

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

In The Matter of the Application of

CREWFACILITIES.COM, LLC,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

-against-

CITY OF NEW YORK, THE NEW YORK  
CITY OFFICE OF EMERGENCY  
MANAGEMENT and THE CONTRACT  
DISPUTE RESOLUTION BOARD OF THE  
NEW YORK CITY OFFICE OF  
ADMINISTRATIVE TRIALS AND  
HEARINGS,

Respondents.

Index No. 162516/2023

**VERIFIED REPLY TO NYCEM'S  
STATEMENT OF PERTINENT AND  
MATERIAL FACTS SET FORTH IN  
ITS VERIFIED ANSWER**

Petitioner CrewFacilities.com, LLC ("Crew"), by its attorneys at Robinson & Cole LLP, hereby submits this Verified Reply pursuant to Section 7804(d) of the Civil Practice Law and Rules ("CPLR") in response to the City Respondents' "Statement of Pertinent and Material Facts" included as paragraphs 99 through 142 of the City Respondent's Verified Answer ([NYSCEF Doc. No. 73](#)). Unless expressly admitted hereto, Crew denies each and every allegation contained in the City Respondents' "Statement of Pertinent and Material Facts."

**PERTINENT AND MATERIAL FACTS ALLEGED BY THE CITY RESPONDENTS**

99. Crew denies the allegations contained in Paragraph 99 to the extent they allege that the Board's Determination<sup>1</sup> was lawful, rational and/or should be upheld.

<sup>1</sup> The capitalized terms used herein have the same meaning given to them in the Verified Petition,

100. Crew admits that, as a result of the COVID-19 pandemic, NYCEM entered into a Services Agreement with Crew to assist with providing temporary housing of individuals impacted by the pandemic. Crew respectfully refers the Court to the Services Agreement for a complete and accurate recitation of its contents. Crew denies the remaining allegations contained in Paragraph 100.

101. Crew denies the allegations contained in Paragraph 101, and respectfully refers the Court to the agreements referenced therein for a complete and accurate recitation of their contents.

102. Crew admits that HotelEngine entered in certain Supplier Agreements with certain participating hotels but denies the remaining allegations contained in Paragraph 102.

103. Crew denies the allegations contained in Paragraph 103 and respectfully refers the Court to the agreements referenced therein for a complete and accurate recitation of their contents.

104. Crew denies the allegations contained in Paragraph 104 and respectfully refers the Court to the agreements referenced therein for a complete and accurate recitation of their contents.

105. Crew denies the allegations contained in Paragraph 105 and respectfully refers the Court to the exhibits referenced therein, which do not condition the guarantee on a termination for convenience but rather reference the guarantee as a standalone term, and the agreements themselves.

106. Crew denies the allegations contained in Paragraph 106. By way of further response, on or about July 1, 2020, NYCEM paid \$13,498,415.07 in response to Crew's June 17, 2020 invoice for the period of June 8-15, 2020.

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unless otherwise indicated.

107. Crew denies the allegations contained in Paragraph 107 except admits that it paid HotelEngine its management fees from the July Payment and temporarily withheld the hotel-bounds funds.

108. Crew denies the allegations contained in Paragraph 108 and respectfully refers the Court to the documents referenced therein for a true and accurate recitation of their contents.

109. Crew denies the allegations contained in Paragraph 109 and respectfully refers the Court to the document referenced therein for a true and accurate recitation of its contents.

110. With respect to the allegations contained in Paragraph 110, Crew admits that NYCEM sent Crew the letter submitted as [NYSCEF Doc. No. 34](#) but denies the remainder of the allegations.

111. With respect to the allegations contained in Paragraph 111, Crew admits that NYCEM sent Crew the letter submitted as [NYSCEF Doc. No. 33](#) but denies the remainder of the allegations.

112. Crew denies the allegations contained in Paragraph 112, and refers the Court to the documents in the record evidencing the information and responses Crew provided to NYCEM, and Crew's participation on calls with NYCEM during the time period in question. (See [NYSCEF Doc. Nos. 31, 35, 39, and 45.](#))

113. Crew admits that NYCEM held a meeting on July 31, 2020. Crew denies the remaining allegations contained in Paragraph 113, including the implication that the "opportunity to be heard" meeting was anything other than a fait accompli and NYCEM's formulaic compliance with the procedural rules preceding its predetermined termination of the Agreement.

114. Crew denies the allegations contained in Paragraph 114 and respectfully refers the Court to the documents referenced therein for a true and accurate recitation of their contents.

115. Crew admits that NYCEM issued a Notice of Termination at 10:15 p.m. EDT on July 31, 2020, less than two hours before the Services Agreement's natural expiration. Crew denies the remaining allegations contained in Paragraph 115 and respectfully refers the Court to the document referenced therein for a true and accurate recitation of its contents.

116. Crew admits that NYCEM contracted directly with HotelEngine to complete the close-out of the Program and further states that NYCEM had secured HotelEngine's participation prior to issuing the Notice of Termination on July 31, 2020. Crew denies the remaining allegations contained in Paragraph 116.

117. Crew admits that NYCEM requested that Crew return the hotel-bounds funds from the July Payment and that Crew complied with the request. Crew further states that NYCEM and HotelEngine continued to withhold these hotel-bound funds from hotels under the Emergency Buy Against Agreement pending reconciliation and eventually paid funds to hotels in the fall of 2020. Crew denies the remaining allegations contained in Paragraph 117.

118. Crew admits that it timely challenged NYCEM's termination of the Agreement and respectfully refers the Court to the Notice of Dispute submitted as [NYSCEF Doc. No. 48](#). Crew denies the remaining allegations contained in Paragraph 118.

119. Crew denies that it was "required" under the Agreement to continue providing reconciliation services under the Agreement because, among other bases, NYCEM's improper termination of the Agreement and withholding of compensation from Crew constitute material breaches that excused any further performance by Crew. Crew admits that it nonetheless cooperated with NYCEM in good faith—consistent with Crew's conduct throughout the Program—and performed reconciliation services. Crew denies the remainder of the allegations contained in Paragraph 119.

120. Crew admits that NYCEM alleged certain deficiencies in its reconciliation, respectfully refers the Court to the letter referenced in Paragraph 120 and otherwise denies the remaining allegations contained in Paragraph 120.

121. Crew admits that NYCEM claims to have made available to the Commissioner certain documents and that the same were provided to Crew. Crew denies the remaining allegations contained in Paragraph 121.

122. With respect to the allegations contained in Paragraph 122, Crew denies the allegation that January 22, 2021 was the first time Crew requested that NYCEM compel HotelEngine to participate in the administrative proceeding. In fact, the request was made on October 29, 2020 in its Notice of Dispute, as contemplated by the governing rules. (See [NYSCEF Doc. No. 48, p. 13, Section IV\(5\).](#)) The January 22, 2021 letter was a follow-up request on several matters in light of NYCEM's inaction in response to the Notice of Dispute. ([NYSCEF Doc. No. 52.](#)) Crew admits that NYCEM "notified HotelEngine of Crew's request" to participate in the administrative proceeding and failed to actually request or compel such participation from HotelEngine, as required under the rules, and that HotelEngine did not voluntarily join the administrative proceeding. Crew denies the remaining allegations contained in Paragraph 122.

123. Crew admits that the Agency Head Determination was issued and respectfully refers the Court to that document for a true and accurate reflection of its contents. Crew denies the remaining allegations contained in Paragraph 123. By way of further response, Crew denies that the then-Commissioner of NYCEM, Deanne Criswell, adequately and rationally considered the record before her in reaching the Agency Head Determination.

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