

RESIDENTIAL AND COMMERCIAL REAL ESTATE

Rent-Controlled Tenant Found Airbnb 'Profiteering'

By Joel Stashenko

A woman has been "profiteering" from her rent-controlled Central Park duplex by renting out bedrooms through the website Airbnb in violation of city and state laws, according to Manhattan Supreme Court Justice Carol Robinson Edmead.

The judge, who issued a temporary injunction against Noelle Penraat, said records Penraat presented indicated she made substantial income from renting to visitors arranged through Airbnb in 2013 and 2014 in an "incurable" violation of Rent Control Laws.

The laws prohibit occupants of rent-controlled apartments from subleasing their units at rates higher than what the building owners can charge.

Edmead said in *Brookford v. Penraat*, 159605/14, that while Penraat pays \$4,477 a month on her four-bedroom duplex at 315 Central Park West—minus a \$284 monthly discount through the Senior Citizen Rent Increase Exemption (SCRIE) program—she made an average of \$6,500 a month through Airbnb rentals from January through June 2014.

"In essence, defendant's own



315 Central Park West..122214

records indicate that she has been profiteering from a rent-controlled apartment partially subsidized by another government program, SCRIE," Edmead wrote.

Penraat provided amenities including fresh linens and towels, complimentary soap, shampoo, a hair dryer, an iron and Wi-Fi. Similar to a hotel operator, Edmead said, Penraat gave renters a confirmation number and charged a penalty if they cancelled their reservation.

"None of these characteristics are attendant with the typical 'roommate' living agreement or arrangement" that would not be subject to Rent Control Law oversight, Edmead noted.

A 2010 amendment to §4.8 of state Multiple Dwelling Law was designed to prohibit permanent dwellings from being rented out to transients in circumvention of fire or safety regulations, and was not, as Penraat argued, a "loophole" that allowed her to engage in the rental activities otherwise prohibited by her landlord and rent control and safety laws, the judge said.

The owner of Penraat's building, Brookford LLC, brought suit on claims that Penraat's rental activities broke not only the Rent Control Law, but also the Multiple Dwelling Law, the Housing Maintenance Code and the New York City Building Code.

Edmead said she was granting the preliminary injunction because Brookford has demonstrated a likelihood that it will prevail in its action and that Penraat was, in fact, breaking the law.

In addition to Rent Control Law

violations, Edmead said Brookford has shown the existence of an "irreparable injury" in the absence of an injunction by the potential safety violations involved in introducing scores of overnight visitors to the apartment.

According to the judge, *City of New York v. Smart Apartments*, 39 Misc 3d 221 (2013), and other cases have established that "placing tourists in accommodations that are not designed or equipped with sufficient fire and safety protections, in and of itself, constitutes irreparable injury."

Brookford's motion included statements from Penraat's neighbors, who complained of a transient element being introduced into the building—the doorman was under Penraat's orders to let Airbnb renters in and give them free access to the apartment house, according to the decision.

The Brookford complaint also noted that the building houses the Twin Parks Montessori School on its first floor, which enrolls about 175 children between the ages of three months and five years.

Edmead indicated that Penraat ceased her Airbnb rental activities when Brookford filed suit in late September.

In addition to trying to halt the Internet rentals, Brookford has been trying to evict Penraat for running an illegal hotel or bed and breakfast.

Michael Pensabene, a member at Rosenberg & Estis who is representing Brookford, said the building will continue efforts to terminate Penraat's lease.

"Opportunism is not the intended consequence of these [Rent Control and Multiple Dwelling] laws,"

Pensabene said in an interview Monday. "We are going to pursue its [Brookford's] rights to the fullest extent of the law."

He said that Airbnb renters could be in danger in the case of a fire, for instance, because they are not provided with the emergency evacuation plans that commercial operators are obligated to provide guests.

Arlene Boop, Alterman & Boop partner, is representing Penraat.

According to Edmead's ruling, Penraat advertised on Airbnb a "Lovely Small Bedroom in Huge Apartment" (for \$75 per night/\$450 per week); a "Sunny Bedroom, Central Park View" (\$100 per night/\$600 per week) and "Gorgeous Master Bed/Bath on the Park" (\$150 per night/\$1,000 per week).

There are 43 units in 315 Central Park West, according to the ruling.

The judge said Penraat's records showed she rented no bedrooms for fewer than three days at a time and none for more than 21 days consecutively.

Airbnb, the California-based marketer of Web-based residential services, was not a litigant in the case. It became embroiled in a legal battle with New York Attorney General Eric Schneiderman earlier this year over his efforts to it to disclose lists of its New York "hosts" so authorities could investigate those suspected of violating laws against the operation of illegal hotels (NYLJ, May 14 and May 22).