EAST BATON ROUGE CITY/PARISH EMPLOYEES' RETIREMENT SYSTEM

COMPLIANCE AUDIT
ISSUED AUGUST 18, 2010

LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
POST OFFICE BOX 94397
BATON ROUGE, LOUISIANA 70804-9397

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

August 18, 2010

Mr. Jeffrey Yates
Retirement Administrator
East Baton Rouge City/Parish Employees' Retirement System
Post Office Box 1471
Baton Rouge, LA 70821-1471

Dear Mr. Yates:

We have audited certain transactions of the East Baton Rouge City/Parish Employees' Retirement System (System) for the period 2001 through 2010. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain allegations brought to our attention during concurrent audits of the Louisiana Municipal Police Employees' Retirement System and the Louisiana Clerks of Court Retirement and Relief Fund. These audits were performed in conjunction with the Louisiana Attorney General's office and the Louisiana Office of the Inspector General.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required of an audit by *Government Auditing Standards*; therefore, we are not offering an opinion on the System's financial statements or system of internal control nor assurance as to compliance with laws and regulations. The concerns and results of our audit are listed below for your consideration.

On April 16, 1999, the System filed a Petition and Order for Appeal in the lawsuit of *Charles E. Carter* et al. vs. *Baton Rouge City-Parish Employees' Retirement System* et al. On April 19, 1999, the appeal was granted subject to the System furnishing a legally accepted security in the amount of $300,000. On April 15, 1999, the System issued a check in the amount of $300,000 and presented it to the Clerk of Court for the Nineteenth Judicial District Court (Clerk of Court) on April 16, 1999. The System's appeal was subsequently denied by the Appeals Court and judgment was rendered in favor of the plaintiff. After obtaining a court approved Receipt, Release and Satisfaction of Judgment, the bond should have been released by the Clerk of Court and remitted back to the System.

On June 22, 2001, Randy Zinna, contract attorney for the System, filed a Motion and Order to Withdraw Bond and/or Security for Appeal. According to Clerk of Court records, on June 27, 2001, two checks totaling $340,393 (original amount plus accrued interest) were issued to the System for the reimbursement of the bond. These records further indicate that on June 27, 2001, Mr. Zinna signed the receipts indicating that he had received both checks on behalf of the System. The receipts reference the lawsuit, suit number, check number, check amount, payee, and check date. A review of system records indicates that the funds were not remitted to the System and the receivable is still carried on the System's books.

The $300,000 bond payment has been carried as a receivable on the System's books since April 15, 1999. During a board meeting on January 25, 2001, Mr. Zinna indicated the System would receive the $300,000 bond back.

In 2007, during the System's annual audit, auditors questioned what to do with the outstanding receivable. Minutes from the July 27, 2007, System board meeting indicate the issue of possibly writing off the $300,000 bond payment was raised by the auditors. At that meeting, Mr. Zinna stated, "the City actually made the particular obligation involved here whole as to CPERS." This comment appears to reference a $1,840,463 payment by the City of Baton Rouge to the System which was a reimbursement to the System for the judgment it paid in the Carter lawsuit. It included adjustments to monthly retirement benefits, punitive damages, attorney fees, and court costs, but did not include the $300,000 bond posted by the System for its appeal in April 1999. During our interview with Mr. Zinna, he indicated that he does not know what happened to the checks, but he intends to resolve the issue with the System board by either filing a claim through his liability insurance policies or by reimbursing the System using personal assets.

Because funds totaling $340,393 appear to have been mishandled and not remitted to the System, the System was deprived of the funds for use in its general operations and/or accrual of interest.

We recommend the System adopt procedures to ensure the timely recovery of outstanding receivables. These procedures could include the use of aging reports and the periodic write downs of receivables deemed uncollectible. All write downs should be reviewed, approved, and documented by management. In addition, the System should recover all funds owed to it that may have been improperly held by Mr. Zinna.

This correspondence represents our finding and recommendations as well as management's response. This correspondence is intended primarily for the information and use of management of the System. I trust this information will assist you in the efficient and effective operations of the System.

Sincerely,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP:GD:DD:dl

EBRRS 2010

Management's Response

Employees' Retirement System

City of Baton Rouge
Parish of East Baton Rouge

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Baton Rouge, Louisiana 70821

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June 29, 2010

Mr. Daryl G Purpera, CPA, CFE
Louisiana Legislative Auditor
P. O. Box 94397
Baton Rouge, LA 70804-9397

Dear Mr. Purpera,

This correspondence is the requested response to your June 18, 2010 letter regarding the compliance audit report for this retirement system.

The facts stated in the report are accurate in every respect. As general legal counsel to CPERS for over 16 years, Mr. Zinna maintained a fiduciary relationship with the Board of Trustees, and was routinely given discretionary authority to handle litigation matters as part of his duties. A consistent pattern of apparent misrepresentations was made to the Trustees, the staff, and the independent auditors regarding the status of the $300,000 security deposit. The long-standing fiduciary relationship, and years of effective legal representation contributed to the acceptance of these misrepresentations as fact.

The Retirement System has clearly suffered financial harm as a result of not having use of the security deposit funds for over nine years. In response, the CPERS Board has promptly taken every action in its power to recover the loss. To date this includes, issuing a demand letter to Mr. Zinna demanding return of the funds and interest to the date paid, having interim legal counsel meet with Mr. Zinna regarding possibly filing a claim against his professional liability insurance, and working with law enforcement officials to assure inclusion in any recoveries made against assets. In addition, the Board of Trustees is contemplating civil action against Mr. Zinna and/or his professional liability insurance company.

From a management perspective, CPERS very rarely has suspense items or receivables on the books for extended periods of time. However, CPERS has initiated a policy whereby all receivable and suspense items will periodically and thoroughly be reviewed to determine the probability of recovery in a timely manner. Where recovery is deemed uncertain or doubtful, allowance accounts may be established to effectively write down the receivable amounts.

We appreciate the efforts of the Legislative Auditor's Office in assisting, verifying, and documenting our office's internal investigation of this situation.

Sincerely,

Jeffrey R. Yates
Retirement Administrator

JRY/jy

Response from Mr. Randy Zinna

In a letter dated June 18, 2010, we asked Mr. Zinna to respond, in writing to this report. As of the date of this report, Mr. Zinna has chosen not to respond.