

Lasser Law Group

Airbnb Wins Federal Injunction in Fight with NYC Over Short-Term Rental Disclosure Law

Stephen M. Lasser · Wednesday, April 10th, 2019

As you may have read in our [2016](#) and [2018](#) articles, it has been illegal in New York since 2010 to rent an apartment in a multiple dwelling for less than 30 days pursuant to § 4 of the NY Multiple Dwelling Law. Notwithstanding this law, illegal short-term rentals in New York flourished resulting in a new law being enacted in 2016, NY Multiple Dwelling Law § 121, which levies fines for posting advertisements for apartment rentals with a term less than 30 days. Airbnb filed a lawsuit against the State of New York and New York City challenging the validity of the law on the basis that it failed to clearly identify who would be fined for § 121 violations, the advertisers who post on Airbnb or Airbnb. That lawsuit settled once the New York Attorney General's Office clarified that fines would not be levied against Airbnb for acting as the hosting site, and that instead the fines would be levied against those individual hosts who post their short-term rental listings on Airbnb's website.

In August 2018, Mayor DeBlasio reignited New York City's battle with Airbnb by signing Local Law 146, aiming to regulate booking services like Airbnb by requiring them to file monthly reports with the New York City Office of Special Enforcement. The mandatory monthly reports require hosting websites like Airbnb to disclose the names and addresses of hosts using the service, their contact information, and fees received, among other items. Airbnb filed a lawsuit to prevent enforcement of Local Law 146 shortly after Mayor DeBlasio signed the new law. On January 3, 2019, U.S. District Judge Paul Engelmayer of the Southern District of New York (the "SDNY") issued a preliminary injunction preventing New York City from enforcing Local Law 146, based upon the Fourth Amendment of the U.S. Constitution.

The Fourth Amendment prohibits unreasonable searches and seizures and requires the government to have probable cause to obtain a search warrant to inspect records. Notwithstanding the Fourth Amendment, the Supreme Court has on occasion ruled that warrantless government searches may comply with the Fourth Amendment in limited instances such as border searches, when an individual provides consent to a search, or evidence of a criminal activity is in plain view of authorities.

However, in the most recent lawsuit between Airbnb and New York City, the SDNY Judge ruled that Local Law 146 was a form of unwarranted search and seizure in violation of the Fourth Amendment of the U.S. Constitution. The Judge adopted the

reasoning of a 2015 U.S. Supreme Court decision, *City of Los Angeles v. Patel*, where the U.S. Supreme Court struck down a Los Angeles Municipal Code that compelled hotels to make guest information available to police officers without a warrant. As a result, the SDNY Judge ruled that Local Law 146 was unconstitutional and issued an injunction prohibiting enforcement of Local Law 146.

If Airbnb's challenge of the Local Law 146 had been unsuccessful, the records obtained by New York City under the statute could have been another potential information source for co-op and condo boards and building owners to prove illegal short-term rental cases, and may have also discouraged some individuals from using Airbnb and other hosting websites. Instead co-op and condo boards and building owners will have to continue to monitor and photograph website postings and document illegal short-term rentals through surveillance cameras and eyewitness accounts. Despite the fact short-term rentals in multiple dwelling buildings are illegal in many municipalities including the entire state of NY, and despite enforcement efforts, Airbnb's services remain in demand and there has been a lot of buzz on Wall Street about an initial public offering potentially happening in 2019 or 2020.

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