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, TOSHI INC., ROBERT K.Y. CHAN, and "JOHN DOE" and "JANE DOE," numbers 1 through 10, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the business being carried on by defendants SMART APARTMENTS LLC, ROBERT K.Y. CHAN, or TOSHI INC.,

Defendants.

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VERIFIED COMPLAINT

Index No. 402255/12

Plaintiff, THE CITY OF NEW YORK, by its attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, for its complaint against defendants, alleges as follows, upon information and belief:

1. Plaintiff THE CITY OF NEW YORK ("CITY") is a municipal corporation incorporated under the laws of the State of New York.

2. This action is brought to enjoin defendants from committing deceptive trade practices in the marketing and providing of illegal transient accommodations to visitors and tourists in New York City; to enjoin the public nuisance created

by their practices; and to obtain civil penalties, and compensatory and punitive damages.

3. The CITY brings this action pursuant to and by authority of section 20 of the New York General City Law, section 394 of the New York City Charter, and Section 20-703 of the Consumer Protection Law, in order to enforce the Consumer Protection Law of 1969, Title 20, Chapter 5, Subchapter 1, Section 20-700 et seq., of the Administrative Code of the City of New York (the "Consumer Protection Law"); and pursuant to the common law doctrine of public nuisance in order to eliminate public nuisances in the City of New York.

4. The action has been brought because defendants have repeatedly committed deceptive trade practices against visitors and tourists seeking short-term accommodations in New York City, implicitly holding themselves out as engaging in a legal business when in fact they are conducting a business which places tourists and visitors in illegal occupancies and exposes them to serious fire safety risks. These practices include advertising and promoting the booking of short-term accommodations in as many as 50 or more properties operated and maintained by defendants; properties in which transient, short-term occupancies of less than 30 days are prohibited by New York State and City laws.

5. The action has also been brought because of the public nuisance being maintained by defendants, caused by (1) illegally renting permanent residential dwelling units to numerous transient occupants without those dwellings having the more stringent fire and safety features required in buildings legally designed to serve transient occupants, and (2) creating significant security risks in buildings not staffed to handle the security issues associated with transient occupancy, and a degradation in the quiet enjoyment, safety, and comfort of the surrounding residents, caused by noise, filth, and the excessive traffic of unknown and constantly changing individuals entering their places of abode. These conditions in the buildings in which those units being used for short-term accommodations are situated, as well as the areas surrounding those buildings, negatively affect the health, safety, security, and general welfare of the residents of the City of New York and its visitors.

**BACKGROUND**

6. Tourists and other visitors to New York City have been increasingly enticed by short-term "hotel" or "apartment" accommodations in buildings designed for permanent residency being offered on numerous web sites. The typical tourist is thus unwittingly led to book accommodations which are not only

illegal, but also pose a heightened risk to his or her health and safety.

7. For a business to mislead consumers by purveying illegal and unsafe consumer goods or services without any indication that it is not legal or safe, is one variety of deceptive trade practice prohibited by federal, state, and local consumer protection laws, including the New York City Consumer Protection Law, NYC Admin. Code §§ 20-700 to 20-706.

8. Moreover, the advertising and booking of transient accommodations in buildings where such accommodations are illegal creates a public nuisance as known under the common law. The common law has long recognized that conditions or practices which endangers or injures the property, health, safety or comfort of a considerable number of persons constitute a public nuisance - a public nuisance which affects not only tourists and visitors to New York City, but those who reside in the residential apartment buildings which are being illegally used.

9. City government continually receives complaints from many sources - calls to "311", letters and emails from the public, communications from elected officials and community groups - regarding excessive noise from tourists, overflowing trash, vomit in hallways, fires, loud fighting, drugs, prostitution, and elevators damaged by constant suitcase traffic, and the like.

10. Notwithstanding occupancy and safety rules which prohibit such use, units in permanent residential apartment buildings in New York City are increasingly being utilized as transient, short-term occupancy units for tourists and other short-term occupants rather than occupied by tenants who intend to establish a permanent residence.

11. The practice has been abetted by the phenomenal growth of the internet travel industry, and comes at a time when available housing accommodations for the residents of New York City remain at historically low levels.

12. The spread of illegal transient occupancies, which some elected officials from New York City have termed an "epidemic," creates a number of serious problems for the City:

(1) a growing number of complaints from tourists who book accommodations over the internet, in most cases responding to advertisements unaware that rooms are being offered in violation of the law, only to find that the accommodations are in apartment buildings parading as "hotels" which often lack the barest essentials that short-term guests would normally expect;

(2) serious safety hazards, in particular with regard to fire protection, as code requirements for permanent residency buildings are not nearly as stringent as those for units and buildings geared to transient occupancy, but also with regard to severe overcrowding;

(3) a burgeoning number of transient occupants inter-mixed with permanent residents whose presence poses significant security risks in buildings not equipped to handle the security problems associated with transient occupancy,

as well as a degradation of quality of life for residents;

(4) harassment of permanent tenants by owners who seek to evict those tenants illegally in order to pursue a more lucrative transient market; and

(5) an illegal siphoning off of a significant portion of the city's housing stock, occurring most acutely in the affordable housing stock sector.

13. To begin to address this situation the New York State Legislature enacted Chapter 225 of the Laws of New York State of 2010 ("Chapter 225"). Chapter 225, which went into effect on May 1, 2011, prohibits renting any unit in "Class A" multiple dwellings, as defined under the New York Multiple Dwelling Law ("MDL") and the New York City Housing Maintenance Code ("HMC"), for less than 30 days.

14. Before the enactment of Chapter 225, the MDL and HMC provided that Class A multiple dwellings were to be "occupied, as a rule, for permanent residence purposes." MDL § 4(8), NYC Admin. Code § 27-2004.a.8.(a). In January 2009, the Appellate Division, First Department interpreted "as a rule" to mean that owners of Class A buildings could rent up to half of their rooms for "nonpermanent or transient occupancy," so long as the majority of the rooms were rented for longer than 30 days. See,

City of N.Y. v. 330 Continental LLC, 60 A.D.3d 226, 230-31, 873 N.Y.S.2d 9, 12-13 (1st Dept. 2009).[1]

15. The State Legislature enacted Chapter 225 in response to court's decision, amending the MDL and other related laws to prohibit, among other things, the rental of any unit in a Class A building for less than 30 days. Chapter 225 became effective May 1, 2011. The legislative justification for Chapter 225 was explained by the law's sponsor thusly:

> The Multiple Dwelling Law and local Building, Fire and Housing Maintenance Codes establish stricter fire safety standards for dwellings such as hotels that rent rooms on a day to day (transient) basis than the standards for dwellings intended for month to month (permanent) residence. There are substantial penalties for owners who use dwellings constructed for permanent occupancy (Class A) as illegal hotels. However, the economic incentive for this unlawful and dangerous practice has increased, while it is easier than ever to advertise illegal hotel rooms for rent to tourists over the internet. This is especially so in New York City, which is attracting visitors and tourists from around the world in record numbers. In most cases tourists responding to such advertisements are unaware that the rooms are being offered in violation of the law. Not only does this practice offer unfair competition to legitimate hotels that have made substantial investments to comply with the law but it is unfair to the legitimate "permanent"

[1] This case was recently settled, with the defendants agreeing to a permanent injunction against managing their properties as "illegal hotels", and to pay the City of New York $600,000.

> occupants of such dwellings who must endure the inconvenience of hotel occupancy in their buildings and it decreases the supply of affordable permanent housing. It endangers both the legal and illegal occupants of the building because it does not comply with fire and safety codes for transient use. Recently, law enforcement actions against illegal hotels have been hindered by challenges to the interpretation of "permanent residence" that enforcing agencies have relied on for decades.

See New York State Assembly Memorandum in Support of Legislation (S. 6873-B, 233rd Leg. (N.Y. 2010 (Sponsor's Memo) Bill No. A10008).

16. The advertising, maintenance and operation of properties for short-term transient use in buildings where such use is prohibited and unsafe, deceives consumers. It also creates a public nuisance by endangering or injuring the property, health, safety and comfort of residents in those buildings, residents in surrounding areas, and tourists and visitors to the New York City.

**PARTIES**

17. Defendant SMART APARTMENTS LLC is a limited liability company organized under the laws of the State of New York, and upon information and belief is the lessee and/or manager or operator of numerous apartments in a multitude of class A multiple dwellings which are being operated and made

available for short-term, transient occupancy for periods of less than thirty (30) days.

18. Defendant TOSHI INC., a business corporation organized under the laws of the State of New York, upon information and belief has been the lessee and/or manager or operator of numerous apartments in a multitude of class A multiple dwellings which are being operated and made available for short-term, transient occupancy for periods of less than thirty (30) days, doing business under the name "Hotel Toshi" or otherwise.

19. Defendant ROBERT K.Y. CHAN is upon information and belief a principal member of Defendant SMART APARTMENTS LLC and actively engaged in the management and operation of SMART APARTMENTS LLC; and a major shareholder and chairman or chief executive officer of Defendant TOSHI INC. and actively engaged in the management and operation of TOSHI INC.

20. Defendants "JOHN DOE" and "JANE DOE," numbers 1 through 10, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the business being carried on by defendants SMART APARTMENTS LLC, ROBERT K.Y. CHAN, or TOSHI INC.

## APPLICABLE LAW

### A. Consumer Protection Law

21. The New York City Consumer Protection Law, Administrative Code § 20-700, prohibits unfair trade practices:

> No person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts.

22. Consumer Protection Law § 20-701(a) defines deceptive trade practices to be:

> Any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services … which has the capacity, tendency or effect of deceiving or misleading consumers. Deceptive trade practices include but are not limited to: … representations that goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have … goods or services are of a particular standard, quality, grade, style or model, if they are of another … the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive … offering goods or services with intent not to sell them as offered….

23. Consumer Protection Law § 20-703 authorizes the CITY to institute proceedings for civil penalties:

> a. The violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, shall be punishable upon proof thereof, by the payment of a civil penalty in the sum of fifty dollars to three hundred and fifty dollars, to be recovered in a civil action.
>
> b. The knowing violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, shall be punishable upon conviction thereof, by the payment of a civil penalty in the sum of five hundred dollars, or as a violation for which a fine in the sum of five hundred dollars shall be imposed, or both.

24. In addition, § 20-703(d) authorizes the CITY to bring an action for injunctive relief:

> Whenever any person has engaged in any acts or practices which constitute violations of any provision of this subchapter or of any rule or regulation promulgated thereunder, the city may make application to the supreme court for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order, or other order enjoining such acts or practices.

25. Section 20-703(e) further provides that actual injury to consumers need not be shown to establish a cause of action.

**B. Common Law Public Nuisance**

26. Under common law principles in New York, a public nuisance is an offense against the State:

> It consists of conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all (New York Trap Rock Corp. v. Town of Clarkston, 299 NY 77, 80), in a manner such

> as to offend public morals, interfere with the use by the public of a public place or endanger or injure the property, health, safety or comfort of a considerable number of persons (Melher v. City of New York, 190 NY 481, 488; Restatement, Torts, notes preceding § 822, p. 217).

Copart Industries v. Consolidated Edison, 41 N.Y.2d 564, 568 (1977); City of New York v. Smokes-Spirits.Com, 12 N.Y.3d 616, 626 (2009) (quoting Copart Industries v. Consolidated Edison, Co., 41 N.Y.2d 564, 568 [1977]).

27. Similarly the Restatement of Torts 2d, §821B, defines a public nuisance to be "an unreasonable interference with a right common to the general public," and further describes circumstances which can constitute a public nuisance to include significant interference with "public safety," "public peace," and "conduct proscribed by a statute, ordinance or administrative regulation."

28. It is well settled that a governmental entity such as the CITY may bring an action to abate a public nuisance. New York Trap Rock Corp. v. Town of Clarkstown, 299 N.Y. 77, 83, (1949); City of New York v. Smokes-Spirits.Com, 12 N.Y.3d 616, 626 (2009).

## STATEMENT OF FACTS

### A. The Scope of Defendants' Business Operation

29. Defendants operate a multi-tiered business of advertising, booking, operating and maintaining transient

accommodations for short-term stays of less than 30-days in as many as 50 or more Class A multiple dwellings in New York City, as well as in other buildings for which the legally permissible occupancy prohibits transient occupancy. In at least one instance an entire building is so being used; in others one or a few units.

30. Defendants' have had offices at three locations: 174 Fifth Avenue and 274 Madison Avenue in Manhattan, and at 808 Driggs Avenue in Brooklyn. These offices are used to operate a number of the elements of their business, including their reservation and booking system, storing of supplies, and the laundering of linens brought to and from their various locations around the City.

31. Defendants maintain a web site, smartapartments.com, on which they directly advertise short-term apartment accommodations in Class A multiple-dwellings in New York City to tourists and visitors. The web site openly offers and provides for booking of accommodations for less than 30 days. Defendants also offer hosting services - booking services and apparently advertising - on their web site to "property owners". Defendants also have an internet blog at toshiapartments.blogspot.com, which promotes their accommodations.

32. In addition, defendants maintain an extensive portfolio of photographs of their accommodations on flickr.com,[2] and have also advertised and conducted their business under the name Toshi Hotels, using web site addresses of hoteltoshi.com and/or hoteltoshinyc.com.

33. At another level are a multitude of other internet travel web sites which host defendants' illegal offerings, targeting different national markets in Europe and the United States. Those currently identified by OSE are www.airbnb.com, www.apartime.com, www.backpage.com, www.feelnyc.com, www.flipkey.com, www.holidaylettings.co.uk (British), www.homelidays.com (French), www.istopover.com, www.livingmanhattan.com (Italian), www.only-apartments.fr (French), www.roomorama.com, www.rootstravel.com (French), www.vacationrentals.com, www.vrbo.com, and www.9flats.com.

**i. <u>The Buildings in Which Defendants Operate, and Their Classification</u>**

34. The CITY has identified no less than 44 Class A multiple dwellings as being or having been offered by defendants as accommodations for transient occupants for stays of less than 30 days.

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[2] http://www.flickr.com/photos/smartapartments/sets/.

35. In addition, the CITY has identified 3 other buildings used by defendants to provide accommodations for transient occupants for stays of less than 30 days, which have building classifications other than Class A multiple dwelling, but nonetheless preclude transient occupancies.

36. The addresses of these buildings (all in Manhattan except where noted) are:

| | | |
|---|---|---|
| 1. 8 Centre Market Pl. | 17. 117 E. 77 St. | 33. 313 W. 47 St. |
| 2. 19 Bleecker St. | 18. 135 Metropolitan Ave. - Bklyn | 34. 317 2nd Ave. |
| 3. 19 W. 46 St. | 19. 144 Bleecker St. | 35. 325 E. 10 St. |
| 4. 22 E. 36 St. | 20. 153 E. 26 St. | 36. 338 E. 55 St. |
| 5. 30 Carmine St. | 21. 157 Suffolk St. | 37. 350 W. 37 St. |
| 6. 41 W. 46 St. | 22. 171 Mulberry St. | 38. 356 W. 39 St. |
| 7. 44 W. 37 St. | 23. 174 Broadway - Bklyn | 39. 406 W. 49 St. |
| 8. 45 Carmine St. | 24. 174 Hester St. | 40. 408 W. 49 St. |
| 9. 65 Bank St. | 25. 186 S. 8th St. - Bklyn | 41. 450 Amsterdam Ave. |
| 10. 79 Clinton St. | 26. 188 S. 8th St. - Bklyn | 42. 454 W. 57 St. |
| 11. 82 Kenmare St. | 27. 203 E. 14 St. | 43. 465 Grand St. - Bklyn |
| 12. 89 MacDougal St. | 28. 205 W. 14 St. | 44. 536 Madison Ave. |
| 13. 100 Charlton St. | 29. 224 E. 48th St. | 45. 663 Lexington Ave. |
| 14. 102 Charlton St. | 30. 230 E. 27 St. | 46. 808 Driggs Ave. – Bklyn |
| 15. 107 E. 60 St. | 31. 240 E. 27 St. | 47. 1068 2nd Ave. |
| 16. 115 W. 23 St. | 32. 261 W. 21 St. | |

37. The CITY has reason to believe that apartments in other class A multiple dwellings are being operated and maintained by defendants for illegal short-term transient use. This belief is based, among other things, upon (1) complaints received by the City with respect to certain locations indicating use of apartments by defendants for short-term stay, but which could not be verified because of lack of access at the time of inspections; (2) additional apartment listings posted by defendants in their www.flickr.com "Photostream" collection and

on smartapartments.com for which sufficient information is currently unavailable to plaintiff; (3) listings on www.livingmanhattan.com which upon information and belief are for accommodations being offered by defendants, and not other parties, for short-term stays, but for which additional information is needed to confirm.

38. Upon full discovery and disclosure of defendants' operations in this litigation, the City is confident that it will find that apartments in more than 50 Class A buildings have been advertised and operated by defendants for illegal short-term accommodations of less than 30 days.

39. Whatever the exact number may be, it is evident that defendants' offerings are widespread and illegal.

**ii. Defendants' Internet Advertising**

40. The home page of smartapartments.com advertises defendants' accommodations as follows:

> **New York Short Term Vacation Rentals**
>
> **Smart Apartments for Smart People**
>
> **Planning on visiting New York City?** Come stay in one of our fully furnished vacation rental apartments designed especially for smart people. We represent holiday rental apartments located in **all areas & neighborhoods of NYC** – Park Avenue, Madison Avenue, Clinton Street, East Village, West Village, Times Square, and so much more. Each of these hand-picked apartments features studio to 5 bedrooms, private bathrooms, a fully equipped kitchen, 42" plasma TV and broadband internet access.
>
> We represent a wide range of prices and apartments **to suit everyone's needs and budgets**. Some flats are penthouse

> lofts with private rooftops and jacuzzis while others can be considered contenders for NYC's smallest apartment award. These self-catered flats are **perfect for families and friends looking to experience New York as true New Yorkers.** Our "bookers" are experts in our apartment inventory, New York City culture and neighborhoods and would love to help plan your trip to NYC. [emphasis in original]

Photographs and descriptions of the apartment accommodations which defendants offer are found on the pages for specific accommodations, as well as available dates. For example, a search for available accommodations for a five-day period in late November to December, 2012, returned a list of 75 apartments, with photographs, a paragraph description, and the cost per night.

41. What defendants' advertising on smartapartments.com does not indicate is that the accommodations are illegal and fail to meet required fire safety requirements.

42. Defendants' advertising on other web sites is of a similar nature, containing descriptions of the accommodations, a means of selecting the number of days for which the accommodations are desired, and the cost per night. Many of the web advertisements are explicit in indicating that accommodations are available for fewer than 30 days, such as those on livingmanhattan.com. Among the web sites on which defendants advertise their illegal accommodations are those listed in Paragraph 33 above.

43. A more generic advertisement by defendants for "short-term apartments" posted the host Hub Pages is also explicit in offering accommodations for less than 30 days:

> **Toshi Apartments - NYC furnished short-term apartments**
>
> Are you currently moving between vacations, houses, and cities? Do you need a furnished New York apartment for the short term? Are you looking for an actual luxury apartment as opposed to a damp suite in a hotel or an extremely cramped hostel for a change? Do you want nightly rates that are much cheaper compared to the majority of traditional hotels out there?
>
> Well, Toshi Apartments is here to help! We have furnished New York apartments available for the short term, each of which comes with a private shower, a complete kitchen, dining and living room chairs and tables, dishes, futons and sofas, linens, beds, cable TV and wireless Internet!
>
> You can choose to stay by night, by week, or by month as we have around 150 furnished New York rentals for the short term, which are all readily made for your sleeping, working, studying, and playing needs. Just let us know the amount of bedrooms you require and which location you would prefer to stay in. Our talented booking specialists will work hard and do their best to find the perfect apartment - just for you!

http://toshiapartments.hubpages.com/hub/toshiapartments.

44. Defendants also offer promotional discounts for short-term stays and commissions to real estate brokers and travel agents, such as in the following instance posted in early 2012 on a website for travel agents:

> **New York**-based vacation rental business **Smart Apartments** is now offering travel agents 10 percent commission on all bookings.
>
> Additionally, agents can check out their offerings during a special fam program that runs January, February and March.

> FAMs last for either three or four days and are available on all properties in **Manhattan** and **Williamsburg, Brooklyn**. Apartments range from studios to six-bedroom and are fully furninshed with Wi-Fi, large-screen TVs, modern kitchens and baths.
>
> Rates range from $125 to $600 plus tax per night. FAM rates during January, February and March are 50 percent off.
>
> For more information and to reserve call **Jeff Fried** at 205-999-2058 or email jfried@smartapartments.com. (emphasis in original)

http://www.travelagentcentral.com/mid-atlantic/smart-apartments-fam-new-york-city.

**B. Complaints and Occupancy Violations in Buildings Used for Illegal Transient Occupancy by Defendants**

45. The Department of Buildings has received over one-hundred fifty citizen complaints of illegal transient use in 42 of the 47 buildings in which defendants are providing illegal transient occupancies. Although the details of those complaints are unknown, other than the report of the illegal occupancies, the number and continuing flow attest to those occupancies being problematic to permanent residents having to deal with them on a daily basis.

46. With respect to tourists, there are a number of comment threads on Trip Advisor which attest to the concerns and

issues which they have had with the defendants in particular.[3] A few examples of these comments are:

> **20.** Re: Smartapartments.com Toshi Apartments - Any reviews?
>
> 23 May 2011, 18:57
>
> Destination Expert for New York City
>
> Do you care to address the fact that most of these apartments are flagrantly breaking the new rule forbidding apartment rentals for under 30 days? Some of these apartments may very well be seized or padlocked by the city before the visitor even arrives.
>
> Any business that has caused such grief for so many people and then comes on TripAdvisor to flagrantly break their rules of "no advertising and solicitation" by stating that all the negative reviews are an exaggeration further reinforces - in my mind - what kind of business this really is.
>
> Buyer be very aware.
>
> **21.** Re: Smartapartments.com Toshi Apartments - Any reviews?
>
> 11 June 2011, 0:18
>
> we booked back in February--in a nutshell:
>
> --pictures look great right? Apartment was filthy, hadn't been cleaned in months and had a bad smell
>
> --black grout in the bathroom shower, shower head didn't work, toilet didn't flush properly
>
> --we arrived to used sheets on beds, used towels in bathroom, furniture in complete disarray, and nail clippings on the floor in the bathroom

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[3] http://www.tripadvisor.com/ShowTopic-g60763-i5-k3228229-o30-Hotel_Toshi_New_York-New_York_City_New_York.html; http://www.tripadvisor.com/Hotel_Review-g60827-d2388259-Reviews-Smart_Apartments-Brooklyn_New_York.html; http://www.tripadvisor.com/ShowTopic-g60763-i5-k1563270-Renting_a_vacation_apartment_a_collection_of_posts-New_York_City_New_York.html.

--wireless never worked

--mouse infestation

--turned the oven on and set the smoke detector off because of filthy oven

--they never truly cleaned the apartment for us--we had to do it

We complained almost every day for 2 weeks, they tried to fix some things but ended up doing more damage. they said they couldn't move us to other location. Completely incompetent and they deny that they ever have problems with their customers!!!

We left, they kept our 1 month damage deposit. We tried to mediate, they refused to talk to us. We took them to small claims court. They tried to delay until we left. Finally settled last night. We didn't get all our Deposit back but got most. For the headache & stress, don't stay here. Plus we found out these are mostly illegal rentals--not allowed to rent for less than 1 month but Toshi does it anyway.

**23.** Re: Smartapartments.com Toshi Apartments - Any reviews?

17 August 2011, 14:11

Destination Expert for Washington DC

Louna---Please read the second "Top Question" that appears on the right hand side of this page --- "Why are Vacation Rentals a Bad Idea in NYC?". If you stayed in this apartment for less than a month, then it was an illegal rental.[4]

### C. Lack of Fire Safety in Defendants' Accommodations

47. Of the buildings inspected by the Mayor's Office of Special Enforcement ("OSE") in which defendants are offering,

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[4] These numbered comments are posted at http://www.tripadvisor.in/ShowTopic-g60763-i5-k4498227-Smartapartments_com_Toshi_Apartments_Any_reviews-New_York_City_New_York.html, last visited on June 19, 2012.

Continued...

and in which OSE has confirmed illegal transient occupancies, inspections have resulted in FDNY and DOB notices for fire safety violations related to those illegal transient occupancies in thirty-six of those buildings.

48. Those violations cover a range of fire safety issues:

a. Failure to provide a type of fire alarm system as required for transient occupancies, with in-line smoke detectors: FC 907.2, BC 907.2.8.

b. Failure to provide an automatic sprinkler system as required for transient occupancies: BC 903.2.7.

c. Failure to have installed portable fire extinguishers as required for transient occupancies: FC 906.1, NFPA 10 of 2007, Sec. 504.2.2.

d. Failure to have the external street exit doors from the building swing in the direction of egress travel, as required to transient occupancies: FC 1027.1, FC 904.10.6, BC 1008.1.2.2.

e. Failure to provide the minimum number of exits required for transient occupancies: BC 1018.1, AC 27-366.

f. Failure to post an evacuation diagram depicting 2 evacuation routes and other information on the external door of each unit being used for transient occupancies: FC 408.8.1.

g. Failure to have a fire safety and evacuation plan as required for transient occupancies: FC 404.2.1(8).

h. Failure to have a fire safety director with a certificate of fitness, as required for transient occupancies: FC 401.6.6.2.

49. For those locations at which the OSE was not able to directly verify illegal transient use at the time of inspection because of lack of access to individual apartments (but which have been confirmed through the other means), the OSE Fire Protection Inspector nevertheless observed an absence of fire safety protection measures in the public spaces of those buildings which are required for the protection of transient occupants. In those spaces he observed that there were no fire alarm systems, nor any sprinklers in 5 of the 9 locations.

50. Serious fire safety violations, other than those relating directly to requirements for transient occupancies, have been observed during the inspections conducted by OSE in buildings in which defendants book illegal short-term stays. These violations include:

a. Where there is a fire alarm system installed, it is not only not of the type required for transient occupancies, but defective: FC 907.20.5.

b. Failure to provide emergency lighting with an emergency power source, in public areas of the building: FC 904.10.6, BC 1006.3.

c. Failure to provide exit signs where required: BC 1011.1.

d. Failure to provide smoke detectors: FC 907.20.5, 907.20.6.

e. Blocking of exit signs: FC 801.6, 1006.1.

f. Obstructed exit passageways and fire escapes: FC 801.6.

g. Failure to flameproof wood paneling in corridors: FC 801.3, 801.4.

h. Failure to meet maintenance requirements for standpipes: FC 901.6.2.1, 903.5.

i. Failure to provide automatic sprinkler system in basement laundry room: BC 903.2.10.6.

j. Failure to provide proper fire stopping in cellar electrical and boiler rooms: BC 712.3, AC 27-345.

51. In buildings where there are fire safety issues not directly related to the illegal transient occupancies, the lack of fire safety measures required for transient occupancies exacerbates the risk to transient guests. This is the case with respect to 28 of the buildings used by defendants for illegal transient occupancies, as a search of the Department of Buildings on-line Building Information System ("BIS"), indicates that there are 90 ECB violations issued by the Fire Department for Fire Code violations in those 28 buildings.

52. With respect to 45 of the buildings in which OSE has determined that defendants are operating apartments for illegal transient purposes, a search of FDNY records, specifically the Fire Prevention Information Management System, indicates not even one instance in which a fire alarm system required for transient use occupancy or hotel is acknowledged or registered, and not one instance in which such a system has been on-site tested with the department for transient use. The appropriate

fire alarm system account for transient use occupancy/hotel did not exist for any of the buildings in question.

53. The Environmental Control Board has ruled in an appeal decisions 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.

54. Upon information and belief, none of the buildings in which defendants are maintaining illegal transient accommodations have the fire safety features required for transient accommodations.

**FIRST CAUSE OF ACTION - CONSUMER PROTECTION LAW - DECEPTIVE TRADE PRACTICES**

55. Plaintiffs repeat and reallege paragraphs "1" through "54" as if contained herein.

56. A merchant impliedly represents that the products and services which he advertises and sells are both legal and safe.

57. By inducing tourists and other visitors to New York City to book accommodations in class A multiple dwellings for stays of less than 30 days, such rentals being illegal and unsafe, defendants have misled consumers as to the use of those accommodations and have failed to state material facts about those accommodations, doing so in a manner that tends to

deceive. Defendants have thereby committed deceptive trade practices in violation of § 20-700 of the Consumer Protection Law.

**SECOND CAUSE OF ACTION - COMMON LAW PUBLIC NUISANCE - INJUNCTION AND NOMINAL AND PUNITIVE DAMAGES**

58. Plaintiffs repeat and reallege paragraphs "1" through "57" as if contained herein.

59. The defendants have advertised, operated, and maintained apartments for short-term stays of less than 30 days in numerous class A multiple dwellings which legally are only available for permanent residency, creating serious safety risks for the transient occupants of those apartments, significant security risks in buildings not equipped to handle the security problems associated with transient occupancy, and a degradation in the quality and comfort of the surrounding residents, created by noise, filth, and the excessive traffic of unknown and constantly changing individuals entering their places of abode.

60. The unlawful activities promoted, maintained and allowed by the defendants through their illegal practices, and the unsafe building conditions allowed by defendants, as described in this complaint, are detrimental to the welfare, property, and safety of the citizens of the City of New York and the public at large.

61. They offend, interfere with and cause damage to the public in the exercise of rights common to all, in a manner such as to endanger or injure the property, safety and well-being of a considerable number of persons.

62. The defendants are therefore maintaining a public nuisance as known at common law and in equity jurisprudence.

63. Unless restrained by order of this court, the defendants will continue their illegal activities and will absorb the costs of any fines and penalties imposed upon them as routine operating expenses. In addition, the plaintiff CITY will be forced to continue expending its limited resources in continued attempts to abate this harmful nuisance through administrative inspections, summonses, and violation orders.

64. The plaintiff therefore, has no adequate remedy at law.

65. As a result of the foregoing, the plaintiff is entitled to a judgment against the defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently restraining the above described common law public nuisance.

66. Defendants have acted willfully, wantonly, and with a recklessness betokening an improper motive, and have engaged in intentional misconduct and recklessly and wantonly disregarded

the safety, welfare, and rights of others in permitting and maintaining the aforesaid common law public nuisance.

67. Defendants have continued to engage in their illegal business, unabated. They actively advertise and seek to rent numerous permanent residence apartments to tourist and visitors to New York City for stays of less than 30 days, knowing that this constitutes an illegal occupancy. Defendants have maintained this activity despite being put on notice by the City through the issuance of repeated violations by the Department of Buildings ordering that the transient occupancy violations cease.

68. Plaintiff is thus entitled to compensatory and punitive damages because of the knowing and ongoing common law nuisance created, maintained, and continued by defendants.

WHEREFORE, the plaintiffs demand judgment against the defendants as follows:

1. Declaring that the defendants and each of them had knowledge of the existence of the unlawful acts complained of herein, and failed to take reasonable measures to abate such unlawful activity;

2. Declaring that the defendants and each of them have managed, used, advertised, booked, and operated numerous apartments in permanent residential dwellings for illegal transient use and occupancy though prohibited by State and local

laws, and continue to manage, use, advertise, book, and operate the subject premises in a manner as to constitute deceptive trade practices and a public nuisance;

3. With respect to the FIRST CAUSE OF ACTION, pursuant to sections 20-703 of the Administrative Code, an order

a. permanently enjoining defendants, their agents, employees or representatives, and every person or entity acting individually or in concert with them, from further violating the Consumer Protection Law and from committing the deceptive acts or practices alleged herein;

b. imposing upon defendants fines in the amount of Five Hundred Dollars ($500) for each and every knowing violation of the Consumer Protection Law, and Three Hundred Fifty Dollars ($350) for each and every unknowing violation of the Consumer Protection Law;

4. With respect to the SECOND CAUSE OF ACTION, permanently and perpetually restraining the public nuisance on the second floor of the subject premises and the defendants, their agents, assigns, employees or representatives, and every person or entity acting individually or in concert with them from in any way permitting the subject premises to be used, advertised, or occupied in any manner which violates the certificate of occupancy for the premises.

5. With respect to the SECOND CAUSE OF ACTION, pursuant to the common law doctrine of public nuisance, and order and judgment,

a. permanently and perpetually enjoining the defendants, their agents, assigns, employees or representatives, and every person or entity acting individually or in concert with them, from conducting, maintaining or in any way permitting the common law public nuisance described herein;

b. awarding the plaintiff THE CITY OF NEW YORK compensatory damages in an amount to be set by the court, and punitive damages in the amount of $1,000,000 for the willful and wanton perpetuation of a common law public nuisance by defendants;

6. Taxing and allowing the costs and disbursements against defendants and directing that plaintiff THE CITY OF NEW YORK have execution therefor;

7. Granting to plaintiffs such other and further relief as the Court may deem just, proper and equitable.

Pursuant to section 130-1.1a of the Rules of the Chief Administrator, it is certified that, to the best of my knowledge, information and belief, formed after a reasonable inquiry under the circumstances, that the presentation of the

papers attached hereto and the contentions contained therein are not frivolous.

Dated: New York, New York
October 18, 2012

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York
Attorney for Plaintiffs

Richard Hartzman

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VERIFICATION

GABRIEL TAUSSIG, an attorney admitted to practice before the courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury pursuant to CPLR 2106:

I have been duly designated as Corporation Counsel of the City of New York and as such, I am an officer of the City of New York in the within action. I have read the foregoing complaint and know the contents thereof; the same are true to my knowledge except as to those matters I believe them to be true.

The reason this verification is not made by the City of New York is that it is a corporation. My belief as to all matters not stated upon my knowledge is based upon information obtained from various departments of the city government and from statements made to me by certain officers or agents of the City of New York.

Dated: New York, New York
October 18, 2012

Gabriel Taussig

GABRIEL TAUSSIG

Index No. Year 2012

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

THE CITY OF NEW YORK,

Plaintiffs,

-against-

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

Defendants,

SUMMONS AND VERIFIED COMPLAINT

MICHAEL A. CARDOZO
*Corporation Counsel*

*Attorney for... Plaintiff...*
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*1 Centre Street, Rm. 1012N*
*New York, NY 10007*
*Tel.: (212) 788-7140*
*RICHARD HARTZMAN, Assistant Counsel*

*Due and timely service of a copy of the*
*Within is hereby admitted.*
*New York, .....2012.....*

.....
*Attorney for*

*To.....*, *Esq.*
*Attorney for*