same person.

**RECOMMENDATION #5:** The DHHR should immediately prohibit amendments to invoices or recipient payees without written request. A telephone request should not be the sole reliance for alteration of financial payments.

**RECOMMENDATION #6:** The DHHR, as well as other state agencies, should limit the scope and number of times a special handling may be performed for a vendor. The use of the special processing request to circumvent the OASIS system lessens the systemic controls in place and transparency of payments.

**RECOMMENDATION #7:** The WVRED needs to adopt a formal case management policy that requires signed, dated copies of letters to be retained in lease files. The policy should equally require that the termination letters (1) reflect the certified mailing number within the body of the letter, and (2) be provided to the Auditor's Office, the leasing state agency, and the lease file.

**RECOMMENDATION #8:** The WVRED needs to adopt a case management/tracking system that ensures timely communication with state agencies when communications are received relating to leased property. This communication needs to equally be reflected in the lease file as verification of such transmittal to the state agency.

**RECOMMENDATION #9:** The WVRED needs to institute better standards and employee expectations for review of communications it receives relating to leased or State-owned property, especially notices involving bankruptcy, foreclosure or tax sales. There should be an expectation that the WVRED file relating to the named property in the notice be reviewed and check to ensure there is no property interest at stake. The case management/tracking system should reflect that such a review was performed relating to notice and appropriate action, if necessary, was taken.

**RECOMMENDATION #10:** Where specific employee deficiencies have been noted in this report, the DHHR and WVRED should conduct reviews of the employee's conduct to determine if corrective action is warranted.

**RECOMMENDATION #11:** Given the significant control and supervisory issues found by this investigation within DHHR, a copy of this report is being sent to the West Virginia DHHR Office of Inspector General. In making this referral, it is the recommendation that the DHHR OIG conduct an internal review of the actions underlying this investigation and determine whether additional policies, controls or sanctions are warranted.

**RECOMMENDATION #12:** Given the significant control and supervisory issues found by this investigation within DHHR, a copy of this report is being sent to the West Virginia Legislative Auditor's Office for a review and evaluation to be completed by the Performance Evaluation and Research Division (PERD) of the West Virginia Real Estate Division. In making this referral, it is the recommendation that PERD conduct a review of the actions underlying this investigation, and determine whether additional policies, controls or management systems are warranted within the WV Real Estate Division.

## VI. CONCLUDING STATEMENT

Upon discovery of the potential improper payments, the Auditor's Office initiated an investigation to review the underlying conduct and reasons for the payment of nearly \$1 million to various entities following DHHR vacating the lease at Middletown Mall. Given the pending Bankruptcy proceeding as well as the potential necessity to cease ongoing conduct, the investigation moved expeditiously to try and determine the basis of the conduct. While necessary individuals were interviewed, and documents were sought and obtained, there may be individuals or documents that were not reviewed or produced that may later prove to alter the analysis and findings contained in this report.

If such is discovered, then the findings may need to be amended or supplemented. Notwithstanding, this report is based upon the evidence and facts made known to investigators conducting the investigation.

Finally, the Auditor's office wishes to thank the United States FBI (both Northern and Southern Districts of WV) for their prompt and reliable assistance throughout this investigation. The actions of their agents greatly assisted the efficiency and timeliness of this investigation.