

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
RESTAURANT OPPORTUNITIES
CENTERS (ROC) UNITED, INC., JILL
PHANEUF, and ERIC GOODE,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States of America,

Defendant.

Civil Action No. 1:17-cv-00458-GBD

DECLARATION OF RACHEL J. ROGINSKY, ISHC

EXPERT DECLARATION OF RACHEL J. ROGINSKY, ISHC

I. Experience and Qualifications

1. I am currently the Owner and Founder of Pinnacle Advisory Group, Inc. Pinnacle Advisory Group is one of the nation's leading, full-service hospitality consulting firms. Pinnacle Advisory Group is comprised of five divisions: consulting, valuation, development services, litigation support, and asset management. Pinnacle's clients benefit from the services of a total of 14 professionals located in offices in Boston, New York City, Washington, D.C., Los Angeles, Tampa, and Portland. Pinnacle Advisory Group clients include local, regional, national, and international financial institutions, REITs, private equity firms, hotel companies, developers, public sector agencies, airport authorities, hotel management companies, attorneys, and colleges/universities. Since 1991, Pinnacle Advisory Group has been involved with more than \$60 billion of hotel, resort, and convention assets throughout the United States and Caribbean.
2. I earned my Bachelors of Science degree from Cornell School of Hotel Administration in 1979. Cornell's hotel school is considered to be the leading hospitality program in the world.
3. I have more than 30 years of experience in hospitality consulting. After graduating from Cornell, I started my career in hospitality operations, and then worked with the national accounting firm Pannell Kerr Forster, eventually becoming a Principal, overseeing their Management Advisory Services practice in New England. In 1991, I founded Pinnacle Advisory Group.
4. I have authored and co-authored industry journal articles and several books related to the hospitality business. I am the co-editor and an author for Hotel Investments - Issues and Perspectives, published by the American Hotel and Lodging Educational Institute. With five editions (1995, 1999, 2003, 2006, 2011, and 2014), these books are used by most major hotel schools and many hotel industry leaders.
5. I am an adjunct professor at Boston University School of Hospitality Administration. I currently teach Hospitality Market Feasibility and Valuation in the undergraduate program; I will be teaching a similar course to the graduate program in the spring of 2018. I am also a regular guest lecturer at Cornell School of Hotel Administration, and other prestigious institutes of higher education including Johnson & Wales, University of New Hampshire, Massachusetts Institute of Technology, and Florida International University.
6. I am the Chair Emeritus of the International Society of Hospitality Consultants (ISHC). ISHC is the world's greatest source for hospitality expertise and counsel, represented by some two hundred of the industry's most respected professionals from across six continents. I have been a Board Member for over six years, have led numerous committees, and was the Chairman in 2015.
7. I am on the New England Real Estate Journal Hotel Industry Advisory Board, and a long-time Board Member for the Massachusetts Lodging Association.
8. My expertise includes assessing competition in the hotel industry, and I have regularly assessed the nature and extent of competition among hotels throughout most major markets within the United States. Annually, I review and determine competitive sets of hotels for over 150 geographic areas in

the United States. My expertise also includes evaluating impact that results from hotel competition. Specifically, I have authored reports and have given presentations on hotel impact issues, and my firm has taken a lead role in preparing impact studies for most major hotel companies.

9. I have been certified as an expert witness on hotel industry issues in numerous state and federal courts.
10. I am regularly sought after as a hotel industry expert by most major news organizations, including but not limited to *The New York Times*, *The Wall Street Journal*, and *The Boston Globe*. I have spoken at major hotel events such as the American Lodging Investment Summit, the International Restaurant and Foodservice Show, and events sponsored by the Real Estate Finance Association, New England Women in Real Estate, and the Urban Land Institute.
11. Pinnacle Advisory Group is being compensated for the time I spend on this matter at my normal and customary rate (currently, \$400/hour, except for testimony and trial preparation, which I currently bill at \$500/hour).

II. Assignment and Materials Reviewed

12. I was retained by plaintiffs' counsel in this case to evaluate the nature and extent of any competition between the plaintiffs' and the defendant's hotels in New York City, and to describe the nature and extent of the demand for those hotels' services by foreign and domestic government officials.
13. The materials that I reviewed include websites with information about plaintiffs' and defendant's hotels and the hotel market in New York City, definitions from the Uniform System of Accounts for the Lodging Industry (USALI), websites with information on the United Nations, information from www.NYC.gov, data from the Monthly Group Room Nights Report prepared for NYC & Company, defendant's memorandum in support of his motion to dismiss, and the Declarations of Eric Goode, James Mallios, Thomas Colicchio, Saru Jayaraman, Jill Phaneuf, and Christopher Muller. As a hotel expert with over 30 years of experience, I also relied upon my general knowledge of the hotel industry, which is based in part on my regular review of industry publications, market-specific data, and other materials on the New York City lodging markets.

III. The Nature of Hotel Competition

14. Hotels compete with each other if they market to and attract customers from a common set of visitors. If, for whatever reason, demand increases for rooms at one hotel, that will result in more customers from this common set of visitors staying at that hotel, and fewer staying at its rivals' hotels.
15. Primary competitors include lodging facilities that market to and attract customers from essentially the same pool of visitors. Secondary competition consists of lodging facilities that market to and attract customers from pools of visitors that overlap only in part, and sometimes only under special circumstances. Primary competition occurs among lodging facilities that are similar with respect to the following criteria: location, facilities, services, amenities, class, image, and price. Secondary competition occurs with lodging facilities that have similar locations but share only some of the other major qualities, including particularly class and image.

IV. Summary of Conclusions

16. Eric Goode, owner of the Bowery Hotel and the Maritime Hotel, is of the opinion that the Bowery Hotel competes with Trump SoHo and Trump International New York and that the Maritime Hotel's penthouse rooms compete with Trump SoHo. I share this opinion because the Bowery Hotel, the Trump SoHo, and the Trump International New York attract customers from overlapping pools of visitors and share several comparable characteristics, and because the Maritime Hotel's penthouse rooms and the Trump SoHo attract similar pools of visitors and have several comparable characteristics in common.
17. I also conclude that the Beekman Hotel, which includes the Fowler & Wells restaurant owed by Thomas Colicchio, competes with Trump SoHo. These hotels share several comparable characteristics and attract a common pool of visitors.

V. The Trump SoHo and the Bowery Hotel Compete with Each Other

A. Locational Proximity

18. Both the Bowery Hotel and the Trump SoHo are located in Downtown Manhattan: the Bowery Hotel is located in the Lower East Side; the Trump SoHo is located in SoHo near Tribeca/West Village. This places the hotels less than one mile from each other, and less than a 10-minute cab ride apart (with traffic). Locationally, these hotels are similarly accessible for the market area's demand generators.

B. Comparable Facilities, Services and Amenities

19. Both the Bowery Hotel and the Trump SoHo are full-service, higher-end hotel facilities. Both hotels provide luxuriously appointed guest rooms and suites; both provide ample meeting space (the Trump SoHo's largest ballroom can accommodate up to 400 guests; the event space at the Bowery can accommodate up to 600 people); both provide a minimum of three meals/day at on-site food and beverage facilities; both provide 24/7 room service to hotel guests; both offer guests spa services; and both include a fitness center. As such, both hotels provide comparable facilities, services and amenities.

C. Comparable Class and Image

20. The Bowery Hotel and the Trump SoHo are of similar class and image. Both hotels offer services typically found in higher-end hotels. Examples of this include guest rooms with floor to ceiling windows, deluxe beddings and linens in all guest rooms and suites, business center services, valet, and 24/7 concierge.
21. The Bowery Hotel is a AAA Four Diamond Hotel and the Trump SoHo is a AAA Five Diamond Hotel, placing both hotels at the high end of quality and services. Both hotels received the Readers' Choice Awards "Best Hotels in NYC" in 2016, with the Bowery ranked #33 and the Trump SoHo ranked #35. Both Hotels were placed on the Conde Nast Traveler ranking - "Gold" for Trump and "Hot" for the Bowery. Oyster.com recognized both hotels with various "Best Hotels in NYC" awards. Trip Advisor

rated both hotels similarly: each hotel received a 4.5 out of 5 in its list of 468 hotels in New York City. Google.com gave the Bowery a rating of 4.4 out of 5; Trump SoHo received a 4 out of 5. U.S. News and World Report also ranked these hotels similarly - #21 Best Hotel in NYC for Trump SoHo and #36 Best Hotel in NYC for the Bowery Hotel, and both received a rating of "Good." These facts attest to the extensive similarities between the Trump SoHo and the Bowery Hotel with respect to quality and image.

D. Comparable Pricing

22. Hotels typically offer a variety of room rates and these rates differ based on facilities, class and image, seasonal factors, and business strategies. For example, the rooms and suites at the Bowery currently range from \$395 to \$850, depending on the timing of the reservations. The Trump SoHo's advertised room rates are currently \$300 to \$1,000 (not including 2 bedroom suites). In 2016, the Bowery's Average Daily Room Rate (ADR) was approximately \$500. The Trump SoHo, during the same time frame, had a similar ADR.

E. Conclusion

23. Based on my many years of experience in the hospitality industry, and my specific review of the aforementioned data regarding the competitive attributes of each hotel, I am of the opinion that the Bowery Hotel, unlike most hotels in New York City, competes with the Trump SoHo.

VI. The Trump International New York and the Bowery Hotel Compete with Each Other

A. Locational Proximity

24. Both hotels are located in Manhattan: The Trump International New York is located in the Central Park West area; the Bowery is located in the Lower East Side. This places the hotels a 20-minute cab ride apart (with traffic). Both hotels are located in neighborhoods considered desirable locations for visitors to Manhattan. For example, both hotels are within an approximate 15-minute cab ride from the United Nations Headquarters, the Empire State Building, Pennsylvania Station, and Grand Central Station. Both hotels are approximately 18 miles, or a 30-minute cab ride, to JFK Airport, placing these hotels equidistant from New York City's major airport for international travel. Both hotels are surrounded by many of New York City's top-rated restaurants. Locationally, these hotels are similarly accessible to the midtown area's demand generators

B. Comparable Facilities, Services and Amenities

25. Both the Trump International New York and the Bowery are full-service, higher-end hotel facilities providing services typically found in higher-end hotels. Both hotels provide luxuriously appointed guest rooms and suites, provide a minimum of three meals/day at on-site food and beverage facilities, provide 24/7 room service to hotel guests, offer guests spa services, and include a fitness center. As such, the two hotels provide comparable facilities.

C. Comparable Class and Image

26. The Trump International New York and the Bowery are of a similar class and image. Both hotels offer services typically found in higher-end hotels. Examples include guest rooms with floor to ceiling

windows, deluxe beddings and linens in all guest rooms and suites, business center services, valet, and 24/7 concierge.

27. The Bowery Hotel is a AAA Four Diamond Hotel and the Trump International New York is a AAA Five Diamond Hotel, placing both hotels at the high end of quality. Both hotels received the Readers' Choice Awards "Best Hotels in NYC" in 2016. Both hotels were placed on the Conde Nast Traveler ranking - "Gold" for Trump International and "Hot" for the Bowery. Oyster.com recognized both hotels with various "Best Hotels in NYC" awards. Trip Advisor rated both hotels similarly: each hotel received a 4.5 out of 5 in its list of 468 hotels in New York City. Google.com gave the Bowery a rating of 4.4 out of 5, while Trump International New York received a 3.1 out of 5. The Bank of America – Corporate Perks site ranked both hotels with 5 stars. These facts attest to the similarities between the two hotels with respect to quality and image.

D. Comparable Pricing

28. Hotels typically offer a variety of room rates and these rates differ based on facilities, class and image, seasonal factors, and business strategies. For example, the rooms and suites at the Bowery currently range from \$395 to \$850, depending on the timing of the reservations. The Trump International New York advertised room rates are currently \$550 to \$1,000 (not including 2 bedroom suites).

E. Conclusion

29. Based on my many years of experience in the hospitality industry, and my specific review of the aforementioned data regarding the competitive attributes of each hotel, I am on the opinion that the Bowery Hotel, unlike most hotels in New York City, competes with the Trump International New York.

VII. The Trump SoHo and the Maritime Hotel Compete with Each Other

A. Locational Proximity

30. Both the Maritime Hotel and the Trump SoHo are located in Downtown Manhattan: the Maritime Hotel is located in the Chelsea neighborhood; the Trump SoHo is located in SoHo near Tribeca/West Village. This places the hotels approximately 1.5 miles, and a 15-minute cab ride (with traffic), from each other. Locationally, these hotels are similarly accessible for the market area's demand generators.

B. Comparable Facilities, Services and Amenities

31. Both the Maritime Hotel and the Trump SoHo are considered full-service hotel facilities. Both hotels provide luxuriously appointed guest rooms and suites. For example, the Penthouse rooms at the Maritime provide outdoor terraces with rain showers (and in the case of the Rooftop Penthouse, a 1500 square foot rooftop terrace with outdoor seating and panoramic views of the City), large soaking tubs, complimentary Wi-Fi, wet bars, Bose sound systems, Nespresso coffee makers, and an artisanal minibar. The Junior Penthouse, the Terrace Penthouse, and the Rooftop Penthouse rooms range in size from 550 square feet to 2,500 square feet. The Penthouse rooms are similar in size to many of the suites in the Trump SoHo. Both hotels provide ample meeting/banquet space. The Trump SoHo's largest ballroom can accommodate up to 400 guests; the event space at the Tao restaurant in the Maritime Hotel can accommodate up to 1,500 people. Both hotels provide on-site food and beverage

facilities, and 24/7 access to a gym, concierge, and business center. As such, both hotels provide similar facilities.

C. Comparable Class and Image

32. The Trump SoHo and the Maritime are of similar class and image. Both hotels offer services typically found in higher-end hotels. Examples include deluxe beddings and linens, 24/7 room service, and concierge services.
33. Both hotels receive high online ratings. For example, TripAdvisor, hotels.com, and expedia.com all give the Maritime 4.5 out of 5 stars. The hotel has a 4.3 out of 5 star rating on google.com. Kayak.com rates Maritime an 8.8 out of 10 for an overall rating of "Excellent. U.S. News & World Report gives the Maritime 4.0 out of 5 stars.

D. Comparable Pricing

34. Hotels typically offer a variety of room rates and these rates differ based on facilities, class and image, seasonal factors, and business strategies. For example, the Penthouse rooms at the Maritime Hotel currently range from \$725 to \$1,500, depending on the timing of the reservations. The Trump SoHo's advertised room rates currently range from \$300 to \$1,000 (not including 2 bedroom suites).

E. Conclusion

35. Based on my many years of experience in the hospitality industry, and my review of the aforementioned data regarding the competitive attributes of each hotel, especially their locations and the Maritime Hotel's penthouse rooms, I am on the opinion that the Maritime Hotel's penthouse rooms, compete with the Trump SoHo.

VIII. The Trump SoHo and the Beekman Hotel Compete with Each Other

A. Locational Proximity

36. Both hotels are located in Lower Manhattan approximately 1.5 miles and a 12-minute cab ride (with traffic) from each other. Locationally, these hotels are similarly accessible for the market area's demand generators.

B. Comparable Facilities, Services and Amenities

37. Both the Beekman Hotel and the Trump SoHo are full-service, higher-end hotel facilities. Both hotels provide luxuriously appointed guest rooms and suites and ample meeting space (the Trump SoHo's largest ballroom can accommodate up to 400 guests; the event space at the Beekman can accommodate numerous types of functions with the largest room accommodating up to 225 people); both provide a minimum of three meals/day at on-site food and beverage facilities; both provide 24/7 room service and turn down services to hotel guests; and both include a fitness center. As such, the two hotels provide comparable facilities, services and amenities.

C. Comparable Class and Image

38. The Beekman Hotel and the Trump SoHo are of similar class and image. Both hotels offer services typically found in higher-end hotels. Examples of this include deluxe beddings and linens in all guest rooms and suites, business center services, valet, and 24/7 concierge.
39. The Beekman Hotel is a AAA Four Diamond Hotel, and the Trump SoHo is a AAA Five Diamond Hotel, placing both hotels at the high end of quality and services. The Beekman Hotel is ranked the 11th best hotel in New York City by TripAdvisor, with a five-star classification. It has also been awarded TripAdvisor's Certificate of Excellence and boasts a perfect 5.0 rating. As examples of Beekman Hotel ratings: Forbes Magazine named the Beekman Hotel "New York's Grandest New Luxury Hotel"; Travel & Leisure listed it as one of the "Best New Hotels in the World"; and Frommers called it the "Best New Hotel" and gave it a perfect three-star rating. Conde Nast Traveler said of it, "For all the talk about New York's latest ground-shifting architecture, it might just be the Beekman that feels the most revelatory." The Beekman Hotel, and its culinary offerings, were also recognized by Food & Wine Magazine with a 2017 Food & Wine Hotel Award. These facts attest to the Beekman Hotel's strong upscale quality and image, placing it in a similar class and image to the Trump SoHo.

D. Comparable Pricing

40. Hotels typically offer a variety of room rates, and these rates differ based on facilities, class and image, seasonal factors, and business strategies. For example, the rooms and suites at the Beekman Hotel currently range from \$300 to \$1,200 depending on the timing of the reservations. The Trump SoHo's advertised room rates are currently \$300 to \$1,000 (not including 2 bedroom suites).

E. Conclusion

41. Based on my many years of experience in the hospitality industry, and my specific review of the aforementioned data regarding the competitive attributes of each hotel, I am of the opinion that the Beekman Hotel competes with the Trump SoHo.

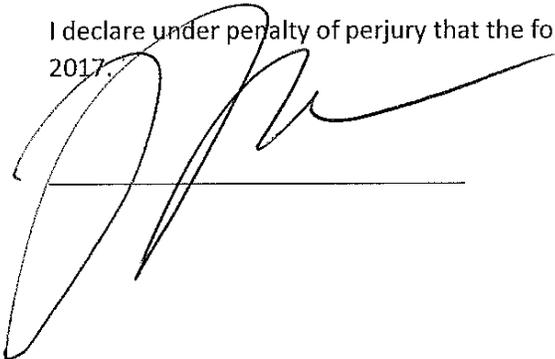
IX. Trump SoHo, Trump International New York, Bowery, Maritime, and Beekman Compete For Government Business

42. The primary source of revenue for a hotel generally comes from the rental of rooms and suites to visitors. According to the Uniform System of Accounts for the Lodging Industry (USALI), Rooms Revenue is divided into four parts: Transient Rooms Revenue, Group Rooms Revenue, Contract Rooms Revenue, and Other Rooms Revenue. Lodging demand within each of these four segments stems from a variety of visitors including business travelers, leisure travelers, associations, conventioners, airline crews, etc.
43. Lodging demand is also generated from the government sector. A portion of this government demand is for high-end hotels. Government travelers who stay at high-end hotels include certain foreign government officials such as diplomats and heads of state, as well as high-level state and local government officials including elected officials and political appointees. For purposes of this report, I will refer to these government travelers as "higher-rated government demand."

44. These government travelers visit New York City on official business for many reasons, including the presence of the United Nations Headquarters, numerous consulates, and numerous other government office buildings, as well as the city's status as a top financial center. These reasons for visiting New York City have become more prominent with the globalization of trade, business, and finance. Following are some more specific reasons for higher-rated government demand visitors to travel to New York City and stay at high-end hotels.
45. The headquarters of the United Nations is located in Manhattan between First Avenue on the west, East 42nd Street to the south, East 48th Street on the north, and the East River to the east. Every month there are numerous meetings and events held at the UN. There are currently 193 Member States in the United Nations. Each member state is a member of the United Nations General Assembly. Meetings and conferences at the UN, including the General Assembly event in September, bring in thousands of government travelers--including diplomats and other foreign government travelers, federal government employees from around the country, and other government travelers (e.g., security personnel, aides, etc.). These travelers typically seek high-end lodging facilities and pay with government funds.
46. The New York City Mayor's Office for International Affairs generates higher-rated government demand in the City. According to the Office's website, the Office "works to foster positive relations and encourage collaboration between the international community and New York City's agencies and local neighborhoods. The Office is focused on sharing New York City's policies and best practices globally, as well as responding to requests from foreign governments, the United Nations, and the U.S. Department of State. International Affairs also advises City agencies on diplomatic and consular matters, and provides guidance to the diplomatic and consular community on City-related issues." These are functions that generate higher-rated government demand for high-end hotels in New York City.
47. Business development and collaboration between private entities and domestic and foreign governments contributes to higher-rated government demand in New York City. For example, foreign governments seek U.S. investments in their countries and visit banks and other investment firms in New York City for that purpose.
48. There are approximately 125 foreign representations in New York City including 105 consulates, 12 general consulates, and 8 representative offices. There are approximately 66 government buildings, both foreign and domestic, within a two-mile radius of the Bowery, including 30 consulates, 10 federal government buildings, 10 state government buildings, 14 municipal buildings, and the United Nations Headquarters. There are approximately 101 government buildings, both foreign and domestic, within a two-mile radius of the Maritime Hotel, including 77 consulates, 7 federal government buildings, 4 state government buildings, 13 municipal buildings, and the United Nations Headquarters. These government buildings host a variety of events and meetings attended by high-level government officials from both foreign and domestic governments, and generate substantial higher-rated government demand for high-end hotels in New York City.

49. Conferences and events held in New York City attract high-level government visitors, both domestic and foreign. For example, Climate Change Week in New York City has hosted hundreds of events that bring in many government visitors. Given New York City's status as a global financial center, numerous events draw both domestic and foreign government representatives, including high-ranking officials, to conferences and seminars. Pinnacle Advisory Group prepares a group booking pace report for a select set of seven upscale/luxury hotels in New York City. Included in group demand reported by the contributing properties (to both Pinnacle and STR Global) is Diplomatic/Government group business. In a typical year the seven contributing properties accommodate approximately 600,000 total group room nights, some of which are government-related.
50. These examples support the conclusion that there is a substantial amount of higher-rated government demand that stays at higher-end hotels throughout Manhattan. These government travelers choose their hotels based on a variety of factors such as price, location, class, and availability, and prefer higher-end hotels. Eric Goode states in his declaration (at paragraph 3) that "clientele of my establishments frequently include diplomats, other officials of foreign states, and officials of the United States and various states." Goode's declaration further states (at paragraph 47) that "[m]y hotels and restaurants are regularly frequented by foreign and domestic government officials." Based on my knowledge and experience, coupled with the facts outlined in this Declaration, I am of the opinion that government travelers--including diplomats and other foreign government officials, and local, state and federal government employees--rent rooms and suites at the Trump SoHo, the Trump International New York, the Bowery, the Maritime, and the Beekman.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of August, 2017.

A handwritten signature in black ink, appearing to be "Eric Goode", written over a horizontal line. The signature is fluid and cursive.