

State of New York
Office of the Inspector General



Investigation into Theft of Funds
from Cayuga Nation Minors' Accounts
by Office of Children and Family Services
Employee Kim Thomas-Muffoletto

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Inspector General

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EXECUTIVE SUMMARY

The Inspector General received an anonymous complaint questioning withdrawals from two trust accounts administered by the New York State Office of Children and Family Services (OCFS) on behalf of Cayuga Nation minors. The complaint also stated that Kim Thomas-Muffoletto, the Director of the Native American Services Bureau at OCFS was the only person authorized to conduct transactions on these accounts.

The Inspector General's investigation determined that Thomas-Muffoletto, systematically stole nearly \$20,000 from 14 trust fund accounts held for Cayuga Nation minors from April 2007 through January 2014. As a result, Thomas-Muffoletto resigned from her position at OCFS and pleaded guilty to Grand Larceny in the Third Degree, a Class D Felony. She was sentenced to probation for five years and was required to pay \$19,993.63 in restitution.

The Inspector General's investigation also found that OCFS lacked any policies or internal controls regulating the operation of these trust accounts. As a result, OCFS failed to adequately monitor the accounts and failed to safeguard the monies entrusted to them for Cayuga Nation children.

The vast majority of the OCFS trust accounts were transferred to Cayuga Nation-operated trust accounts prior to the investigation, and OCFS does not currently have any open trust accounts for any Cayuga Nation minors. However, pursuant to treaties and New York State law, OCFS retains the duty to operate such accounts if requested. Accordingly, the Inspector General recommended that OCFS develop policies regarding the operation of any future trust accounts. The policies should include adequate internal controls to ensure the security of trust fund monies.

In addition, the Inspector General recommended that OCFS conduct a comprehensive review of the policies and practices of the Native American Services Bureau that was managed by Thomas-Muffoletto between 1991 and 2014. Finally, the Inspector General recommended that OCFS conduct an audit of any and all funds that were managed by that Bureau during Thomas-Muffoletto's tenure.

In response to the investigation and recommendations, OCFS surveyed all other program areas and confirmed that no other trust accounts from which it serves as the designated trustee were managed by one individual OCFS employee. OCFS also advised the Inspector General that its financial management team in central office will handle any future trust accounts, with proper internal controls. In addition, OCFS will conduct a comprehensive audit to include a review of the Native American Services Bureau and all related accounts, and will provide the results to the Inspector General by June 1, 2017.

INTRODUCTION AND BACKGROUND

The New York State Office of Children and Family Services

OCFS has a long history of working with the recognized American Indian nations and tribes in New York State (Cayuga, Oneida, Onondaga, Saint Regis Mohawk, Seneca Nation, Shinnecock, Tonawanda Seneca, Tuscarora, and Unkechaug). This work is carried out by the Native American Services Bureau's staff primarily located in the OCFS Buffalo Regional Office.

OCFS has statutory powers and duties related to American Indian affairs. These powers and duties include administering certain treaty obligations; entering into agreements with nations and tribes interested in providing certain child and adult services and in receiving state and federal funds for such services; implementing and overseeing compliance with the Federal Indian Child Welfare Act; and participating in federal Tribal Consultation meetings. These duties also include making annuity and interest payments to the nations and tribes pursuant to various treaties between New York State and the nations and tribes.

Specifically with regard to the Cayuga Nation, OCFS makes interest payments pursuant to New York State law (Chapter 255 of the Laws of 1909) in the amount of \$10,836.19 twice a year (April and October). OCFS also makes an annuity payment in June of each year pursuant to the Treaties of 1789 and 1795 in the amount of \$2,300.00 (\$858.33 of which is paid to the Western Band of Cayuga Native Americans). These payments are coordinated by the OCFS Native American Services Bureau and are paid to each member of the Cayuga Nation on a per capita basis. The Cayuga Nation is unique in that it is the only tribe or nation paid on a per capita basis. The other tribes or nations are paid a lump sum of money pursuant to the relevant treaties. In practice, the Cayuga Nation provides the OCFS Native American Services Bureau with a list of the nation's members, and the Bureau provides the Nation with a check for each member. The payment amount varies based upon the total tribal membership at the time. Generally, each member of the tribe receives slightly less than \$50 annually. For children who resided with their parents, payments are sent to the parents on behalf of the children.

By statute, whenever it appears that any person entitled to an annuity or other payment is not capable of receiving such payment because of incompetence or infancy, such payments are to be held in trust for that individual. Specifically, under the New York Indian Law, OCFS is to administer trust accounts for Cayuga members who are "incapable of receiving it because of incompetency or infancy."¹ Pursuant to this statute, the OCFS Native American Services Bureau created trust accounts for Cayuga minors who did not reside with their parents, but rather resided with another caretaker or in foster care.² For these minors, OCFS deposited the annual payments in the trust accounts held on their behalf until they reached age of majority or demonstrated a need before that date

¹ N.Y. Indian Law §13-a.

² There were no reported instances of "incompetency" as defined by New York Indian Law §13-a during the period reviewed.

related to health, welfare, or education. Thomas-Muffoletto, the Director of the OCFS Native American Services Bureau, administered these trust accounts.

The Cayuga Nation Disbursements

In addition to the deposit of the state per capita payments into these trust accounts, the Cayuga Nation sent additional funds unrelated to any treaty to Thomas-Muffoletto to deposit into the trust accounts. A Cayuga Nation representative advised that the Nation periodically issued disbursement money to its members. In 2006, the Nation began sending these disbursements to Thomas-Muffoletto for the minors with trust accounts administered by the Native American Services Bureau. The Nation representative advised that they discussed the disbursements with Thomas-Muffoletto prior to sending the money, but could not recall if the conversation was by telephone or in-person.

The Cayuga Nation provided records to the Inspector General regarding its payments. The records and the trust account bank records confirmed that the payments were sent and deposited into the accounts. These payments continued until 2010, and for three of the years totaled more than \$2,500 annually. The payments were much larger than the treaty payments made by New York State. According to OCFS, Thomas-Muffoletto never reported to anyone in the agency that she was receiving these additional funds.

In 2009, the Cayuga Nation agreed that it would start establishing trust accounts for members who could not receive payments due to incompetence or infancy. By the end of that year, the Nation stopped forwarding disbursements to Thomas-Muffoletto. At that time, there remained a number of previously existing trust accounts established by OCFS that Thomas-Muffoletto continued to manage, but without contribution from the Cayuga Nation. The vast majority of these remaining OCFS trust accounts were transferred to the Cayuga Nation-operated trust accounts in February of 2013.

Soon after this transfer, the Inspector General received an anonymous complaint questioning withdrawals from two of these trust accounts. The complaint stated that Thomas-Muffoletto was the only person authorized to conduct transactions relative to these accounts and questioned why money was being withdrawn from the accounts prior to the minors becoming adults. As a result of this allegation, the Inspector General commenced an investigation.

THE INSPECTOR GENERAL'S INVESTIGATION DETERMINED THAT THE DIRECTOR OF THE OCFS NATIVE AMERICAN SERVICES BUREAU STOLE MONEY FROM THE TRUST ACCOUNTS OF CAYUGA NATION CHILDREN

The Inspector General found that Kim Thomas-Muffoletto, the Director of the Native American Services Bureau at OCFS, was systematically stealing money over a seven-year period from the trust fund accounts held for Cayuga Nation minors. Thomas-Muffoletto was employed by OCFS as a Native American Affairs Specialist from 1991 to

2014. She was the Director of Native American Services during the times relevant to this investigation. As part of her duties as the Director, Thomas-Muffoletto was responsible for administering these trust fund accounts. Thomas-Muffoletto was the only signatory on the trust accounts and the only person with the authority to deposit or withdraw money from these accounts.

As part of the investigation, the Inspector General obtained and reviewed bank records for the trust accounts administered by Native American Services. The review showed that between April 2007 and January 2014, Thomas-Muffoletto stole nearly \$20,000 from 14 accounts. Bank records prior to April 2007 were not available for review. From 2007 to the end of 2013, OCFS held in trust an average of over \$100,000.

Thomas-Muffoletto withdrew over \$9,000 using official checks and/or personal money orders to pay her personal expenses or the expenses of her son. Specifically, the Inspector General found a number of instances in which Thomas-Muffoletto withdrew monies from the trust accounts and had the bank issue official checks and/or personal money orders. Thomas-Muffoletto then used these official checks and personal money orders to pay personal expenses, such as her insurance and car payments. The records also showed that Thomas-Muffoletto used some of these personal money orders and official checks to pay her son's college tuition and traffic fines.

Thomas-Muffoletto testified under oath regarding this matter and admitted to stealing money from the trust accounts without the permission of OCFS, the minors, or anyone else, and admitted using the money for her personal benefit and the benefit of her son. She was specifically shown the official checks and personal money orders at issue and admitted that these were withdrawn from the Cayuga Nation trust accounts to pay her expenses and the expenses of her son.

In addition to the money Thomas-Muffoletto stole via official checks and personal money orders, the trust account records showed that Thomas-Muffoletto made over \$10,000 in cash withdrawals. Thomas-Muffoletto claimed this cash was provided to the Cayuga Nation minors at their request or upon their reaching the age of majority. When asked if she had records of making these payments, she responded, "I would hope." The majority of minors for whom the trusts were held provided sworn statements to the Inspector General that they had not received these funds. One individual acknowledged receiving payments, and those amounts were not included in the final theft calculations.

In response to the Inspector General's request for records of payments to Cayuga Nation minors, Thomas-Muffoletto provided limited documentation. The Inspector General also obtained additional records from OCFS and from the OCFS Native American Services Bureau office in Buffalo, including a box that was found in a copying room and marked for shredding. The records did not provide any credible documentation that Thomas-Muffoletto paid these funds to the individuals for whom the trusts were held. In fact, the files were generally outdated and incomplete. Moreover, the Inspector General found the records unreliable. One file contained a handwritten receipt and a

check indicating that Thomas-Muffoletto had issued a check to the beneficiary in the amount of \$5,194.10. However, this check was altered and the amount fraudulently changed. Bank records reviewed by the Inspector General showed that this check was actually issued in the amount of \$3,983.10. Thomas-Muffoletto improperly withdrew the remaining \$1,211.65 from the account using the certified checks discussed above, which she used to pay her son's college tuition.

The Inspector General referred this matter to the Erie County District Attorney, and on October 14, 2014, Thomas-Muffoletto was arrested for these thefts. Thomas-Muffoletto resigned from her position at OCFS on October 24, 2014, and on January 26, 2015, pleaded guilty to Grand Larceny in the Third Degree, a Class D Felony. She was subsequently sentenced to probation for five years and was required to pay \$19,993.63 in restitution to the Cayuga Nation. Thomas-Muffoletto initially paid \$7,000 of this restitution and is required to pay \$285 monthly until the entire amount is paid. Those payments are currently being made. This restitution will ultimately be distributed to the account holders.

OCFS FAILED TO SAFEGUARD THE INTEGRITY OF THE CAYUGA NATION MINORS' TRUST ACCOUNTS

The Inspector General found that OCFS relied entirely on Thomas-Muffoletto to administer the trust accounts for the Cayuga Nation minors. Upon receipt of the anonymous complaint, the Inspector General initially contacted OCFS to obtain information relative to the trust accounts. Specifically, the Inspector General inquired as to the purpose of these accounts and requested policies and procedures related to the retention and administration of the accounts, including those regarding the authorization required for the withdrawal of funds. OCFS's Special Investigations Unit, Counsel's Office and management were unable to provide policies or information responsive to this inquiry; at best, OCFS informed the Inspector General that there "may be an emergency situation" in which funds are provided for the benefit of a minor and that Thomas-Muffoletto was the only individual who would be able to answer these trust account questions.

The Inspector General questioned Thomas-Muffoletto's immediate supervisor, who acknowledged that Thomas-Muffoletto was the only individual within OCFS who possessed any knowledge or understanding of this program. This supervisor further stated that there had not been any reviews and or audits of these accounts since she became an Assistant Commissioner and Thomas-Muffoletto's supervisor in 2011.

The investigation further found that OCFS lacked any policies regulating the manner in which these accounts were administered or monitored. Specifically, Thomas-Muffoletto was not required to document or report her activities with regards to the accounts; and OCFS did not have policies that required audits, reviews or any random inspections of Thomas-Muffoletto's records or activities. In fact, OCFS had no internal controls to ensure that these accounts were operated lawfully and appropriately.

Furthermore, OCFS personnel advised the Inspector General that they had no knowledge that Thomas-Muffoletto was accepting funds from the Cayuga Nation for deposit into the trust accounts, despite the fact that bank statements for the OCFS-operated accounts were readily available to OCFS and clearly showed the Cayuga Nation deposits. An audit, or any review of these bank statements, would have alerted OCFS to these deposits. Such audit or review was never conducted. OCFS left the trust accounts' administration to the complete discretion of Thomas-Muffoletto and solely relied upon her to operate these accounts honestly and professionally.

OCFS failed to take any reasonable measures to safeguard these trust accounts. OCFS failed to supervise Thomas-Muffoletto's work related to the trust accounts, failed to conduct site visits, and failed to audit or review these accounts. During the pendency of this investigation OCFS acknowledged this lack of internal controls. In an interview subsequent to Thomas-Muffoletto's plea, her immediate supervisor acknowledged that there should have been oversight and periodic audits of the accounts.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation found that Kim Thomas-Muffoletto, the Director of Native American Services at OCFS, systematically stole funds from the trust fund accounts held for Cayuga Nation minors from April 2007 to January 2014. The Inspector General's investigation also found that OCFS lacked any internal controls or policies or procedures to oversee and regulate the operation of these trust accounts. In fact, OCFS failed to take any reasonable measures to monitor these accounts and safeguard the monies entrusted to them for Cayuga Nation minors, including conducting any reviews, audits, or site visits, as conceded by Thomas-Muffoletto's supervisor. Instead, OCFS left the trust accounts' administration to the complete discretion of Thomas-Muffoletto and solely relied upon her to properly operate these accounts. It is contrary to reasonable practice to place such trust fiduciary responsibility in any one person.

The Cayuga Nation currently is operating the trust accounts for the Nation's minors, and OCFS no longer has responsibility for the operation and/or maintenance of trust accounts. However, pursuant to treaties and New York State law, OCFS retains the duty to operate such accounts if requested. Accordingly, OCFS should develop policies and procedures regarding the operation of these accounts that include adequate internal controls and audits to ensure the security of trust fund monies. Furthermore, the Inspector General recommended that OCFS conduct a complete review of the policies and practices of the Native American Services Bureau, which Thomas-Muffoletto managed since 1991. Finally, the Inspector General recommended that OCFS conduct an audit of any and all funds that were handled by the Native American Services Bureau during Thomas-Muffoletto's tenure.

Response of OCFS to the Inspector General's Recommendations

In response to the Inspector General's recommendations, OCFS surveyed all other program areas and confirmed that no other trust accounts from which it serves as the designated trustee were managed by one individual OCFS employee.

In addition, as recommended by the Inspector General, OCFS advised that in the event it is requested to manage trust accounts for Cayuga Nation minors, such accounts will be the responsibility of the financial management team in OCFS's central office, with all disbursements approved by a primary and secondary signatory at the executive level.

Further, as recommended, OCFS will conduct a comprehensive audit to include a review of all policies of the Native American Services Bureau, as well as a full audit of all related accounts, with results provided to the Inspector General by June 1, 2017.