

Commission on Quality of Care and Advocacy for Persons with Disabilities

Breach of Trust: An Investigation Into the Theft of Resident Funds at Academy Green Residences, Inc.

June 2011



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Chair

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EXECUTIVE SUMMARY

This report describes the theft of more than \$200,000 of wages and other funds belonging to 16 individuals with a developmental disability by Tom Ngowe, the executive director of Academy Green Residences, Inc. (AGR). During the Commission's investigation, residents of the program spoke of their trust, high regard, and caring for this man. Their unquestioning belief that he had their best interests at heart cultivated an environment that caused the residents to hand over thousands of dollars in cash to him, which then disappeared.

Mr. Ngowe was a long-term employee of AGR who was trusted not only by the residents and staff of AGR, but also by its board of directors. The Commission conducted a detailed analysis of nearly a quarter million dollars in resident banking activity for the four-year period from 2007 to 2010 and found that Mr. Ngowe designed and implemented a systematic "cash back" scheme in which AGR resident funds (mainly resident wages) were converted into cash and then disappeared. Missing funds due and belonging to the residents ranged from as little as \$630 for one resident to more than \$30,000 for others.

AGR is a small, not-for-profit agency located in Kingston, New York and licensed by the Office for People with Developmental Disabilities (OPWDD) to provide both residential and community habilitation services to approximately 35 individuals with developmental disabilities. In the fall of 2010, the Commission began a limited fiscal review of the agency. This review quickly turned into a full investigation of the residents' personal allowances after the executive director became evasive and provided contradictory statements regarding resident bank accounts.

This report also touches upon how the government agency charged with overseeing AGR reversed its course, shifting away from efforts to shut down AGR due to poor recordkeeping and questionable financial viability, to a decision which allowed AGR to continue and even expand.

The actions of the executive director in this instance violated the foundational concept of fiduciary duty which, simply defined, is a position of trust and imposes an obligation to act in the best interests of another party. At a minimum, a fiduciary is compelled to properly handle the money of an individual who relies on that trust. However, the nature of AGR imposes another dimension of responsibility: providers who are licensed by the State to care for individuals with developmental disabilities have a moral obligation to ensure that those who are the most vulnerable citizens of our society are respected, properly cared for and protected.

In January 2011, the Commission, along with OPWDD officials, met with AGR's board of directors to present the Commission's preliminary findings which were initially based upon a sample of three residents' bank accounts. The AGR board acted swiftly and decisively, suspending Mr. Ngowe and the agency's bookkeeper that same day. The Commission also referred the matter to the New York State Police. In March 2011, Mr. Ngowe was arrested and charged with grand larceny in the second degree.

The Commission commends the AGR board for the swift actions taken and recommends the following:

- AGR should make full restitution to the affected residents of the facility;
- AGR should ensure that the proper amount of resident wages is paid to the agency to cover room and board costs;
- AGR should improve its controls and oversight over resident wages, and;
- OPWDD should improve its inspection protocols over personal allowances to cover all sources of income, including resident wages.

The Commission sent a copy of this report to AGR and OPWDD requesting a written response. Their responses, which concur with the recommendations, are attached as Appendixes 3 and 4.

Recent events compounded the already difficult financial situation of the agency. In addition to an existing substantial Medicaid disallowance that needed to be paid back to the State, there was now a new burden of restitution for stolen personal allowance funds and a strong likelihood of yet another large Medicaid disallowance because of missing documentation. In May 2011, OPWDD sought for AGR to surrender its license to operate, largely based upon the grounds that AGR will no longer be a financially viable operation. AGR has agreed to surrender its license to OPWDD and transition its residents to other facilities in the region or turn operation of the facility over to another agency provider.

INTRODUCTION/SCOPE OF REVIEW

Academy Green Residences, Inc., (AGR) is a small not-for-profit agency licensed by the NYS Office for People with Developmental Disabilities (OPWDD) to provide both residential and community services to approximately 35 individuals with developmental disabilities. The agency was incorporated in 1982 to “establish, operate and maintain a supervised community residence for persons handicapped by developmental disabilities.” The agency provides residential services to ten individuals at its main headquarters at 6-8 Maiden Lane, Kingston, New York, and to four individuals at two other separate apartment programs located near the main office.¹ AGR also provides respite and community habilitation services to approximately 21 individuals with developmental disabilities in the Hudson Valley area. AGR receives approximately 70 percent of its funding through Medicaid, with most of its other revenue coming from Supplemental Security Income (SSI) and Social Security Administration (SSA) benefits. In 2009, AGR had total revenue of approximately \$681,000 and total expenses of \$514,000. At the time of the Commission’s review, AGR’s executive director was Tom Ngowe and the president of its Board of Directors was Lynne Brush.

The Commission first visited AGR as part of its statewide review of board governance and executive compensation in mental hygiene agencies.² During this initial visit, Commission staff noted that AGR misreported information on the Commission’s survey instrument. The Commission also noted that the agency was on an “early alert” list maintained by OPWDD.³ As a result, the Commission initiated a limited fiscal review of the agency’s finances in September 2010. However, because of evasive and contradictory responses from AGR’s executive director and bookkeeper, the focus of the Commission’s review quickly shifted to resident funds.

The Commission’s review included a detailed investigation into the wages and management of all AGR resident personal allowance accounts for the four-year period from 2007 to 2010. In order to conduct the review, the Commission subpoenaed bank accounts, examined AGR’s books and records, reviewed resident clinical records, and interviewed both AGR staff and residents.

AGENCY BACKGROUND

Since at least 2007, AGR has experienced problems in its operations. In 2007, OPWDD issued a report citing AGR for failing to maintain adequate supporting documentation for its Medicaid billings. This report ultimately led the NYS Office of the Medicaid Inspector General (OMIG) to issue a \$360,414 Medicaid disallowance for the three-year period ending December 31, 2006. As a result, AGR’s independent auditor gave the agency a “going-concern” opinion on its financial statements.⁴ When AGR claimed it was unable to repay the disallowance (which comprised 74 percent of the agency’s total 2007 revenue), OPWDD began developing a plan to transition the residents from AGR, and to close the facility by late 2008. This plan was eventually abandoned and AGR was allowed to continue operations under its new executive director, Tom Ngowe, who had been a long-time employee of the agency. To assist the agency with the cash flow problems caused by the disallowance, OPWDD granted AGR a license allowing it to provide At-Home Residential Habilitation

¹ Residential services are provided at OPWDD certified Individualized Residential Alternative (IRA) programs.

² Best Practices: Board Governance & Executive Compensation in Non-Profit Mental Hygiene Agencies, April 2010.

³ The OPWDD “early alert” list prohibits expansion of any program until the agency is removed from the list.

⁴ AGR’s independent auditor opined that “the Organization has become subject to a significant debt that has raised substantial doubt about its ability to continue as a going concern.”

and Respite services effective February 2009.⁵ In a September 2010 letter to OMIG, OPWDD supported a revised schedule of recoupment of the disallowance, citing surpluses from the expanded services:

“After a careful consideration of the request for expansion, OPWDD approved the Agency to start At-Home Residential Habilitation services in early 2009. Based on such approval, the Agency recalculated its cash flow projections and submitted a repayment plan on February 20, 2009. The plan called for repayment of the disallowance amount of \$360,415 over a period of slightly over 5 years.⁶ OPWDD staff, as well as staff from the Taconic DDSO, reviewed the plan and **advised the Agency to document that the new services would generate enough surplus to meet the repayment** (emphasis added). Accordingly, the agency has now submitted its interim financial statement that shows a surplus of \$160,264 for the year ended December 31, 2009 and projected surplus of \$86,481 for the year ending December 31, 2010.”

It appears that one of the primary purposes for allowing AGR to expand its services was to enable the agency to generate sufficient cash flow to repay the Medicaid disallowance. Discussions with OPWDD officials indicated this expansion of services was predicated on AGR receiving additional technical assistance and oversight from OPWDD. However, the Commission found that any such assistance and oversight resulted in little or no improvement in AGR’s recordkeeping practices. The lack of oversight also allowed AGR’s executive director, Tom Ngowe, to continue his practice of misappropriating resident funds.

COMMISSION FINDINGS

Misappropriation of Resident Funds

As a residential service provider, AGR placed itself in a position of trust and had a fiduciary duty to properly account and safeguard resident funds.⁷ It failed to do so by leaving resident income unprotected. Based on the Commission’s investigation, it appears that the executive director of AGR systematically misappropriated \$204,000, mostly from resident paychecks, in two distinct ways: 1) by depositing only a portion of the residents’ checks and converting the rest to cash (\$175,000); and 2) by inappropriately withdrawing funds from resident bank accounts (\$29,000).

It is helpful to have an understanding of how resident wages affect SSI/SSA benefits and how both of those income sources are used to provide residents with a monthly personal allowance. According to New York State regulation, every resident of an IRA is allowed to keep a portion of their income for personal allowance, based upon a formula:

- From SSI/SSA benefits, the first \$150 per month, plus
- From wage income, the first \$65 and one-half of any amount over \$65 per month.⁸

⁵Effective November 1, 2010, At-Home Residential Habilitation services was renamed Community Habilitation.

⁶ OMIG agreed to a 5-year repayment plan with no interest.

⁷ There are various federal and state laws and regulations that require IRAs to account for residents’ income, disbursements, and resource levels. See 20 CFR §§404 and 416 (Social Security Administration), NY Mental Hygiene Law §33.07(e) and 14 NYCRR §633.15.

⁸ Per 14NYCRR §633.15(e), an extra \$20 income disregard may apply.

Any remaining income above these personal allowance levels may be collected by the provider to cover room and board costs. The reason the provider is allowed to collect some money from wages is because SSI/SSA benefits are reduced as wages increase.

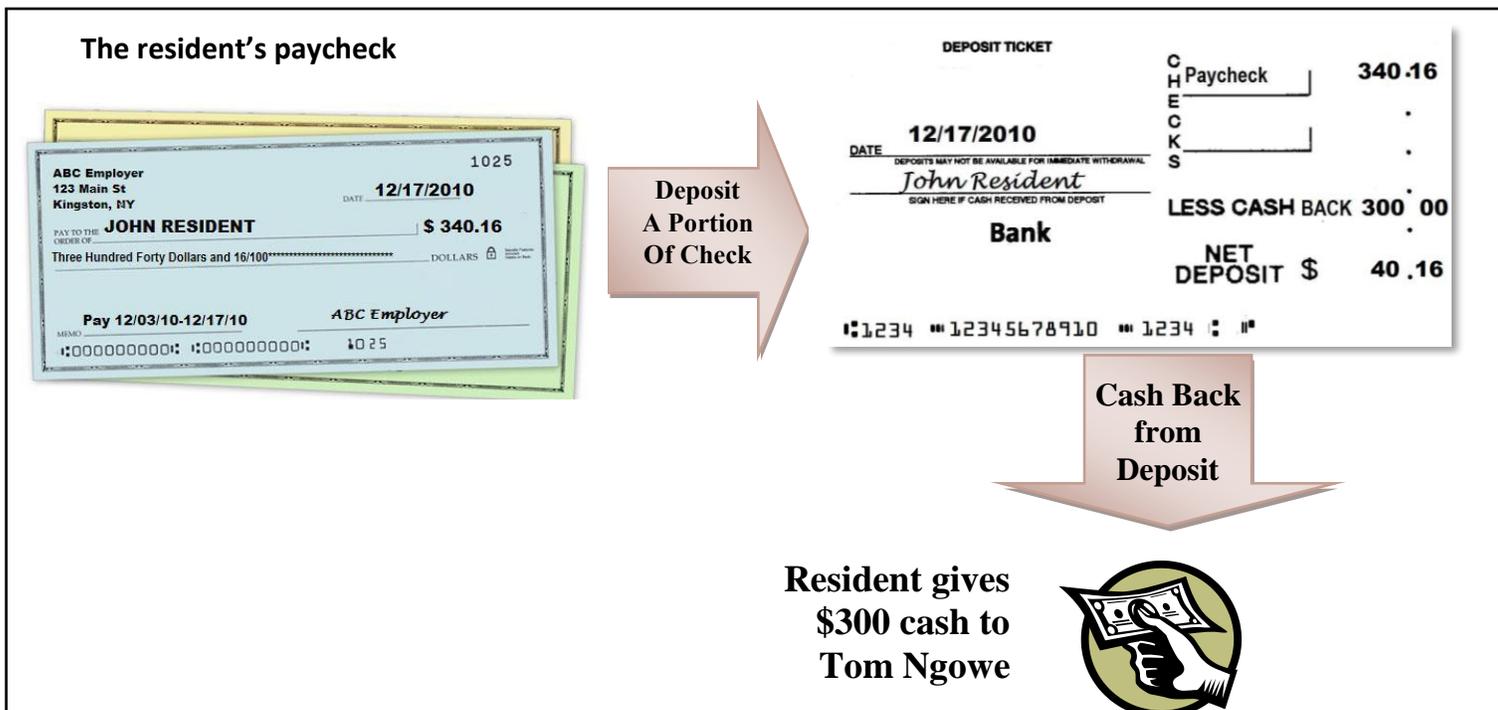
However, the system at AGR did not work this way. Despite the fact that all of the residents at AGR were employed -- with many earning hundreds of dollars per paycheck -- AGR failed to account for the residents' wages as required. Instead, most of the residents' wages were converted to cash and then simply disappeared. As a result, the Commission concludes that residents lost approximately \$110,000 in personal allowance funds and that AGR lost over \$90,000 in uncollected room and board revenue.

1. Cash Back Scheme - \$175,000

Over the four-year period examined by the Commission, it appears that Tom Ngowe took more than \$175,000 of resident funds by simply depositing only a small portion of their checks into their personal bank accounts and then taking the balance in cash. An analysis of the resident bank records found that cash was taken out of 818 deposits, which consisted mainly of paychecks earned by the residents. Records and interviews indicate:

1. Mr. Ngowe filled out the deposit slips, deciding how much would be deposited in the bank and how much would be received back in cash.
2. Mr. Ngowe had the residents endorse their checks and sign the deposit slips.
3. Residents presented their check and deposit slip to the bank. The bank gave the residents cash, who in turn, gave the cash to Mr. Ngowe.
4. The cash received by Mr. Ngowe was never recorded or documented in any AGR record.

The following example illustrates the scheme involving resident payroll checks:



When the cash was given to Mr. Ngowe, residents were given the impression it was being managed as part of their personal allowance. However AGR’s personal allowance ledger for each resident only accounted for the SSI/SSA portion of the allowance and not the wages, as shown in the sample ledger below.

Cash Back Not Deposited in Personal Allowance Account (only SSI/SSA)

PERSONAL ALLOWANCE ACCOUNT LEDGER CARD				Individual: [REDACTED]			
Individual Authorized to handle \$ _____ Spending Money				House Manager's Name:			
Individual can sign for transactions Yes ___ No ___							
Date	Explanation	Deposits	With- drawals	Balance	Verification		
					Manager	Individual	
	Balance Forward						
9/3/10	Sept Deposit	150		150	TN	[REDACTED]	
9/3	Weekly allowance		30	120	TN	[REDACTED]	
9/10	Weekly allowance		40	80	TN	[REDACTED]	
9/17	Weekly allowance		30	50	TN	[REDACTED]	
9/24	Weekly allowance		40	10	TN	[REDACTED]	
10/1/10	Oct Deposit	150		160	TN	[REDACTED]	

As illustrated above, the ledger shows that only the SSI/SSA allowance of \$150 per month was deposited into a resident account at the agency, from which \$30 to \$40 per week was given to the resident. The ledger also reflects the initials of TN (Tom Ngowe) who managed and verified the activity in the accounts. Based on interviews, residents stated that the cash given to Mr. Ngowe was kept in an AGR safe and from this money they received about \$30 to \$40 per week. As a result, residents believed that the money from their wages was being applied toward their weekly allowances. However, the Commission found no evidence that the residents’ wages were accounted for, safeguarded in AGR’s safe, or deposited in any AGR account, and that the weekly allowance given to the residents was nothing more than the mandatory SSI/SSA allowance.

The residents were given the false impression that the cash from wages was being safeguarded and managed as part of their personal allowance.

Misappropriated SSI Benefits

The Commission also found that two SSI benefit checks totaling \$5,635.80 were apparently misappropriated as part of the same cash-back scheme, resulting in a total of \$5,400 in missing cash.

Diverted SSI Benefit Checks

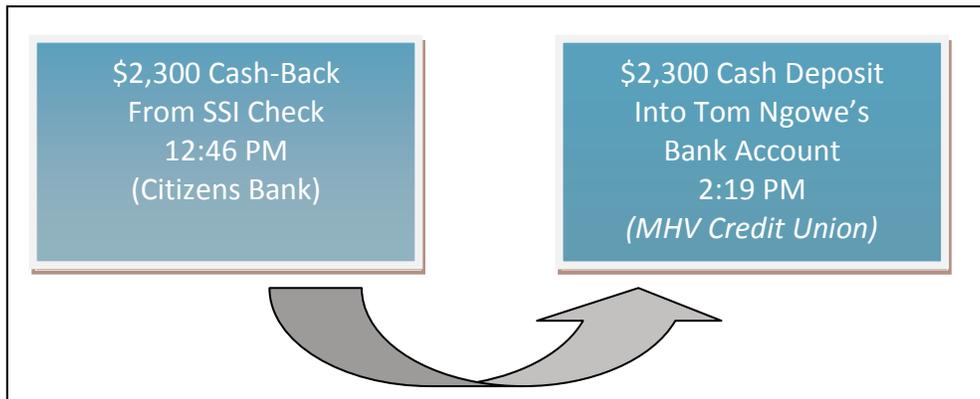
Deposit Date	SSI Check Amount	Net Deposit	Cash-Back
September 30, 2008	\$ 2,404.57	\$ 104.57	\$ 2,300.00
November 9, 2010	\$ 3,231.23	\$ 131.23	\$ 3,100.00
Total	\$ 5,635.80	\$ 235.80	\$ 5,400.00

Normally, SSI checks were received in AGR’s business office and then deposited into its business account at Key Bank. However, two SSI checks belonging to one of the residents were negotiated at the resident’s personal bank (Citizens Bank). Because of the unusual nature of the deposit, the Commission sought bank surveillance video to determine who cashed the two checks. While video was not available for the first check cashed in 2008, the bank provided a number of clear photos showing Mr. Ngowe assisting the resident with the second SSI check for \$3,100 cash.⁹

Bank surveillance photos show Mr. Ngowe assisting a resident with a developmental disability obtaining \$3,100 in cash from a diverted SSI benefit check.

Based on a review of the records, the Commission could find no evidence that either AGR or the resident received the cash back from the SSI checks. However, within two hours of the first transaction, the Commission noted that an equal amount of cash was deposited into Mr. Ngowe’s personal bank account.¹⁰

**Missing Cash Matches Ngowe’s Deposit
September 30, 2008**



2. Unsubstantiated Withdrawals from Resident Accounts - \$29,000

During its review of the residents’ bank records, the Commission found numerous transactions in the form of checks and cash withdrawals that did not have adequate documentation or explanation of how the funds were used:

- 51 checks made payable to residents and then cashed, totaling over \$21,000.
- 20 cash withdrawals totaling over \$7,000.
- A \$900 check to Tom Ngowe.

In some instances, it appeared that Mr. Ngowe attempted to disguise what happened to the money. For example, three checks totaling \$2,800 were recorded in the resident check registers as payable to the “Mental Health Association,” which is an agency that had sponsored trips for the residents. However, the checks that were cashed were actually made payable to the residents themselves.

⁹ It is unlikely that this resident had intercepted these checks as the checks were addressed to AGR’s main office while the resident lived elsewhere in one of AGR’s apartments.

¹⁰ The Commission noted frequent cash deposits into Mr. Ngowe’s personal bank account totaling over \$60,000.

Similarly, three other checks written to residents totaling \$2,000 were recorded in the check registers as payable to AGR, but the money did not end up in any AGR account.¹¹ In each of these cases, there was no evidence that the residents received these funds or had any need for such large payments.

The Commission also found that in July 2010 there was a cluster of withdrawal activity coinciding with a time when Mr. Ngowe apparently needed a large sum of cash in order to go on vacation. The Commission found that Mr. Ngowe obtained a \$5,900 pay advance from AGR on July 15, 2010, and between July 8 and July 16, 2010, \$3,900 in withdrawals from six resident accounts occurred. This is a significant sum for just nine days, given that over four years all the withdrawals in question total \$29,000.

3. Misrepresentations by AGR Executive Director

Throughout its investigation, it appeared that Mr. Ngowe attempted to mislead Commission staff regarding his involvement with resident funds.

Mr. Ngowe hid:

- The extensive participation and control he had over the banking activity;
- The extensive banking records in his possession;
- The amount of wages residents earned; and
- The fact nearly all of the residents paychecks were not being deposited in full.

In the early stages of the Commission’s review, when asked to provide copies of resident banking records, Mr. Ngowe only provided records pertaining to two residents who had recently moved into AGR during 2010. He further claimed that most residents were independent, “very high functioning” individuals who handled their own bank accounts. However, when the Commission subsequently subpoenaed the residents’ bank records, it became clear that Mr. Ngowe was intimately involved with the resident accounts. His handwriting appeared on nearly all deposit slips and checks. Furthermore, after he was suspended, a large cache of resident bank records were found in his desk, including check registers,¹² blank check stocks, deposit slips, un-cashed paychecks, bank statements and even the passports that some residents used for identification at the bank.

During the investigation, Mr. Ngowe could not adequately explain how he monitored the funds of each resident to ensure that they would continue to qualify for SSI benefits, which requires their resource levels not to exceed \$2,000.¹³ Although Mr. Ngowe claimed he lacked any control over the resident accounts, records show that when balances were near the \$2,000 SSI resource limit, withdrawals were made to avoid losing the benefit.

¹¹ It is noteworthy that unlike most of the entries in the check registers, the questionable withdrawals were usually written in pencil. Furthermore, most checks, although signed by the residents, were written by Tom Ngowe.

¹² The check registers did not record the full paycheck amounts or the cash back; only the net deposit amounts were recorded. Also, typically there was no running balance.

¹³ See 14 NYCRR §633.15 (r)(4) - a record of all resources with current values shall be maintained to meet all benefit paying organization reporting requirements and to ensure that the entitlement is not jeopardized by an individual's resources exceeding regulatory limits.

In addition to downplaying the level of his involvement with resident bank accounts, Mr. Ngowe also misled investigators regarding the amount of wages received by residents. When interviewed about resident wages, Mr. Ngowe initially stated that the residents typically earned between \$60 and \$90 per pay period. This appeared to agree with deposits listed on the bank statements presented to Commission investigators.

Mr. Ngowe Falsely Asserted That Bank Deposits Represent the Whole Paycheck

Key Express Checking Statement
May 24, 2010

Deposits			
<i>Date</i>	<i>Description</i>		<i>Amount</i>
4-30	Deposit Branch 0320 New York		\$59.29
5-14	Deposit Branch 0320 New York		62.07
Total			\$121.36

When asked about the extent of paychecks being deposited, Mr. Ngowe said that most of the time the entire check was deposited. However, once investigators obtained the actual deposit details from the banks, it became clear that the residents' paychecks were much larger and the deposits were, in fact, only a small portion of the actual wages.

Subpoenaed Deposit Slip Reveals Most of Paycheck is Not Deposited

Checking Deposit Ticket

Date: 4/30/10

Name: [REDACTED]

ALL CHECKS DEPOSITED TO CASH RETURNED BY LEAVING A CHECK

Checks and other items received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreement

KeyBank KeyBank National Association

ACCOUNT NUMBER: 3232400 [REDACTED]

⑆5 442⑈8888⑆

CASH: _____

C _____

M _____

E _____

R _____

S _____

CHECKS OR TOTAL FROM OTHER SIDE: 199.29

SUB TOTAL: 140.-

LESS CASH: _____

BY: \$ 59.29

When confronted with these documents, Mr. Ngowe claimed he was mistaken in his earlier statements and now insisted the residents themselves received the cash back from the bank deposits. Mr. Ngowe's assertion that residents maintained large cash amounts not only conflicted with his prior statements, but also was inconsistent with information obtained from the residents who said they turned the cash over to Mr. Ngowe. During interviews with Commission investigators, none of the residents ever recalled having such large sums of cash.

Mr. Ngowe's claims also conflicted with the residents' service records which Mr. Ngowe prepared and signed. The records reflected that the residents were capable of handling no more than \$30 to \$60 in cash at any one time. Yet, the vast majority of cash back transactions described in this report involved amounts well above the limits specified in the service records (see Appendix 2). The Commission finds that Mr. Ngowe's statements that AGR allowed residents to carry around hundreds of dollars in cash were not credible given the fact their service records state that they could only handle \$30 to \$60 in cash.

After being confronted with the subpoenaed records, Mr. Ngowe claimed that the residents were routinely given hundreds of dollars at a time, contradicting his prior statements and also contradicting service records he prepared and signed.

RECOMMENDATIONS

AGR

- AGR should make full restitution to the affected residents.
- AGR should ensure that the proper amount of resident wages is paid to cover the cost of the room and board it provides to them.
- AGR should improve its controls and oversight over resident wages.

OPWDD

- OPWDD should improve its inspection protocols over personal allowances of residents. The past allowance reviews conducted by OPWDD were limited to examining personal allowance coming from SSI/SSA. The certification reviews should be expanded to cover all sources of income, including resident wages.
- OPWDD should improve its oversight and assistance with troubled agencies that are allowed to continue operations. Agencies which have a history of recordkeeping problems, such as AGR, should be more closely monitored. Agencies should not be allowed to expand in order to cover paybacks of Medicaid disallowances and, in general, should not be allowed to expand until their ongoing operations are both programmatically and financially sound.
- OPWDD should work with AGR towards recovering funds lost by the affected residents.

REFERRALS

DISTRICT ATTORNEY

Information uncovered by the Commission's investigation has been referred to the Ulster County District Attorney's Office for whatever action is deemed appropriate within its jurisdiction. Additionally, in January 2011, the Commission referred the matter to the State Police in Kingston and Mr. Ngowe was arrested in March 2011 and charged with grand larceny.

OPWDD

Details regarding the misappropriation of money belonging to the affected residents have been referred to OPWDD so it may commence an action to recover funds lost on behalf of the individuals and AGR.

SOCIAL SECURITY ADMINISTRATION

The Commission has referred its findings related to the two misappropriated SSI benefit checks to the Social Security Inspector General's Office for whatever action is deemed appropriate within its jurisdiction.

APPENDIX 1

Breakdown of Misappropriated Funds by Resident

<i>Resident</i>	<i>Missing Cash-Back</i>	<i>Unsubstantiated Withdrawals</i>	<i>Total</i>
# 1	\$ 25,247	\$ 5,550	\$ 30,797
# 2	26,480	4,000	30,480
# 3	22,005	1,700	23,705
# 4	18,680	2,650	21,330
# 5	17,340	3,150	20,490
# 6	18,150	1,540	19,690
# 7	16,490	-	16,490
# 8	10,516	2,650	13,166
# 9	10,425	1,900	12,325
#10	2,696	1,600	4,296
#11	2,360	1,925	4,285
#12	2,960	1,000	3,960
#13	800	800	1,600
#14	560	515	1,075
#15	<u>430</u>	<u>200</u>	<u>630</u>
Total	\$ 175,139	\$ 29,180	\$ 204,319

Notes:

- For lower wage earners, Mr. Ngowe collected the resident's paychecks and then deposited them en masse. In doing so, he created large cash-back amounts from small checks. For example, a \$600 cash-back was generated when depositing paychecks covering seven months (i.e., \$600 cash from 15 paychecks averaging only \$48 each).
- The chart above does not include Resident #16 who did not have a bank account. From 2007 to 2010 his paychecks totaled \$3,189; the disposition of these monies can also be called into question. The Commission found that his paychecks averaged \$30 each, but were accumulated and periodically cashed in batches.
- Resident #7 moved out of AGR during 2010.
- Resident #11 moved out of AGR during 2009.
- Resident #14 moved to AGR during 2010.
- Resident #15 moved to AGR during 2010.

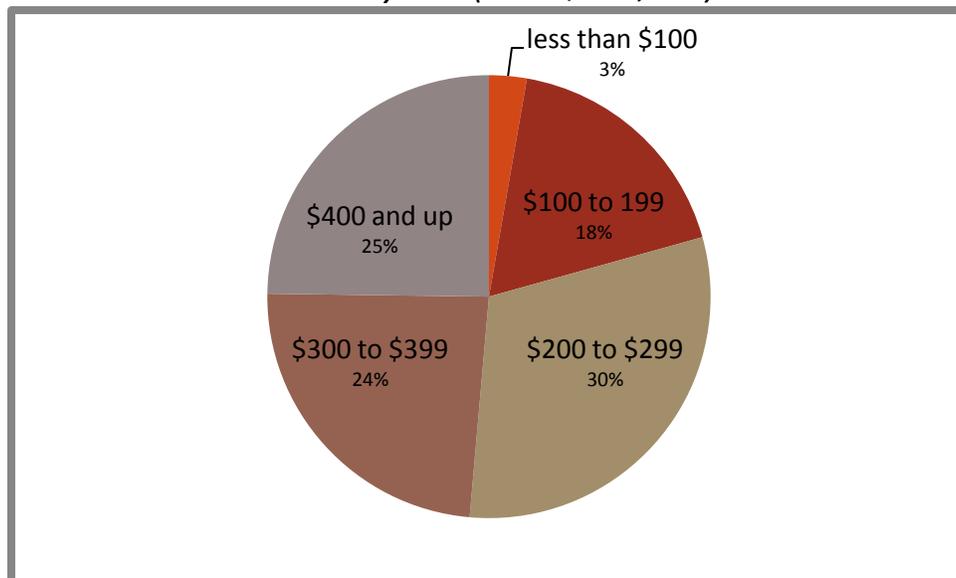
APPENDIX 2

Residents' Money Management Limits vs. Cash Payouts

<i>Resident</i>	<i>Money Management Limit</i>	<i>Average Payout</i>	<i>Highest Payout</i>
# 1	\$ 45	\$ 265	\$ 1,000
# 2	40	299	1,500
# 3	60	289	700
# 4	50	309	3,100
# 5	45	205	800
# 6	50	177	400
# 7	45	229	500
# 8	50	145	1,000
# 9	50	140	700
# 10	50	205	600
# 11	30	476	1,007
# 12	40	495	1,000
# 13	50	229	400
# 14	50	108	250
# 15	50	158	300
# 16	50	*	*

*Resident #16 did not have a bank account

Cash Payouts (total \$204,319)



Most of the missing monies involved large cash payouts:

- Almost 80 percent pertained to payouts of \$200 or more
- About half pertained to payouts of \$300 or more
- One fourth pertained to payouts of \$400 or more

APPENDIX 3



ACADEMY GREEN RESIDENCES, INC.

6-8 Maiden Lane, Kingston NY 12401
Phone 845-338-3448 Fax 845-338-2227
academygreen@gmail.com

Board of Directors: Lynne Brush, President
Carol Urban, Secretary
Gayle Schumacher, Treasurer
Judy Casimir

June 2, 2011

John J. Rybaltowski
Director
Bureau of Fiscal Investigations
Commission on Quality of Care
401 State Street
Schenectady, NY 12305

Dear Mr. Rybaltowski:

First of all, let me thank Mr. Rich Cicero and his committee for the excellent work they did and the courteous manner with which they treated us. Although they brought terrible news, they did it in a dignified and humane manner and were most supportive of our situation.

Attached is our response to your findings. Our residents are our first priority as they have always been. We are most anxious that they be repaid for their losses. Unfortunately, DDSO has seen fit to force us to give up our operating certificate, consequently, our plan as stated may be beyond our control. We will do our best to make it work.

Yours truly,

Lynne Brush, AGR Board President

Helping people with developmental disabilities live more independently since 1982.



RECOMMENDATIONS FOR AGR

- **AGR should make full restitution to the affected residents.**

Academy Green Residences, Inc. will make full restitution to the affected residents to the best of our ability following this plan:

1. A claim has been made with our insurance carrier for the full amount of employee theft coverage [\$50,000] that is available.
2. It is anticipated that the remaining amount will be paid from the proceeds of receivables due to AGR from billing for services provided.
3. When AGR completes the transition of programs to another agency whatever assets remain with the corporation will be liquidated and used to pay any remaining amount of restitution.

- **AGR should insure that the proper amount of resident wages is paid to cover the cost of the room and board it provides to them.**

Academy Green Residences, Inc. has instituted a procedure within the accounting program to calculate and bill residents on a monthly basis for the cost of room and board that AGR provides. It is retroactive to February 2011. Each affected resident will make payment by personal check.

- **AGR should improve its controls and oversight over resident wages.**

Academy Green Residences, Inc. is committed to using every opportunity to improve each resident's understanding of the handling of their wages and to use accepted bookkeeping practices to record finances in the most honest methods possible.

1. AGR instituted a policy in January of 2011 that all resident paychecks will be deposited fully into the individual's personal checking account.
2. Each resident has a separate back up accounting of their monies in the AGR QuickBooks program. Checkbooks will be reconciled on a monthly basis.
3. When residents have need for funds beyond the monthly spending amount; items will be purchased using a check from the individual's account. As always, receipts will also be kept on file. [It should be noted that since January of this year, each resident that is earning a wage has purchased personal items for themselves using their monies earned. The ability to update their wardrobes and dispose of worn out clothing and make desired purchases has improved self esteem as well as appearances.]
4. The "new found" disposable income that has been available has offered opportunities to teach money management at levels that can be understood on an individual basis. Since February, an additional 15 to 20 hours each month have been spent with the residents training on money matters. [One of the women now tells us how much of her monthly spending she wants each week; one of the men has asked to be taught to count better.]

APPENDIX 4



Andrew M. Cuomo, Governor
Courtney Burke, Commissioner

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June 8, 2011

John Rybaltowski
Director
Bureau of Fiscal Investigations
Commission on Quality of Care
401 State St.
Schenectady, NY 12301

Dear Mr. Rybaltowski:

Staff from my office reviewed your draft audit report of Academy Green Residences (AGR). We appreciate the thoroughness of the report. As you probably know, OPWDD is in the process of severing its Medicaid funding to AGR and transferring the individuals to another viable entity. We expect this process to be completed in the very near future.

Regarding your recommendations to us for improved monitoring of personal allowance funds, we have already implemented several measures and the attached document details them. We are confident that our new measures will benefit the individuals we serve and the Medicaid system in a much improved manner.

Thanks for sharing your report with us and giving us a few extra days to provide comments.

Sincerely,

A handwritten signature in black ink that reads 'Courtney Burke'.

Courtney Burke
Commissioner

CB:JMF
Attachment
cc: Richard Cicero
Mohan Iyer

OPWDD RESPONSE TO CQC AUDIT REPORT ON ACADEMY GREEN RESIDENCES
6/8/11

AGR Recommendations by CQC

OPWDD has no comment.

OPWDD Recommendations by CQC

For Recommendation 1:

As of 4/1/11 Personal allowance (PA) is subject to review in two areas within the Division of Quality Management (DQM), the Bureau of Program Certification (BPC) and Compliance Management (BCM). Reviews conducted by BPC have always focused on a number of regulatory requirements including; but not limited to; the timely receipt of PA that individuals are entitled to on a monthly basis, the disbursement of PA funds in a manner that benefits the individuals, that PA funds are safeguarded by the provider and that there is accountability for funds expended on the behalf of individuals. In addition, if individuals have earned income beyond a specified threshold amount, survey staff must ensure that the agency applies the rent calculation formula correctly, as described in Part 633 and Part 635, including requirements such as income disregards, so as to ensure that the individual retains all PA and earnings to which they are entitled.

DQM/BPC is in the process of finalizing a revision to the personal allowance review process. This revision will result in a two pronged approach. Survey staff will continue to conduct on-site PA reviews, as described above, using a protocol designed for that purpose. In addition a new central agency review protocol will have a PA and earnings section. This central PA and earnings review will be conducted annually at agency offices and will review items including agency P&P related to PA as well as internal controls including the requirement for a 25% internal audit of PA and earnings by agency administration. Any significant issues uncovered will be forwarded to BCM for further action.

In addition, as part of our limited fiscal reviews of agencies we have also begun to conduct PA and earnings reviews as well.

For Recommendation 2:

OPWDD has recently strengthened its oversight process, especially for agencies with significant problems in the areas of consumer health and safety or financial integrity. OPWDD has made significant changes to its internal monitoring process, known as the Early Alert Process, to further strengthen its supervision and regulatory role in these areas. Under the revised process, in addition to closer monitoring of the agency's programmatic and fiscal operations, we will be meeting with the board of directors of such agencies to directly hold them responsible for timely and proper corrective actions.

Going forward OPWDD will not allow agencies to expand services in order to recover any payback of funds and will be suspending any new development for agencies who have significant program/fiscal issues until such time as they are corrected.

For recommendation #3:

OPWDD will work with AGR staff and the board to ensure funds recovered from the Agency's prior Executive Director or from any other source such as insurance are appropriately used to repay the affected individuals who lost their personal allowance funds.