

COMMERCIAL OBSERVER

How the City Nails Landlords for Their Tenants' Illegal Airbnb Rentals

BY REBECCA BAIRD-REMBA | AUGUST 16, 2017

Two weeks ago, a Manhattan Supreme Court judge handed down a decision designed to strike fear in the hearts of landlords. Justice James d'Auguste ordered that an independent receiver be appointed to manage two Midtown residential buildings where the landlords allegedly allowed illegal Airbnb rentals to occur.

The case, which began when the city sued the landlords in February 2015, has become one of the battlegrounds in a larger war between city enforcement agencies and short-term rental sites like Airbnb.

Airbnb, which was recently valued at \$31 billion, refuses to release the exact addresses of hosts who break the law by renting their entire apartment for less than 30 days without being present. Without the addresses and names of Airbnb violators, the city mostly targets the owners of buildings that rack up the most illegal hotel complaints from 311 calls and the New York City Department of Buildings.

"This entire model—and it was intentional [by the city]—is complaint-driven," State Senator Liz Krueger said. "We don't want a city that has one police or building cop per building going, 'Gotcha!'"

She explained that tenants who violate short-term leasing laws and bother their neighbors in the process deserve to be punished. "If grandma's been [renting out her apartment] for 30 years and no one has complained, then it's probably okay," Krueger continued. "If grandma's figured out how to move to another state and turned it into a short-term stay unit, then

that's a big problem. If grandma's figured out how to get herself 10 units, and grandma's off in Vegas with the money she's making from these illegal units, then go get grandma."

It's legal for tenants to rent out spare rooms in their apartments as long as they remain there with guests. Homeowners can lease out rooms in a unit they live in, but they can't rent out other units in a two- or three-family home for less than 30 days.

By now, most New Yorkers are familiar with the arguments against subletting apartments to travelers for a few days at a time: It takes units off the market just as the city faces a major housing crisis (the rental vacancy rate hovers just under 4 percent, according to May data from the New York City Rent Guidelines Board), and watching tourists cycle in and out with suitcases makes neighbors nervous. Hotels are also held to higher fire and safety standards than apartment buildings, like having clearly posted evacuation plans, extensive sprinkler systems and multiple exits.



LUISE A. BARRACK

When officials discover flagrant and ongoing illegal subletting, they prosecute landlords under a 2010 state law banning short-term rentals in residential properties. The Mayor's Office of Special En-

COMMERCIAL OBSERVER

forcement (OSE), which leads the charge against illegal hotels, acknowledges that it's burdensome for landlords to police their own apartments and tenants for short-term rentals. But it also argues that city law still holds owners accountable for what happens inside their buildings.

"The administrative code puts the owner of a property as responsible for maintaining



MICHAEL A. PENSABENE

all code compliance," said OSE's spokesman, Alex Schnell. "That ranges from the tenants' use in the certificate of occupancy to the façade maintenance. That is the current law, and that is the law that OSE enforces."

Unsurprisingly, real estate lawyers on the landlord side of the battle condemn the practice, claiming it unnecessarily punishes owners.

"That would be patently unfair if landlords were prosecuted for tenants' conduct, and if [the city] sought to indirectly enforce this through landlords," said Michael A. Pensabene, a member at Rosenberg & Estis. "It's sort of like going after prostitutes but not the johns."

Even landlords who bring short-term rental cases to OSE can get hit with fines, said landlord lawyer Sherwin Belkin, a founding partner at Belkin Burden Wenig & Goldman.

One of his clients, who owns 120 West 23rd Street, let the mayor's office know that a tenant had shoved several bunk beds into his apartment and begun advertising it on

vacation rental sites. The landlord hoped that instead of having to start costly eviction proceedings against the tenant, the city would issue a vacate order. Building inspectors did exactly that, but they also issued the landlord thousands of dollars in fines and building code violations.

"And I'm aware of instances where owners or landlords having nothing to do with the short-term rental—neither advertising, participating nor profiting—were fined tens of thousands of dollars by the city," Belkin added, because they were found to be violating other building or fire code rules.

Over the past five years, the city's Law Department has filed suit against seven landlords deemed to be the most egregious violators of the state's seven-year-old "anti-Airbnb" law. Developer Salim Assa, who owns four Midtown apartment complexes and the MAve Hotel at Madison Avenue and East 27th Street, is one of those landlords.

A 57-page ruling issued last month accuses Assa of failing to stop his tenants from running illegal, short-term hotels in two apartment buildings, 15 West 55th Street and 334 West 46th Street. The precedent-setting judgment strips the landlord's legal control over those properties and appoints a lawyer named Darren Marks to run the

buildings and collect the rents.

If higher courts uphold the ruling, Assa would take a major financial hit, to the tune of \$130 million with penalties. The receivership would mean an automatic default on his mortgages for those buildings.

"It appears that despite receiving over 100 building and fire violations, criminal court summonses regarding the illegal use and occupancy of the properties, being sued by the city in the instant action and being enjoined from using the properties as illegal short-term hotels pursuant to the preliminary injunction in place, the owner defendants have taken minimal steps to remedy the alleged illegal use and occupancy that is the subject of this instant action," d'Auguste wrote in the decision.

After the judge handed down the July 31 ruling, Assa's lawyers quickly secured an emergency stay of enforcement from the state appellate court, preventing the city from appointing a receiver until a panel of appeals court judges hears the case next month. For now, Assa is out of the woods.

"Assa Properties is not involved in any short term leasing activity," a spokesman for Assa's company told CO in a statement. "This is a misrepresentation of the facts and unfairly targets landlords for their tenants' bad behavior. We have serious concerns about the validity and merits underlying this ruling and will continue to vigorously defend against these claims."

However, both the city and the judge call the short-term leasing in Assa's properties a "public nuisance," which is legally defined as a threat to the health, safety and welfare of the city's residents and visitors.

To understand why, it helps to go back to December 2013, when Assa purchased 334 and 336 West 46th Street for \$9.5 million. The seller was an LLC represented by member Ben Zion Suky. Suky and his brother Eran Suki (their last names are spelled differently, according to court documents; neither brother could be reached by press time) operated NY City Stay, which rented out apartments at the two Hell's Kitchen buildings on a nightly basis, the city alleged in its initial complaint. The suit also claimed Suky and Suki were operating 15 and 19 West 55th Street (both of which are owned by Assa) as illegal hotels, citing listings on Booking.com as evidence.

Leases for the Suky-Suki brothers' company were terminated after the city filed suit, according to Assa's lawyers. However, Suky's wife may have as much as a 49 percent ownership interest in West 46th Street Investors LLC, which owns the two three-story walk-ups on West 46th Street, the recent court decision alleges. Abraham Lavi, one of the investors in the West 46th Street properties, claimed that Assa "duped" him into believing that they were buying the buildings together and "secretly brought Suky into the deal," in a suit filed last year.

The city also sued Suky in a different illegal hotel lawsuit, over alleged short-term leasing in a 13-story residential building at 440 West 41st Street.

Assa purchased 15 and 19 West 55th Street, then known as The Branson, for \$60 million in November 2013. Several elderly rent-stabilized tenants lived in the buildings at the time, but the majority of the other units were vacant. When he offered six-figure amounts to buy them out of their leases, they spurned the offers for being too low, *Crain's New York Business* reported two years ago.

A few months later, residents began to notice tourists in the hallways. They called 311 and filed dozens of illegal hotel complaints, putting the properties on the city's radar.

"They seemed to do whatever they could to avoid having long-term tenants in those apartments," said Betsy Eichel, a tenant organizer at Housing Conservation Coordinators who worked with residents at The Branson. "I don't necessarily understand

COMMERCIAL OBSERVER

because deregulated apartments on 55th Street could go for a lot of money.”

Meanwhile, Assa began renovating the empty apartments and turning them into luxury rentals. Two-bedrooms at 15 West 55th are listed on StreetEasy starting at \$5,100, and three-bedrooms are available from \$8,000 to \$13,500. Then he expanded the ground-floor retail space into a two-story store, café, hair salon and private members’ club, all for Italian clothing designer Domenico Vacca. With the opening of the flagship and club in early 2016, the building was rebranded the “Residences at Domenico Vacca.” Travelers can rent apartments for anywhere from one to 12 months, with one-bedrooms beginning at \$380 a day, according to the property’s website. That’s a bargain compared to the Peninsula Hotel across the street, where rooms go for at least \$695 a night.

One long-term resident at 15 West 55th Street, who asked that his name be withheld, said that the 31-unit building has seven rent-stabilized tenants and three or four market-rate tenants on year-long leases. The remaining 20 units are marketed as 30-day-plus rentals on sites like Booking.com and StreetEasy.

“Even now they have people coming in for much shorter periods [than 30 days],” the tenant said. When CO noted that the landlords claim they’re no longer involved in short-term rental activity, the tenant responded, “That’s laughable. It’s just a big lie. Given their history, it just doesn’t make sense.”

Between October 2013 and February 2015, the DOB hit Assa’s buildings with a total of roughly 100 building and fire code violations, many of which were related to the alleged hotel uses. Then the city, at the urging of Krueger and several of the building’s rent-stabilized tenants, filed suit against Assa in February 2015.

In March 2016, the judge and lawyers on both sides agreed to a preliminary injunction prohibiting short-term occupancy in the buildings, according to court documents.

Then, on Oct. 14, 2016, court filings show that building inspectors discovered a family from upstate New York staying for three days in a third-floor apartment at 334 West 46th Street. They showed city investigators their Airbnb booking. Four days later, in an eighth-floor apartment at 15 West 55th Street, a British businessman told police and building inspectors that he was renting the unit for only a week.

By the end of October, the city asked the judge to find the landlords in contempt, which set the gears in motion for last month’s decision.

Assa’s lawyer, Anthony Genovesi of Abrams Fensterman, contended that his client had made every effort to prevent the illegal subleasing. He ended the leases of

tenants who violated the short-term rental law, signed up for a service called Sublet Alert that notifies landlords about vacation rentals in their buildings, and required new residents to show doorman leases of at least 30 days to enter the building, court documents show.

“What that decision essentially said was that if a tenant surreptitiously arranges for a tenant to stay in their apartment for less than 30 days, that the landlord has done something wrong,” he said. “How is the owner supposed to stop that?... Presumably the court wants owners to start knocking on the doors of hardworking people and interrogating them.” Genovesi argued that the city should punish the tenants who Airbnb the apartments.

Thanks to the ruling, landlords will feel even more pressure to keep their eyes peeled for short-term rental violators. “This decision will have a chilling effect,” said Luise A. Barrack, a managing member at Rosenberg & Estis. “I think it’s going to persuade landlords to take violations seriously.”

Assa—and the LLCs that own his buildings—are being sued under New York City’s nuisance abatement law. Created in 1977 to combat prostitution in Times Square, nuisance abatement actions have been used by city enforcement agencies and the New York Police Department to shut down a broad range of illicit activity, from bodegas selling alcohol to underage kids to drug dealers operating out of apartments.

A ProPublica and New York *Daily News* investigation published last year highlighted how the law enabled the police to shutter businesses and drive residents out of their homes without being charged with a crime. In October 2016, the City Council passed a package of bills reforming the nuisance abatement law, dramatically curtailing the city’s power to close businesses or evict residents without first allowing defendants to appear in court. The new legislation also establishes a four-month statute of limitations for nuisance abatement cases, meaning that the city can no longer keep businesses closed several months or years after they’ve stopped their illegal activity.

A little-discussed aspect of the law allows officials to start nuisance abatement actions based on certain building or zoning code violations, such as illegal hotel use in residential buildings. Assa and other landlords who allegedly permit short-term rentals are being sued on that basis.

City Hall claims Airbnb’s decision not to share information about hosts has stymied its efforts to enforce against tenants engaged in illegal subleasing. But Gov. Andrew Cuomo signed a law last October that made it illegal to advertise rentals for less than 30 days, empowering the city to go after tenant violators.

OSE began cracking down on Airbnb hosts in the past six months. Officials have slapped 17 owners and tenants across the five boroughs with nearly \$300,000 worth of summonses since January, when the new anti-advertising law went into effect, a spokesman for the agency said. Renters, homeowners and condominium or co-op unit owners who flout the advertising law face \$1,000 for a first violation and as much as \$7,500 per offense for repeatedly listing the same unit or building.

Assemblywoman Linda Rosenthal hopes to remedy the information gap in the city’s enforcement strategy by authoring a bill that would require Airbnb to share addresses and exact names of hosts who are flouting the law. The information would only be sent to OSE and potentially the state’s Division of Housing and Community Renewal, which enforces the city’s rent-stabilization laws. Since the addresses wouldn’t be posted publicly, Rosenthal argues that the measure wouldn’t make it easier for landlords to build eviction cases against tenants who are subleasing their apartments.

She also charged that Airbnb realizes a lot of its revenue from residents renting out units illegally, and that’s why it refuses to release host information to the city.

“Airbnb has shown bad faith throughout this whole discussion, and they’re just interested in changing the law to suit them,” she said. “I want to see if they’re interested in sharing information with enforcement agencies. Airbnb has had years to try and get its advertisers [or hosts] in line, and they have no interest in doing so.”

The nine-year-old San Francisco-based company strongly opposes Rosenthal’s bill. Instead, it backs legislation introduced by Assemblyman Joseph Lentol in April. The proposal would rewrite the state’s multiple dwelling law to allow Airbnb rentals, as long as hosts register their units with the state, pay tourism taxes (which would be collected from hosts and dispensed to local governments by Airbnb) and follow several other rules designed to prevent hosts from running makeshift hotels.

Josh Meltzer, the head of Airbnb’s public policy in New York, argued that the bill holds hosts accountable for violating short-term rental laws, making it easier for the city to punish tenants who engage in illicit hotel activity.

“The vast majority of New Yorkers agree: The city should focus its enforcement efforts on targeting truly bad actors who threaten to remove housing from the market, not responsible hosts who share their own homes to make ends meet,” Meltzer said. Lentol’s bill “would draw a clear line between these groups, while ensuring that landlords are not penalized for short term rental activity that took place without their knowledge or consent.”