

Velva L. Price
District Clerk
Travis County
D-1-GN-18-000063
Ruben Tamez

CAUSE NO. D-1-GN-18-000063

ROGER OBERG,
Plaintiff

v.

AIRBNB, INC. and
AIRBNB PAYMENTS, INC.
Defendants

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 250TH
§ _____ JUDICIAL DISTRICT

ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND DAMAGES

NOW COMES, Roger Oberg, Plaintiff ("Oberg" or "Plaintiff"), and complaining of Defendants, Airbnb, Inc. ("Airbnb") and Airbnb Payments, Inc. ("AP"), shows as follows:

Discovery Level

- 1. Discovery is to be conducted under Level 2 of Rule 190.3 of the T.R.C.P.

Jurisdiction, Venue and Rule 47 Statement

- 2. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief.
- 3. The damages sought are within the jurisdictional limits of the court.
- 4. The court has jurisdiction over the Defendants because they do business in Travis County, Texas, and have taken action affecting the rights of Plaintiff in Travis County, Texas.
- 5. Venue is proper because Defendants directed their actions towards Plaintiff in Travis County, Texas, and Plaintiff was injured and affected by Defendants' actions in Travis County, Texas.

Parties

- 6. Roger Oberg is a resident of Texas, and of Travis County.
- 7. Defendant, Airbnb, Inc., is a duly registered business incorporated in the State of California, with its principal offices located at 888 Brannan Street, 4th Floor, San Francisco, CA 94197. It is not registered to do business in the State of Texas, and may therefore be served by serving the Texas Secretary of State.

8. Defendant, Airbnb Payments, Inc., is a Delaware corporation, registered to do business in the State of Texas, and may be served through its registered agent, Corporation Services Company, 211 E 7th Street, Suite 620, Austin, Texas, 78701.

Summary of Complaint

9. The Defendants describe their business, on their website, in the "About Us" section, as follows: "*Founded in August of 2008 and based in San Francisco, California, Airbnb is a **trusted community marketplace for people to list, discover, and book** unique accommodations around the world -- online or from a mobile phone or tablet.*" (Emphasis added).

10. That "trust" was put to the test and miserably failed to live up to any acceptable standards when Plaintiff's money was effectively misappropriated by the application of convoluted, misleading, vague, ambiguous, inconsistent, arbitrary and plainly illegal policies and procedures, which the defendants impose on their users

11. Plaintiff "trusts" that his is not an isolated instance, and believes that it is necessary to bring this action not only to recoup his money, but also to rectify the egregious behavior of these Defendants.¹

Facts and Allegations

12. Airbnb is a residential rental service that allows one to rent room in a host's residence, on a short term (one night) or long (er) term basis.

13. AP is a subsidiary of Airbnb that processes payments for the service.

14. To utilize the service, one has to create an account, and agree to be subject to the terms and conditions of Airbnb and AP.

15. The terms and conditions for both Defendants are fairly similar. Relevant here, are the cancellation policies and provisions incorporated therein.

16. An Airbnb host is allowed to select among three cancellation policies.

¹ In this regard, the Plaintiff reserves the right to amend his petition, after relevant discovery is conducted, to assert a claim under Rule 42 of the TRCP, related to Class Actions.

“Cancellation Policies

Airbnb allows hosts to choose among three standardized cancellation policies (Flexible, Moderate, and Strict) that we will enforce to protect both guest and host alike. The Super Strict cancellation policies apply to special circumstances and are by invitation only. **The Long Term cancellation policy applies to all reservations of 28 nights or more. Each listing and reservation on our site will clearly state the cancellation policy.** Guests may cancel and review any penalties by viewing their travel plans and then clicking ‘Cancel’ on the appropriate reservation. A host will be able to see the number of reservations a guest has canceled over the previous 12 months when the guest submits a request to book.

- Flexible
- Moderate
- Strict (grace period)
- Strict
- Super Strict 30 Days
- Super Strict 60 Days
- Long Term

Long Term: First month not refundable, 30 day notice for cancellation

- *Note: The Long Term cancellation policy applies to all reservations of 28 nights or more.*
- *Cleaning fees are always refunded if the reservation is canceled before check-in.*
- *Accommodation fees (the total nightly rate you’re charged) are refundable in certain circumstances as outlined below.*
- *If there is a complaint from either party, notice must be given to Airbnb within 24 hours of check-in.*
- **Airbnb will mediate when necessary, and has the final say in all disputes.**
- *A reservation is officially canceled when the guest clicks the cancellation button on the cancellation confirmation page, which they can find in Dashboard > Your Trips > Change or Cancel.*
- **Cancellation policies may be superseded by the Guest Refund Policy, extenuating circumstances, or cancellations by Airbnb for any other reason permitted under the Terms of Service. Please review these exceptions.**

- *Applicable taxes will be retained and remitted.* (Emphasis added).

17. The cancellation policy for the listing in question, displayed the following URL, to wit:

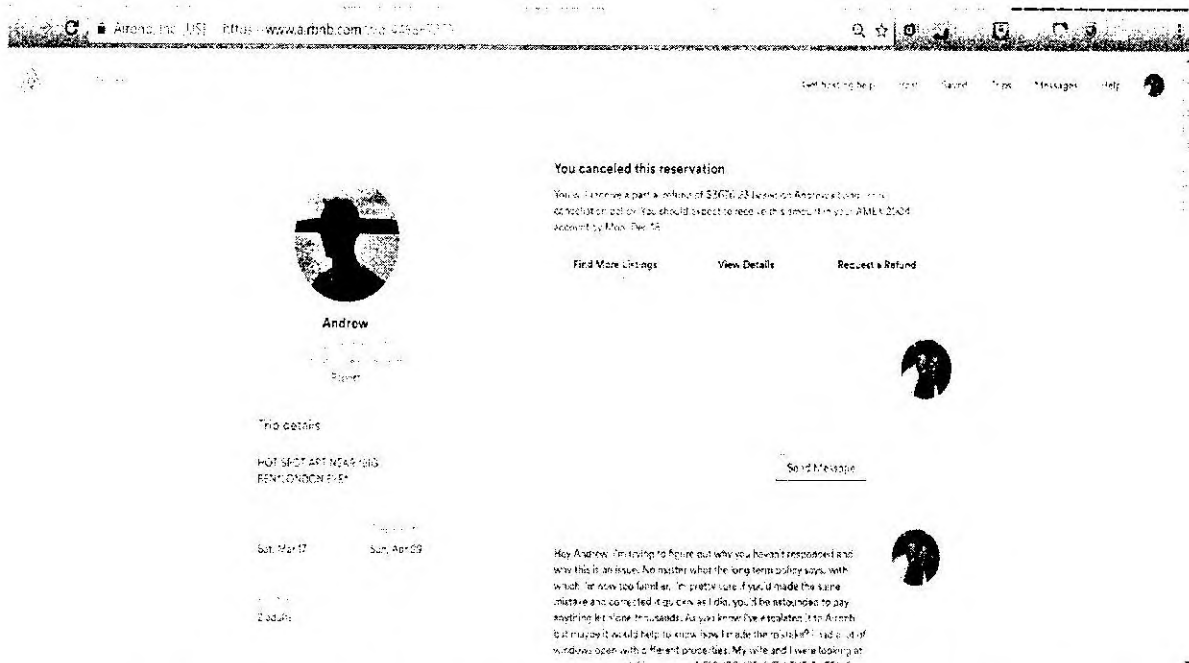
*“https://www.airbnb.com/home/cancellation_policies?guest_fee_policy=**grace** period **48 hours**#long-term*” (Emphasis added).

18. Against this backdrop, here are the facts surrounding the reservation made and subsequently cancelled by Plaintiff.

19. On December 8, 2017, Plaintiff made a reservation for a listing in London, England. The reservation was for over 30 days. It was to begin on March 17, 2018. He paid \$7,479.03 on his credit card.

20. Within exactly ten (10) minutes after making this reservation, Plaintiff realized that he had chosen a different property than intended, and immediately hit the "cancellation" button. On December 9, 2017, Airbnb refunded \$771.03, keeping \$6,708.00.

21. Plaintiff further received a message from the host indicating that Plaintiff would receive a \$3,676.23 refund, and that this money would be credited back to his credit card, by December 18, 2017.



22. Subsequently, Plaintiff received what appeared to be an offer to refund an additional \$1,000 from Airbnb.

23. Not satisfied to take an approximate \$2,000 loss for a cancellation that was made within ten (10) minutes of an advertised 48 hours cancellation grace period, the Plaintiff continued communicating with the Airbnb representative assigned to mediate the dispute.

24. As the communications continued, Plaintiff was shocked to find out that Airbnb had now overruled the host's offer to refund the \$3,676.23, and the only offer on the table was \$1,000. It was a final, "take it or leave it" offer. Airbnb was apparently invoking its right to make the final, non-appealable, decision and have the "final say". Needless to say, the host's promised refund did not arrive on December 18, 2017. Plaintiff refused to accept the \$1,000 payment, and this lawsuit followed.

Causes of Action

I. Declaratory Judgment.

- 25. Plaintiff incorporates paragraphs 1-24 as if fully set out herein.
- 26. Plaintiff seeks the following declarations:

- a. That the long term policy, as written, is void and unenforceable, as against public policy, in that the no refund portion represent a penalty in the form of liquidated damages, and has no reasonable relationship to any actual damages incurred by either Defendants and/or its hosts.
- b. That the long term policy, as written, is void and unenforceable, as against public policy, as it denies due process to Plaintiff, in that it allows Defendants to have the "final say" in any dispute.
- c. That the long term policy, as written, is void and unenforceable, and in violation of the open courts provision of the Texas Constitution.

II. Tortious Interference.

27. Plaintiff incorporates paragraphs 1-26 as if fully set out herein.

28. Defendants willfully and intentionally interfered with the host's offer to refund at least part of the money spent by Plaintiff to make the initial reservation.

29. Such interference caused Plaintiff damages, for which he now sues.

III. Money Had & Received.

30. Plaintiff incorporates paragraphs 1-29 as if fully set out herein.

31. Defendants converted, misappropriated, and kept, for their own use, moneys belonging to Plaintiff, which money, in equity and good conscience, should be returned to Plaintiff.

32. This remedy is particularly appropriate in this case, as it involves a refund, especially one that was partially recognized, and then, in bad faith recanted.

IV. Exemplary Damages.

33. Plaintiff incorporates paragraphs 1-32 as if fully set out herein.

34. The acts of Defendants are malicious, unconscionable and Plaintiff is entitled to exemplary damages, as allowed by law and as determined by a trier of fact..

V. Attorney Fees.

35. Plaintiff incorporates paragraphs 1-34 as if fully set out herein.

36. Plaintiff seeks his reasonable and necessary attorney fees and costs incurred in prosecuting this action and rectifying the wrongs committed by Defendants, including the request for declaratory relief.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for the following relief:

- a. That Defendants be cited to appear and answer; and
- b. that Plaintiff be awarded the declarations sought herein; and
- c. that Plaintiff be awarded his damages; and
- d. that Plaintiff be awarded his reasonable and necessary attorney fees and costs; and
- e. that Plaintiff be awarded pre and post-judgment interest as allowed by law; and
- f. that Plaintiff be awarded exemplary damages; and
- g. that Plaintiff have such other and further relief, in law and equity, to which he may show himself justly entitled.

Respectfully Submitted,

/s/ Bogdan Rentea
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