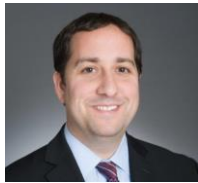




## A "Victory" For Airbnb: Why Owners Should Care

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By **Jeffrey H. Seiden, Esq.**  
Partner

In what some see as a surprising settlement, the Attorney General of the State of New York in conjunction with the New York City Mayor's Office has agreed that new legislation prohibiting the posting of short term rental advertisements will not be enforced against the platforms (i.e., web sites) on which those advertisements are posted. Some see this as letting Airbnb and other online travel broker sites off the hook. Although the most efficient way to curb illegal transient occupancy would be to shut down the platforms through which these occupancies are advertised, it may not be legal to do so under federal law.

Rather than litigating the issue, the city agreed to this limitation, and enforcement will be targeted at the individuals who use the platforms - the people who post their apartments on Airbnb for illegal transient occupancies. If the new law is properly enforced, it could still have a deterrent effect and reduce the amount of illegal rentals, thereby limiting an owner's exposure to fines and penalties, in addition to aiding an owner in evicting the offending tenant. However, politics play an unusually influential role here, given that enforcement will be handled by the Mayor's Office, and it remains unclear how aggressive the administration is willing to be and against whom. Building owners and their tenants who follow the law and seek quiet enjoyment of their apartments should be calling on the Mayor for responsible enforcement of the new law.

Even before the new prohibition against advertising illegal transient occupancies, the Multiple Dwelling Law and New York City Administrative Code prohibited a Class "A" multiple dwellings being used for other than permanent residential occupancy. Bill No. S06340A signed into law by Gov. Cuomo amended Multiple Dwelling Law §121 and §27-287.1 of the New York City Administrative Code, prohibiting the mere advertisement of units in Class "A" dwellings for uses other than permanent residential use, and providing fines and penalties against the offender for each violation.

Prior to these amendments, buildings owners were the only targets for enforcement by the government agencies. The sole remedy for the owner to avoid fines and penalties for the illegal

acts of their tenants was to commence eviction proceedings against the offending tenants, and seek their removal from their apartments, before the enforcement agencies were involved. Generally, the Courts have taken a hard stance against short-term rentals, especially the commercialization of rent-regulated apartments. Courts have recognized not only the illegality of this practice pursuant to the Rent Stabilization Code, Multiple Dwelling Law, Building Code and Fire Code, but the significant safety risks posed by these illegal occupancies to other tenants. However, the offending tenant was free to keep its "profits", and there was no financial disincentive for violating the law.

Despite the new law and the institution of fines against the offending tenants, building owners still carry the heavy burden of monitoring their buildings and rooting out illegal transient use. Enforcement of the prohibition on advertising is now the task of the Mayor's Office of Special Enforcement, whose mandate is to address quality of life issues citywide. While the law signaled a collaborative effort among the City, building owners, and tenants to root out the commercialization of rent-regulated apartments, in which tenants are collecting rents that exceed what is permitted by the state agency governing regulated units, that message will resonate only if the law is properly enforced, without exception. Crucially, the new law did not impose any criminal liability on the offending tenants, nor does it require the offending tenant to return the money generated from the illegal rental. So prompt enforcement is necessary, even on first-time offenders, so that the monetary fines act as an economic deterrent rather than simply a cost of doing business. But again, it is unclear if enforcement will be as robust as necessary to achieve this goal. Assemblywoman Linda B. Rosenthal, who drafted the legislation, stated in her press release, "I expect the City will now get down to the important business of enforcing the law against the serial lawbreakers on the site." By using the term "serial lawbreakers", Assemblywoman Rosenthal has implied to the public that this practice is acceptable, even though illegal, as long as long as the tenant does not do it too often. However, this standard has not been applied to landlords, who are liable for fines and penalties if one apartment is found to be occasionally occupied for illegal transient use.

Unfortunately, however, the new law has done nothing to shift liability and enforcement away from the innocent and unknowing building owner. The owner is still liable for any illegal occupancy in place at the building that is discovered by the enforcement agencies. A tenant can be fined for advertising an illegal rental, but an owner can still be fined if the illegal occupants are observed in the apartment. This new law was designed to eradicate the problem of illegal short term rentals. But nothing is simple in politics. The Assemblywoman's statements and the settlement with Airbnb are clear examples of "lawmakers" capitulating to requests for selective enforcement by constituents and lobbyist dollars, respectively. While on the one hand, lawmakers cry that there is an affordable housing "crisis" in New York City, that is made worse by turning rent-regulated apartments into commercial short-term rentals, yet on the other hand, they are unwilling to enforce the laws that are intended prevent the "removal" of affordable apartments from the rental market.

*Mr. Seiden's primary practice areas include both residential and commercial litigation, including summary nonpayment and holdover proceedings, administrative law proceedings and the defense of city and/or tenant initiated HP proceedings and harassment proceedings. He can be reached via email at [jseiden@borahgoldstein.com](mailto:jseiden@borahgoldstein.com) or by phone at (212) 965-2569.*

### ***Recently Published Articles***

Loft Law Occasional Note: [LOFT BOARD FINES LANDLORDS FOR UNFILED BUYOUTS](#), by partner David R. Brody, January 23, 2017.

*Mann Report*: Counsel Brian Graifman co-authored the article [Hosts Now Liable for Advertising Illegal Airbnb Rentals, But Landlords Still Within Enforcement Cross-Hairs](#), which was published, March 2017 .

### ***Recent Notable Cases***

[London Terrace Gardens LP, v. Constance Hildebrandt & Virginia Lee Hildebrandt](#) The court denied the succession claim of the daughter of the tenant of record and awarded possession to the Landlord. After trial, the Court held that the succession claimant's mother, the tenant of record, never permanently vacated the rent regulated apartment and that her daughter had spun a "web of lies" going back to the 1993 apartment application which Landlord's counsel argued had been supported by a fraudulent employment letter. Managing partner Robert D. Goldstein tried the case, assisted by partner Joseph I. Farca and senior associate Jason M. Frosch, with additional support from associate Ka Ni Li. Partner Lawrence E. Goldstein led the proceedings against the tenant of record.

[Board of Managers of Village Mall at Hillcrest Condominium v. Banerjee](#) (Sup. Ct. Queens County Dec. 22, 2016). Court granted summary judgment to Board, ordering unit owner to remove balcony enclosure that had been in place since 1979. Court relied on business judgment rule and on board resolution the firm assisted in drafting. Senior partner Eric M. Goidel served as Board's counsel, and senior partner David R. Brody and counsel Brian D. Graifman litigated the action.

[Fulton 101 LLC v. Presso Coffee LLC](#) In this case, landlord obtained summary judgment in a commercial holdover proceeding based on conditional limitation for failure to pay rent and additional rent as breach of tenancy. Tenant alleged multiple defenses which were rejected by the court. Landlord initially served notice of default alleging tenant failed to remove or bond mechanic's lien. Instead of terminating on that basis, landlord terminated based on independent ground of Tenant failing to pay rent. Court upheld Landlord's right to do so. Senior partner David B. Rosenbaum handled the case. *Note: tenant moved for stay pending appeal. The Appellate Term denied a stay of eviction.*

[Cast Iron Company v. Brooklyn Industries](#) The landlord obtained summary judgment award of \$450,000 against the retail tenant and guarantor for post-vacatur rent. Tenant breached the lease by vacating during the term thereof, and the guarantor was liable for tenant's default because tenant failed to return possession in a manner that would have terminated guarantor liability. Tenant's counterclaims alleging constructive eviction and loss of business were dismissed as precluded by the lease and because tenant was responsible for conditions in the premises. Partner Craig M. Notte handled the case.

## *Recent Presentations & Events*

Partner **Virginia Trunkes** was a panelist on the topic "Who pays for Late Construction" at Buildings New York, held at the Javitz Center. The educational session was sponsored by New York Association of Realty Management (NYARM).



Senior partner **David R. Brody** presented on Loft Law at the City Bar Center for CLE Programs Presents this month. The topic was "What Construction Lawyers Need to Know About Navigating The (Not So) Secret World of New York City's Administrative Agencies". The event was sponsored by New York City Bar Association Construction Law Committee, which is chaired by **Virginia Trunkes**, partner in the firm's Appeals Division.

Senior partner **David B. Rosenbaum** and partner **Lester J. Figueroa** (pictured) were featured speakers at New York Association of Realty Management (NYARM) this February. The topic was " Residential & Commercial Collections/Judgment Enforcement, Holdover/Non Payment Proceedings".



Partner **Eileen O'Toole** presented at the New York Women's Bar Association Civil Courts Committee Express Lunchtime Series Event on the topic of Rent Regulation: High Rent Vacancy Deregulation.



Counsel **Brian Graifman** again co-chaired the New York County Lawyers Association reception honoring new and reappointed judges and delivered the introductory remarks, who gave remarks.

Senior partner **Eric M. Goidel** presented at the City Bar Center for CLE on the topic "Ethical Issues in the Practice of Real Estate": What Every Attorney Must Know When Handling a Transaction.

Senior partner **David R. Brody** presented on Loft Law at St. John's University School of Law.

## *Upcoming Events*

The firm continues its support of the LGBT community and will proudly sponsor LeGaL's 2017 Annual Dinner and Community Vision Awards in April.

The firm will exhibit at **The Cooperator Expo** New York Wednesday, April 26 at the New York Hilton Midtown. To register for this free event click [here](#). Visit us on the 3rd floor, booth 2107.

### *Recent Hires*



**Christopher D. Warren** joined the firm as an associate in our Supreme Court Division. He was previously in private practice and brings a wealth of experience in complex commercial real estate litigation. Prior to earning his J.D., Mr. Warren worked in commercial real estate lending, helping companies expand their portfolios by providing services and tactical advice.

Mr. Warren is a member of the Construction Law Committee at the New York City Bar Association and previously served on its Land Use & Zoning Committee.

### **Our Offices**

Manhattan  
377 Broadway  
New York, NY 10013  
T (212) 431-1300  
T (212) 334-0960

Queens  
108-18 Queens Blvd.  
Forest Hills, NY 11375  
T (718) 263-6611  
F (718) 263-8272

Visit us at [www.borahgoldstein.com](http://www.borahgoldstein.com)

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