

**DEPARTMENT OF EXCISE AND LICENSES
DENVER, COLORADO**

FINAL DECISION

**IN THE MATTER OF A BUSINESS LICENSE(S) HELD BY GARTH C. YETTICK AT
410 NORTH MARION STREET, DENVER, COLORADO**

SHORT-TERM RENTAL LICENCE # 2017-BFN-0005511

Procedural History

On November 6, 2018, the Department of Excise and Licenses (the "Department") issued an Order to Show Cause for the short-term rental license held by Garth Yettick at 410 Marion Street, Denver, Colorado (the "Respondent").

On January 17, 2019, a hearing was held on the Order to Show Cause.

On January 23, 2019, the hearing officer issued a decision recommending that the short-term rental license be revoked (the "Recommended Decision").

The Department has not received any objections to the Recommended Decision from the Respondent or the Assistant City Attorney in this matter.

Findings and Conclusions

The Department alleges that the Respondent violated the Denver Revised Municipal Code, (the "D.R.M.C."), section 33-49(b) when he operated a short-term rental that was not his primary residence. If this law violation happened on the premises, the Director may suspend or revoke the short-term rental license. D.R.M.C. § 32-22(8).

At the hearing, the Respondent argued that D.R.M.C. § 33-46(4) only requires that he provide two forms of documentation to prove that the residence is his usual place of return for housing. Recommended Decision, ¶¶ 15, 17. Additionally, the Respondent argued that 410 Marion Street is in fact his primary residence, and he presented four witnesses who testified as such. *Id.* at ¶¶ 9, 11, 12, 13.

Upon review of the testimony and the exhibits submitted, the Director hereby adopts the Recommended Decision, as supplemented below. The Director finds that the Department may investigate whether the residence is the Respondent's usual place of return for housing even if he has provided two documents outlined in D.R.M.C. § 33-46(4). The Director further finds that the Respondent does not use 410 Marion Street as his primary residence.

As an initial matter, the Department has the authority to investigate violations of law on the premises. D.R.M.C. §§ 32-22; 33-554. It is unlawful to operate a short-term rental license that is not the applicant's primary residence. D.R.M.C. § 33-49(b). Primary residence means "a residence which is the usual place of return for housing as documented by at least two of the following: motor vehicle registration, driver's license, Colorado state identification card, voter registration, tax documents, or a utility bill." D.R.M.C. § 33-46(4). The natural reading of this definition suggests that a primary residence is a place of usual return, which must be "documented by at least two" items in an enumerated list. The term "documented by" indicates that the items are intended to show proof that the residence is a place of usual return for housing, not that they stand in for actual residency. The term "at least" means that the Department may go beyond those two items to determine if the residence is a place of usual return. Nothing in D.R.M.C. § 33-46(4) prohibits the Department from looking beyond those documents when investigating whether the Respondent is operating at a location that is not his primary residence. In fact, D.R.M.C. § 33-48(c) clearly states that the Director may require additional documentation as may be necessary to enforce the requirements of Article III, Chapter 33, or Chapter 32. Therefore, the Director adopts the hearing officer's finding that the Department has the authority to investigate whether the Respondent is operating a short-term rental that is not his primary residence regardless if the Respondent has submitted two forms of documentation.

Furthermore, the Department has shown, by a preponderance of the evidence, that the 410 Marion Street is not the Respondent's primary residence. The Department presented testimony from seven neighbors who claimed that the Respondent did not use 410 Marion Street as his usual place of return for housing. *Id.* at ¶¶ 1-8. All of the witnesses testified consistently. Each witness testified that they regularly observed the Respondent at the residence prior to the summer of 2017. *Id.* But soon after the summer or fall of 2017, the Respondent seemed to have moved out of the location. *Id.* During this period, neighbors noticed that packages were no longer being delivered to 410 Marion Street, they saw moving vans at the premises, and noticed that pictures were being taken of the house. *Id.* at ¶¶ 1-7. Each witness testified that, thereafter, large groups of people began to utilize the residence as a short-term rental. *Id.* Throughout the year of 2018, Mr. Yettick was rarely seen at the location. *Id.* at ¶¶ 3, 4, 5, 6. Each witness testified that they live close to the property, and they have an opportunity to observe the activity at the location throughout the day and night. *Id.* at ¶¶ 1-8. None of the witnesses believe that the Respondent utilizes the location as his primary residence. *Id.* at ¶¶ 1-8.

The witness testimony was corroborated by additional evidence presented at the hearing. The Respondent purchased another property located at 105 Fillmore Street on August 31, 2017, and he advertises 410 Marion Street as a "hotel" which sleeps twenty and offers concierge service. *Id.* at ¶¶ 2,8,9. The Fillmore property is located across the street from the Respondent's workplace and he keeps personal effects there. *Id.* at ¶¶ 9, 18. He is "inseparable" from his partner who lives at the Fillmore property. *Id.* at ¶ 18. The Respondent stays at the Fillmore property when 410 Marion St. is "booked" and the Respondent had a total of 252 "revenue nights" from 410 Marion St. between July 24, 2018 and January 17, 2019. Hearing Recording #2 at 00:14:90; Exh. 2A.

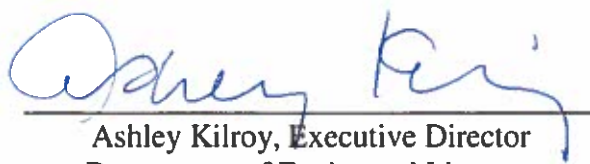
The Respondent's witnesses failed to meaningfully rebut any of the evidence presented. Ms. Glumac, the Respondent's partner, testified 410 Marion Street is the Respondent's usual place of return. However, Ms. Glumac also testified that the Respondent only sleeps at 410 Marion Street

when it is not being used as a short-term rental property, that he “decided to turn his house into a vacation rental.” *Id.* at ¶ 9; Hearing Recording #2 at 00:9:12. Ms. Matthews corroborated that testimony. Recommended Decision, ¶ 13. Mr. Moss, the Respondent’s acquaintance, testified that he has been to the residence ten to twelve times over the course of two years, however he did not provide any direct evidence that the Respondent utilizes the home as a usual place of return. *See Recommended Decision, ¶ 11*. Ms. Ware, another acquaintance, testified that she cannot relate to the Respondent’s travel frequency and that the notion of a “usual place of return” does not apply to the Respondent. *Id.* at 12; Hearing Recording #2 at 2:31:00. While all the witnesses testified that the Respondent *believes* 410 Marion St. is his primary residence, none of the witnesses provided any evidence that the Respondent utilizes the premises as his usual place of return.

Finally, the Respondent also failed to establish that he uses the location as his primary residence. He testified that he “book[s]” 410 Marion Street when he wants to stay at the residence *Id.* at 2:01:40. He testified that he treats his time there as a “minor stay” and he looks at the calendar on the rental website to know whether he will be staying there. *Id.* at 2:03:00. The Respondent uses a team of people to manage the house and he competes with other hotel chains for tourism revenue. *Id.* The Respondent visited the property 206 times between July 24, 2018 and January 17, 2019. *Id.* at 2:08:50; Exh. A. The Respondent’s “visits” include any usage of the property, including stays lasting one to two hours. Hearing Recording #2 at 2:11:11. The Respondent recorded this information based on input from his tax attorney so that he can show the Internal Revenue Service that he lives there. *Id.* at 2:11:55. Finally, the Respondent failed to submit any objections to the Recommended Decision.

As such, the Department has sustained its burden to show that 410 Marion St. is not the Respondent’s primary residence as that term is defined in D.R.M.C. § 33-46(4). Therefore, the Respondent has violated D.R.M.C. § 33-49(b) on the premises and the Short-Term Rental License issued to Garth Yettick at 410 Marion St., Denver, CO is here by REVOKED pursuant to D.R.M.C. § 32-22(8). This Final Decision shall constitute a final agency action subject to judicial review in Denver District Court.

SO ORDERED this 20th day of March, 2019



Ashley Kilroy, Executive Director
Department of Excise and Licenses

CERTIFICATE OF MAILING

The undersigned hereby states and certifies that one true copy of the foregoing Order was sent via email on the 20 day of March, 2019 to the following:

Garth C. Yettick, Respondent
410 Marion St.
Denver, CO 80218
gyettick@yahoo.com

Garth C. Yettick, Respondent
105 Fillmore St., Unit # 105
Denver, CO 80206
gyettick@yahoo.com

Chris Gaddis, Assistant City Attorney
Chris.gaddis@denvergov.org



Excise and Licenses



DENVER
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Department of Excise
Director of Excise and
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Garth C Yettick
410 Marion St
Denver CO 80218

2017-PFN-0005511



9590 9402 4514 8278 0765 16

2. Article Number (Transfer from service label)

7018 0680 0002 1778 3800

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

 Agent

 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
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PS Form 3811, July 2015 PSN 7530-02-000-9053

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Garth C Yettick
105 Fillmore St Unit 105
Denver CO 80206

2017-PFN-0005511



9590 9402 4514 8278 0758 23

2. Article Number (Transfer from service label)

7018 0680 0002 1778 3817

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 Agent

 Addressee

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C. Date of Delivery

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- You can request an electronic or printed receipt for Certified Mail items.

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