

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL BRANCH

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In the Matter of the Application of

THE CITY OF NEW YORK,

*Petitioner,*

Index No.

-against-

**VERIFIED PETITION**

AIRBNB, INC.,

*Respondent.*

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The Petitioner City of New York (the “City”), by its attorney, Zachary Carter, Corporation Counsel of the City of New York, as and for its verified petition in this matter, respectfully alleges, upon information and belief, as follows:

**PRELIMINARY STATEMENT**

1. Following a clear public mandate – as expressed through thousands of complaints from the public and repeated legislation – the City, acting through the New York City Mayor’s Office of Special Enforcement (“OSE”), is engaged in efforts to find and stop illegal conversions of permanent residences in New York City into *ersatz* hotels that deplete housing stock for New Yorkers, pose fire and building safety risks, and deceive consumers.
2. As part of those efforts, OSE has been conducting a long-term investigation (the “Investigation”) to identify and halt the illegal use and occupancy of dwellings in a number of buildings in Manhattan, Brooklyn and Queens (individually and collectively,

- the “Subject Buildings”), and identify those wrongdoers who have taken permanent housing stock out of the market to advance their illegal business activity.
3. Through the Investigation, OSE has uncovered, *inter alia*, a persistent illegal transient hotel business at the Subject Buildings unlawfully advertising and hosting transient (i.e., less than thirty-day) stays at the Subject Buildings through a well-known advertising and reservation service operated by Airbnb, Inc. (“Airbnb”) by a group of known and unknown confederates (individually and collectively, the “Subjects”).
  4. As part of that investigation, OSE issued – by its Deputy Director – a subpoena *duces tecum* seeking copies of records regarding that illegal activity (individually and collectively, the “Records”) on or about July 16, 2018 (the “Subpoena”), and upon Airbnb’s consent, obtained a non-disclosure order from the Criminal Term of the Court to protect the Investigation. A redacted copy of the Subpoena and accompanying non-disclosure order is annexed hereto as Exhibit 1.
  5. The Subpoena was returnable to OSE’s office in New York County on July 31, 2018.
  6. The Subpoena and accompanying non-disclosure order was served by e-mail on Airbnb on July 26, 2018, and a copy of the e-mail by which there were served is annexed hereto as Exhibit 2.
  7. After several rounds of communications with Airbnb and an adjournment for additional time to respond to the Subpoena, Airbnb has failed to produce all but a very small handful of the Records contrary to the Subpoena’s plain terms, and instead actively refused to comply with the Subpoena contrary to state law. A copy of Airbnb’s letter objections is annexed hereto as Exhibit 3.

8. In light of that noncompliance, the City is seeking judicial assistance pursuant to CPLR 2308(b) and Judiciary Law § 2-b(3) to compel Airbnb's compliance with the Subpoena as required by state law. A copy of a proposed order and judgment is annexed hereto as a Proposed Order.
9. As a City agency tasked with investigating and abating quality of life offenses that affect the health, safety and general welfare of the City, its residents, and visitors, OSE has a clear obligation to conduct thorough and complete investigations that inspire confidence in the public that those who harm the quality of life in the City will be identified, stopped, and punished.
10. By the same measure, the subjects of OSE investigations are also entitled to full, fair and impartial investigations that correctly identify those are breaking state and local laws, exonerate those who are not, and produce an accurate base of knowledge upon which the City may take whatever actions the facts support.

### PARTIES TO THE ACTION

11. The City is a municipal corporation organized under the laws of the State of New York, and OSE is an agency of the City pursuant to Mayoral Executive Order No. 96 of 2006 with its principal place of business located at 22 Reade Street in New York County.
12. Airbnb is an authorized foreign business corporation organized under the laws of the State of Delaware, with its principal place of business located at 888 Brannan Street in the City and County of San Francisco, California. Airbnb also maintains a permanent office and staff in the State of New York.

## JURISDICTION AND VENUE

13. The Court has jurisdiction pursuant to CPLR 2308(b) and Judiciary Law §2(5).
14. The Court also has jurisdiction pursuant to the Court's inherent power to promote the proper administration of justice.
15. The City is seeking to proceed by order to show cause in this matter because the public's interest in in the swift, thorough, and complete investigation of public safety threats and deceptive consumer practices necessitates greater speed in conducting OSE's work.
16. Venue is proper in New York County pursuant to CPLR 503(a) and 506(b) because OSE's principal place of business is located in, the Subpoena was returnable in, and the cause of action arose in New York County.
17. The City is seeking to proceed by order to show cause in this matter because of the public's interest in in the swift, thorough, and complete investigation of public safety threats and deceptive consumer practices, and to serve Airbnb through its counsel in this matter as contemplated by *Bianca v. Frank*, 43 N.Y.2d 168 (1977).
18. No prior application has been made by the City for the relief sought herein

## STATEMENT OF FACTS

### **Background and Statutory Scheme**

19. OSE is an agency of the City organized by Mayoral Executive Order No. 96 of 2006 to "address issues and combat adverse conditions that can impact quality of life, including those that threaten public safety, community livability and property values and can lead to serious crime." Those conditions "have been historically been associated [*inter alia*, with] apartment buildings that have been converted into hotels," as noted in Mayoral

Executive Order No. 96 as well, and a copy of Mayoral Executive Order No. 96 has been annexed hereto as Exhibit 4.

20. Executive Order No. 96 was subsequently amended in 2016 by Mayoral Executive Order No. 22 to specifically direct OSE to enforce “provisions of the Multiple Dwelling Law and the New York City Administrative Code prohibiting the advertisement of certain unlawful occupancies,” like those at issue here. A copy of Mayoral Executive Order No. 22 is annexed hereto as Exhibit 5.

21. The deleterious effects of illegal conversions of permanent dwellings into transient hotel operations have been documented by a number of reports and studies by both governmental and non-governmental organizations. Examples include:

- a. An October 2014 report by the New York State Office of the Attorney General entitled “Airbnb in the City,” – available at <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf> – which specified that “72 percent of units used as private short-term rentals on Airbnb” appeared to violate State and local laws in New York,” including the Multiple Dwelling Law and the New York City Administrative Code;
- b. A June 2016 report from MFY Legal Services entitled “Short Changing New York City – The Impact of Airbnb on New York City’s Housing Market” – available at [http://www.hcc-nyc.org/documents/ShortchangingNYC2016FINALprotected\\_000.pdf](http://www.hcc-nyc.org/documents/ShortchangingNYC2016FINALprotected_000.pdf) – which specified that “over 55% of Airbnb’s NYC listings are illegal and over 8,000 housing units [are] lost to Airbnb in 2015, reducing available housing by 10%”; and
- c. A January 2018 report from Professor Wachsmuth of McGill University entitled “The High Cost of Short-Term Rentals in New York City” – available at <https://mcgill.ca/newsroom/files/newsroom/channels/attach/airbnb-report.pdf> – which stated that “Airbnb has removed between 7,000 and 13,500 units of housing from New York City’s long-term rental market, including 12,200 frequently rented entire-home listings that were available for rent 120 days or more and 5,600 entire-home listings available for rent 240 days or more.”

22. In exercising its powers, OSE employs a number of building and fire inspectors, police officers, deputy sheriffs, attorneys, analysts and investigators detailed from various agencies within City government to conduct field inspections, investigations and legal proceedings.
23. The principal work of OSE is determining whether buildings in the City are being used to perpetrate quality-of-life offenses in violation of state and local safety, consumer protection and other regulations, and OSE investigations uncovering wrongdoing primarily result in administrative prosecutions and civil proceedings seeking injunctive relief and other penalties to halt quality-of-life issues afflicting the City, its residents and visitors.
24. The laws and regulations governing the use and occupancy of dwellings in the City – including the Subject Buildings – are principally found in the Multiple Dwelling Law, and the New York City Fire, Building and Housing Maintenance Codes.
25. The advertisement of potential occupancies of dwellings in the Subject Building and other dwellings in the City is principally regulated, in relevant part, by Chapter 396 of the Laws of 2016 (codified in relevant part as Multiple Dwelling Law § 121 and N.Y.C. Admin. Code § 27-287.1) and the New York City Consumer Protection Law, codified in relevant part as N.Y.C. Admin. Code 20-700 *et seq.*
26. Airbnb operates the well-known online marketplace and hospitality service bearing Airbnb's name.
27. Airbnb operates its well-known service through a number of affiliates and subsidiaries, including, but not limited to:<sup>1</sup>

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<sup>1</sup> While the City does not believe Airbnb's listed affiliates and subsidiaries are necessary parties, copies of the City's papers in this proceeding will be provided to Airbnb's affiliates to provide them with notice out of the City's desire

- a. Airbnb Payments, Inc., an authorized foreign business corporation organized under the laws of the State of Delaware, a sharing its principal office space and executive staff with Airbnb in the City and County of San Francisco, California.
- b. Airbnb Ireland Unlimited Company (“Airbnb Ireland”), an unauthorized foreign business corporation organized under the laws of the Republic of Ireland, with its principal place of business located in Dublin, Ireland.
- c. Airbnb Payments UK Limited, an unauthorized foreign business corporation organized under the laws of the United Kingdom, with its principal place of business located in London, United Kingdom.
- d. Airbnb Internet (Beijing) Co., Ltd., an unauthorized foreign corporation organized under the laws of the People’s Republic of China, with its principal place of business located in Beijing, China.
- e. Ant Financial Services Group, doing business as Alipay (“Alipay”), an unauthorized foreign business corporation organized under the laws of the People’s Republic of China, with its principal place of business located in Hangzhou, China, and an office in San Mateo, California;
- f. Tencent International Service Pte. Ltd., doing business as WeChat, an unauthorized foreign business corporation organized under the laws of the Republic of Singapore, with its principal place of business located in Singapore.

28. That marketplace functions as a vehicle for people to list (commonly referred to as “hosts”) and book (commonly referred to as “guests”) lodging accommodations.

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to err on the side of transparency and caution, following *Oliver C. v. Weissman*, 203 A.D.2d 458, 459 (2d Dept. 1994).

29. Airbnb charges hosts percentage-based commissions to engage in booking transactions through its service.
30. Airbnb also charges guests percentage-based commissions to engage in booking transactions through its service.
31. In exchange for those commissions, Airbnb provides a wide range of services to hosts and guests, including payment processing and handling, tax accounting, dispute resolution, and assistance in generating content for advertisements.
32. The City is one of Airbnb's largest markets for its services in the United States and around the world.
33. Airbnb commands majority share of the advertising market for transient stays offered in permanent residences in the City.
34. The offering of entire permanent residences designed and equipped for such permanent occupancy for periods of less than thirty days in exchange for any consideration is, however, contrary to the Multiple Dwelling Law as well as various provisions of the New York City Fire, Building and Housing Maintenance Codes.
35. In order to facilitate inquiries like the Investigation, the Legislature has specifically conferred the power to issue subpoenas upon OSE by Multiple Dwelling Law §§ 121(4) and 303(1-a).
36. The offering of demised real property in violation of state and local building and fire safety regulations as a business is also subject to abatement pursuant to Real Property Actions and Proceedings Law § 715, and can be investigated by OSE through the use of subpoenas pursuant to Real Property Actions and Proceedings Law § 715(5).



### **The Investigation**

37. For some time, OSE has been conducting the Investigation, concerning illegal transient rentals involving the unlawful advertisement and occupancy of permanent dwelling units within the Subject Buildings in violation of state and local building and fire safety regulations, Chapter 225, Chapter 396, and consumer protection laws.
38. New York City Department of Buildings (“DOB”) records indicate numerous complaints about illegal transient occupancies at the Subject Buildings from 2013 through the present, a number of which have resulted in findings by the New York City Environmental Control Board sustaining violations.
39. The Investigation thus far has indicated that permanent dwelling units at the Subject Buildings were being advertised on Airbnb for short-term stays of less than thirty days, in part by the Subjects as part of a multi-building and multi-borough illegal transient hotel business in the Subject Buildings.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(For an Order Pursuant to CPLR 2308(b) and Judiciary Law § 2-b(3))**

40. The City repeats and re-alleges each and every allegation contained in paragraphs 1 through 39 as if fully set forth herein.
41. The Investigation is squarely within OSE’s jurisdiction.
42. The Subpoena was lawfully issued and served.
43. Airbnb has not disputed that OSE is – which it indeed is – authorized to issue the Subpoena.
44. OSE seeks records regarding the Subject Buildings that are relevant to the Investigation

45. OSE has a proper basis for inquisitorial action in support of the Subpoena, and is prepared to produce information supporting the Investigation *ex parte* for the Court's *in camera* review following *Hearn v. Dept. of Investigation*, 2007 N.Y. Misc. LEXIS 9428 (Sup. Ct., New York Co. 2007); and *Hearn v. Dept. of Investigation*, 2007 N.Y. Misc. LEXIS 9429 (Sup. Ct., New York Co. 2007) if the Court so directs.
46. The Subpoena is authorized by Multiple Dwelling Law § 303(1-a) and Real Property Actions and Proceedings Law § 715(5).
47. Alternatively, the Subpoena would have been authorized pursuant to OSE's existing investigative powers and those of its constituent agencies, which may be exercised on OSE's behalf pursuant to Mayoral Executive Order Nos. 96 and 22.
48. Pursuant to CPLR 2308(b), "if a person fails to comply with a subpoena that is not returnable in a court, the issuer or the person on whose behalf the subpoena was issued may move in the supreme court to compel compliance," and the Court shall order compliance if the Court determines the subpoena was authorized.
49. Additionally, as a court of record and of original jurisdiction in law and equity, the Court may enter orders in support of its equitable and inherent powers to promote the proper administration of justice.<sup>2</sup>
50. The Court may also impose costs and penalties pursuant to CPLR 2308(b) after determining that the Subpoena was authorized.
51. Records of illegal advertisements posted, reservations accepted and stays hosted as part of an illegal business to convert permanent residences to transient occupancy are manifestly relevant to an investigation of illegally converted buildings.

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<sup>2</sup> This power includes addressing a small scrivener's error subsequently discovered in the Subpoena, which identified the location listed in as item 5(g) of the definitions listed in the Subpoena as being on an avenue, when it should have been listed as being on a street.

52. Airbnb has acknowledged in previous proceedings before the Court, of which the Court may take judicial notice, that transactional records of the type sought in this proceeding maybe produced pursuant to Airbnb's own policies and state law. A copy of Airbnb's memorandum of law detailing its position in *NYC Hosts v. Airbnb, Inc.*, is annexed hereto as Exhibit 6.

53. Those policies notwithstanding however, the Court's intervention has become necessary in a number of matters – now including this matter – to secure Airbnb's cooperation with a subpoena.

**WHEREFORE**, the Petitioner City of New York respectfully requests that the Court issue an Order:

1. Finding that the Subpoena was authorized;
2. Directing Airbnb to produce the Records as directed by the Subpoena;
3. Imposing costs and penalties as authorized by CPLR 2308(b); and
4. Granting such other, further, or different relief as the Court deems just and proper.

Dated: New York, New York  
August 20, 2018

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By:   
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**VERIFICATION**

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BRIAN KRIST, an attorney duly admitted to practice before the courts of the State of New York, hereby affirms the following to true under penalty of perjury pursuant to CPLR 2106:

1. I am a Special Assistant Corporation Counsel assigned to the New York City Mayor’s Office of Special Enforcement (“OSE”), and of counsel to Zachary Carter, Corporation Counsel of the City of New York and counsel for the petitioner City of New York (the “City”) in this proceeding.
2. I have read the annexed petition and I have knowledge of the matters set forth in said petition, upon information and belief, based on my review of the books and records of OSE and its constituent agencies pertaining to the matters set forth in said petition, and conversations with City personnel assigned to assist OSE in its investigation of the matters set forth in said petition, and my review of the sources and exhibits referenced in said petition.

3. Upon that information and belief, I believe the contents of the annexed petition to be true.

Dated: New York, New York  
August 20, 2018



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