

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

SMART APARTMENTS LLC, ROBERT K.Y.
CHAN, TOSHI INC., et al.,

Defendants.

AFFIDAVIT IN SUPPORT
OF PLAINTIFF'S ORDER
TO SHOW CAUSE

Index No.

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STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

KATHLEEN MCGEE, being duly sworn, deposes and says:

1. I have been Director of the Mayor's Office of Special Enforcement ("OSE") since May 1, 2011. I was previously Deputy Director of OSE, beginning December, 2007.

2. The Mayor's Office of Special Enforcement ("OSE") was created by Executive Order No. 96 in December, 2006, as the successor to the Office of Midtown Enforcement. (A copy of the Executive Order is attached hereto as Exhibit "3".) The Office of Special Enforcement was given expanded, citywide jurisdiction to enhance and coordinate quality of life enforcement efforts. It is vested with responsibility for "overseeing response to conditions at properties throughout the City that threaten quality of life and require a coordinated response from multiple agencies or otherwise demand special attention." The Executive

Order explicitly refers to "apartment buildings that have been illegally converted into hotels" as one of the issues and conditions to be addressed by OSE.

3. It is my responsibility to oversee and coordinate the City's response to this problem.

4. I submit this affidavit in support of the CITY's application for a temporary restraining order and motion for a preliminary injunction. This affidavit is based on my personal knowledge, and upon information obtained from numerous sources, including OSE personnel, complainants, members of the public, and elected officials and their staff.

5. The proliferation of "illegal hotels" (the term colloquially used to refer to illegal short-term transient occupancies in permanent residence buildings) was first brought to the attention of the City Administration in April, 2006 by the Illegal Hotels Working Group.

6. Beginning in the fall of 2006, OSE began handling complaints regarding illegal hotels as part of the City's enhanced enforcement strategy in an effort to facilitate an effective response to this emerging problem. As part of this enforcement strategy, OSE works in partnership with the Department of Buildings (DOB) by investigating complaints of illegal hotels. Those complaints can come from many sources,

including calls to NYC "311", the City's information and services center, letters and emails from members of the public and communications from elected officials and community groups. Regardless of the source, OSE arranges for an inspection team to visit the premises and attempts to determine whether a violation exists. If it is determined that a violation exists, appropriate enforcement is taken, which can include issuing DOB violations and Environmental Control Board ("ECB") Notices of Violation ("NOV"), issuance of Fire and Health Department violations, and in severe, life endangering cases, issuance of DOB vacate orders. When an ECB NOV is issued, OSE refers the case to the DOB Administrative Enforcement Unit for prosecution.

7. In addition to the on-the-ground investigation and enforcement of illegal hotel complaints, OSE worked with DOB, the City's Law Department, City Planning, and the Department of Housing Preservation and Development to clarifying statutory terminology in order to provide for effective enforcement against illegal hotels.

8. This legislation, Chapter 225 of the Laws of 2010, was signed by Governor Paterson in July, 2010, and became effective on May 1, 2011. The legislation clarified the definitions of permanent and transient occupancy, making clear

that short-term occupancies of less than 30 days are prohibited in permanent residences that are Class A multiple dwellings.

9. Additionally, OSE participated in the City's affirmative civil action against the property owners of three SRO buildings on West 94th and 95th Streets, based on the illegal transient use of the premises. See, City of New York v. 330 Continental LLC, et al, 60 A.D.3d 226 (1st Dept. 2009). Commenced in 2007, the case was recently settled in Supreme Court with the property owners being permanently enjoined from operating the premises as illegal hotels, and agreeing to pay a penalty of \$600,000.

10. Most recently OSE has testified before the City Council in support of newly enacted legislation, Local Law 45 of 2012, signed into law by the Mayor on October 2, 2012, which provides for heightened penalties for repeated violations of the prohibition against illegal hotels.

11. Since its inception in 2006, OSE has received over 2,500 "311" complaints concerning illegal transient occupancies. In addition, many such complainants have directly contacted OSE.

12. The illegal hotel complaints received by the City have described a veritable menu of quality-of-life concerns, ranging from the disruption of peace and quiet to the outright life-threatening. They include illegal hotel guests throwing

late night parties in residential units; puddles of vomit and garbage strewn in residential hallways and entryways by illegal transient guests; the overcrowding of apartment units with bunk-beds; and buildings with none of the fire prevention or fire emergency provisions required for transient occupancy. Permanent residents have complained of repeated harassment by the landlords and operators of these illegal hotels, including but not limited to the withholding of heat or other basic services, verbal harassment, and illegal eviction.

13. In response to complaints of illegal transient occupancies, OSE has conducted over 1,500 inspections, issued almost 5,000 violations, and executed over 100 full or partial DOB vacate orders for life-threatening conditions observed in the course of said inspections. Observed conditions during OSE inspections include occupancy contrary to that allowed by DOB records; illegal conversions and work without permits in the construction of full height partitions to create additional rooms for transient use; overcrowding of rooms with up to twelve bunk-beds in a room with a legal capacity of two to four beds; failure to provide unobstructed exit passageways; failure to provide required means of egress; lack of fire extinguishers, fire alarms and sprinklers; and a failure to maintain good housekeeping and cleanliness.

14. In upholding violations issued by OSE for illegal transient occupancies, the Environmental Control Board has ruled, in appeal decisions, (1) that short-term transient occupancy in only one apartment in a Class A residential building is a violation of Section 28-118.3.2 of the Building Code, NYC v. 364 West 51st Street Associates LP, ECB Appeal No. 1200294, July 26, 2012; and (2) that even partial illegal transient occupancy (in the case then before ECB, two apartments) requires building-wide compliance with the enhanced fire safety requirements for transient occupancies, NYC v. Mige Associates II, L.P., ECB Appeal No. 1200383, August 30, 2012. Copies of the decisions are attached as Exhibit "4".

15. Complaints from tourists are much more difficult to track. Visitors to New York City who did not get what they bargained for, if they seek any redress at all, are more likely to do so when they return to their home and via contact with the booking agent or their credit card issuer than to search out which government agency in New York might provide them some remedy. Nevertheless, review of web site forums such as Trip Advisor,¹ clearly show the concern many tourists have about

¹ See, e.g., the lengthy thread beginning in 2007 entitled "*New York City Forum: Renting a vacation apartment - a collection of posts*", http://www.tripadvisor.com/ShowTopic-g60763-i5-k1563270-Renting_a_vacation_apartment_a_collection_of_posts-New_York_City_New_York.html; and those directly concerned with the defendants herein: "*New York City Forum: Hotel Toshi - New York*", http://www.tripadvisor.com/ShowTopic-g60763-i5-k3228229-Hotel_Toshi_New_York-New_York

booking illegal accommodations in New York City, generally, and with defendants herein in particular.

16. A significant factor of which tourists are likely not to be aware, even though it is a material fact which they would be highly concerned about if informed, is that these illegal accommodations do not meet the minimal fire safety standards required for transient occupancies, standards which are far more stringent than they are for permanent residence occupancies. The reasons for and nature of these higher standards are described in the affidavits of Thomas Jensen, Chief of Fire Prevention for the New York City Fire Department and James Colgate, Assistant Commissioner of Technical Affairs and Code Development for the New York City Buildings Department, attached as Exhibits "5" and "7", respectively.

17. In short, visitors who stay in transient residential occupancies are not familiar with the layout of the building, including the exit stairwells, as are permanent residents. Occupants of transient accommodations therefore are likely to find it more difficult to evacuate the building quickly in the event of a fire or other emergency. A history of just such tragic hotel fires led to the enactment of the

City New York.html, and "*Smart Apartments*", http://www.tripadvisor.com/Hotel_Review-g60827-d2388259-Reviews-Smart_Apartments-Brooklyn_New_York.html, all last visited on Sept. 28, 2012.

stricter fire safety standards for transient accommodations in effect in New York and elsewhere.

18. It is to be noted that foremost among the legislative findings in the newly enacted Local Law No. 45 of 2012 (Intro. 404-A), is the reference to "significant health and safety concerns for occupants of illegally converted apartments". A copy of the Law is attached as Exhibit "10".

19. One of the most widespread and notorious of the operators of illegal hotels is Robert K.Y. "Toshi" Chan ("Toshi"). (See articles from the New York Observer and The Village, attached as Exhibit "11".) Toshi conducts this illegal business through two companies, Toshi, Inc. and Smart Apartments LLC, having used a number of monikers: Hotel Toshi, Toshi Apartments, and more recently Smart Apartments. Toshi advertises extensively on the internet through multiple travel-oriented websites, including his own. (See, e.g., the exhibit to the Affidavit of John Bigolski, attached as Exhibit "17" to the Order to Show Cause.) Nowhere in Toshi's advertising is there any indication that the accommodations he offers to the consuming public are in fact illegal and fail to meet fire safety standards.

20. OSE has received over one hundred-fifty complaints of illegal hotel activity specifically involving units operated

by Toshi. (See, Exhibit "16", Paragraph "9".) Through inspections conducted by OSE in response to complaints and through investigation of Toshi's business activities, OSE has developed firm evidence of his operating illegal transient establishments in over forty Class A multiple dwellings in both Manhattan and Brooklyn; and other evidence to form a strong belief that, altogether, he operates in fifty or more buildings which are Class A multiple dwellings or other classes of buildings in which transient occupancies are prohibited.

21. A partial listing of those buildings was posted on a whiteboard in Toshi's basement office at 808 Driggs in Brooklyn at the time of an OSE inspection conducted on November 2, 2011. I personally accompanied the OSE team on that inspection and observed the whiteboard as depicted in the two photographs attached as Exhibit "12".

22. Further evidence of the many buildings in which Toshi conducts his illegal operations is contained in other exhibits being provided by the City in support of this motion, though the exact number and location of Toshi's operations can only be determined through the judicial discovery process.

23. OSE personnel, when interviewing Toshi hotel guests and lawful permanent residents during inspections of the buildings in which Toshi units were and are situated, have

learned that Toshi guests were and are often moved from unit to unit and building to building during the course of their stay; and that Toshi hotel guests are often not given the exact address of their reserved unit until they arrived at Toshi office headquarters, at which time they are transported to their designated location by a Toshi-operated van.

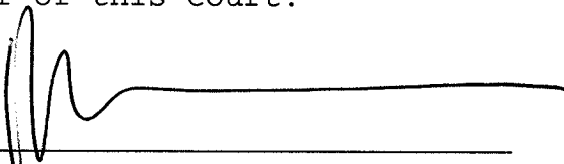
24. The breadth and depth of complaints regarding Toshi-operated illegal hotels has been outstanding for other reasons, not least of which has been their consistency with most of the types of complaints described in paragraph 12 above.

25. During inspections conducted in response to the complaints received regarding Toshi units, OSE has observed and issued violations including, but not limited to occupancy contrary to that allowed by DOB records; illegal conversions and work without permits in the construction of full height partitions to create additional rooms for transient use; failure to provide unobstructed exit passageways; failure to provide required means of egress; lack of fire extinguishers, fire alarms and sprinklers; and a failure to maintain good housekeeping and cleanliness.

26. Notwithstanding numerous and repeated issuance of violations concerning illegal occupancy and fire safety at multiple locations (See, Exhibits "23" and "24"), Toshi

continues to operate with impunity. This bespeaks an attitude of total defiance toward the law, and a disregard for the safety of the public and the quiet enjoyment by residents of their homes.

27. The multiplicity of complaints regarding illegal use of units for short-term transient stays operated by Toshi has elevated this quality-of-life situation to one that is repetitive, multiple, and persistent in nature. It is clear that Toshi will continue to engage in this illegal activity unless sooner restrained by order of this Court.



KATHLEEN MCGEE

Sworn to before me this
4th day of October, 2012



Notary Public

DIANE DIMINO-LEONARD

NOTARY PUBLIC, State of New York

No. 01D14748753

Qualified in Queens County

Commission Expires

8/31/13