

City of New York v Shazam Rest. Corp.

2013 NY Slip Op 33690(U)

March 14, 2013

Sup Ct, NY County

Docket Number: 400031/13

Judge: Carol E. Huff

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: **CAROL E. HUFF**
Justice

PART 32

CITY OF NY

INDEX NO. 400031113

MOTION DATE _____

Shazam Restaurant Corp., ET AL.

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~order~~

with accompanying memorandum decision

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: MAR 14 2013


CAROL E. HUFF

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

-----X

THE CITY OF NEW YORK, : Index No. 400031/13
Plaintiff, :
- against - :
SHAZAM RESTAURANT CORP.; 1G SECOND :
GENERATION PARTNERS, L.P.; 1 BLDG CO., INC.; :
THE LAND AND BUILDING KNOWN AS :
151 DYCKMAN STREET, TAX BLOCK 2220, :
TAX LOT 1, COUNTY OF NEW YORK, CITY and :
STATE OF NEW YORK; THE NEW YORK STATE :
LIQUOR AUTHORITY; "JOHN DOE" and "JANE DOE"; :
fictitiously named parties, true names unknown, the parties :
intended being the owners, lessees, operators, or occupants :
of the commercial establishment operating as :
"MTB Lounge" located at 151 Dyckman Street, New York, :
New York; and any person claiming any right, title or :
interest in the real property which is the subject of this :
action, :
Defendants. :

-----X

CAROL E. HUFF, J.:

Motions with sequence numbers 001 and 002 are consolidated for disposition.

In this nuisance abatement action with respect to premises located at 151 Dyckman Street, New York, New York, plaintiff City of New York seeks, pursuant to various provisions of the Nuisance Abatement Law (New York City Administrative Code §§ 7-701 et seq), orders and a judgment closing, restricting the operations of, and/or fining defendants because of alleged prohibited activities.

Defendant Shazam Restaurant Corp. operates a restaurant and night club at the premises.

On January 9, 2013, the City was granted a temporary restraining order barring Shazam from engaging in prohibited activities but not closing the premises, pursuant to the City's motion seeking permanent injunctive relief (motion 001). On March 7, 2013, the City was granted a temporary restraining order closing the premises because of further alleged prohibited activity, pursuant to the City's second motion seeking permanent injunctive relief (motion 002). By stipulation dated March 11, 2013, the City and the landlord of the premises, I Bldg Co., Inc., and the Land and Building Known as 151 Dyckman Street, settled their dispute.

At a hearing held March 11 and 12, 2013, the City presented the testimony of several police officers and an auxiliary police officer attesting to the service of liquor to minors at the premises, and to conditions of overcrowding and fighting at the premises. These witnesses presented credible testimony. The testimony of a Shazam security guard and one of its proprietors failed to rebut the City's contentions of prohibited activity both before and after the January 9 TRO. Specifically, there existed violations of both NYC Admin. Code § 7-703(h) (underage drinking) and § 7-703(l) (conduct endangering the safety of a considerable number of persons).

Accordingly, it is

ORDERED that the complaint is dismissed as to defendants I Bldg Co., Inc., and the Land and Building Known as 151 Dyckman Street; and it is further

ORDERED and ADJUDGED that the motions (001 and 002) are granted and judgment is awarded to plaintiff to the following extent:

1. Defendant Shazam Restaurant Corp., its agents, assigns, employees, patrons and/or representatives are hereby permanently enjoined from violating or permitting the violation of the

New York State Alcoholic Beverage Control Laws, the New York State Penal Laws, or any illegal activity enumerated in Title 7 of the New York City Administrative Code, within the subject premises.

2. Defendant Shazam Restaurant Corp. shall obtain, install and utilize an electronic age-verification and recording system and shall use the system prior to serving any individual an alcoholic beverage to insure that the individual is at least twenty-one (21) years of age. Any individual with scannable identification as defined within the New York State Alcoholic Beverage Control Laws will have the identification scanned into the system. If a patron produces unscannable identification, vital information including date, time, name and date of birth shall be entered into an official log or a digital photo may be taken of the unscannable identification. This information shall be maintained for at least a thirty (30) day period.

3. Defendant Shazam Restaurant Corp. shall permit into the premises no more persons than provided for in the certificate of occupancy, including staff.

4. Defendant Shazam Restaurant Corp. shall obtain the services of a new security company, approved by plaintiff, that is duly licensed and bonded by the State of New York to provide security guards to the subject premises. Shazam shall employ at least two (2) New York State licensed security guards, pursuant to the Security Guard Act under General Business Law Article 7-A, Section 89, at the premises every night it is open for business from 7:00 p.m. until closing. There shall be at least one (1) guard stationed at the entrance to the premises, whose responsibility shall be to check the identification of all individuals wishing to enter the establishment, to scan the identification through the scanner as detailed in paragraph 2 above, to ensure that no illegal activity is occurring within the premises, and to limit the number of

individuals entering the premises to no more than provided for in the certificate of occupancy, including staff. Additionally, there shall be at least one (1) guard roaming the interior of the premises to ensure that no illegal activity is occurring within the establishment.

5. Defendant Shazam Restaurant Corp. is permitted to reopen the premises and the TROs shall be vacated upon compliance with the terms of this order and judgment.

Dated: **MAR 14 2013**


CAROL E. HUFF
J.S.C.