

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUFFALO REGIONAL OFFICE

In the Matter of

Assurance No. 24-077

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**
Manga Airport LLC d/b/a Aloft Buffalo Airport,
Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law (“GBL”) Article 22-A, into the cancellation of hotel rooms by Respondent during the April 2024 solar eclipse. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent Manga Airport LLC d/b/a Aloft Buffalo Airport, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, licensees or subsidiaries (“Respondent” or “Aloft Buffalo Airport” and together with the OAG, the “Parties”).

OAG’s FINDINGS

Respondent

1. Respondent Manga Airport LLC is a New York limited liability company doing business as Aloft Buffalo Airport.
2. Respondent is owned by Manga Hotel Group (“Manga”), a hospitality company based in Ontario, Canada.

3. Respondent operates under the “Aloft” brand pursuant to an agreement with Marriott International, Inc. (“Marriott”).

4. Respondent’s property known as Aloft Buffalo Airport is a hotel located at 4219 Genesee St, Buffalo, NY 14225, near the Buffalo International Airport.

5. Aloft Buffalo Airport has approximately 153 total hotel rooms.

April 2024 Solar Eclipse

6. On April 8, 2024, a total solar eclipse occurred across portions of the United States. Buffalo, New York was in the path of totality for the solar eclipse.

7. Many tourists traveled to Buffalo to view the solar eclipse.

8. Consumers booked reservations at the Aloft Buffalo Airport to stay while traveling to view the eclipse. Several consumers booked far in advance, with some booking over a year prior to event.

Aloft Buffalo Airport Overbooking

9. During the relevant time period Emar Fernandez served as the General Manager of the Aloft Buffalo Airport. Mr. Fernandez is no longer employed by the Aloft Buffalo Airport or Manga.

10. In December 2023, staff at the Aloft Buffalo Airport realized that on April 7, 2024, the hotel was overbooked by 120 rooms, with significant overbookings on April 6 and April 8 as well. Staff began discussing this issue in January 2024.

11. Aloft Buffalo Airport staff claimed that a prior sales manager had signed a contract with a tour company two years in advance of the solar eclipse, but that the contract was not entered into the computer system. Aloft Buffalo Airport’s Director of Sales found the paper contract in March 2023 after cleaning her office following a flooding event.

12. On March 5, 2024, Mr. Fernandez informed the tour operator that no rooms were available, claiming that the tour operator did not guarantee the rooms with a deposit.

13. The tour operator subsequently sued Aloft Buffalo Airport and its affiliate for breach of contract. *Sugar Tours, Inc. v. Manga Airport, LLC*, 807128/2024 (Erie Cnty. Sup. Ct.)

14. In addition to the tour group, Aloft Buffalo Airport was also overbooked due to an airline block of rooms that was not placed into the computer system, local staff overbooking rooms and a technical issue regarding the interface between Marriott's Automated Reservation System (MARSHA) and Lightspeed, a hospitality property management system.

Cancelations and Consumer Complaints

15. In late March 2024, Mr. Fernandez canceled dozens of reservations for guests at the Aloft Buffalo Airport without first informing them of the cancelations. Several consumers learned of the cancellation when checking their Marriott account. It is unclear what criteria were used to select reservations to cancel.

16. Most of the reservations canceled were booked at a rate of \$149 or less, which was significantly cheaper than the rate being offered by other hotels in the Buffalo area during the solar eclipse.

17. On April 2, 2024, Mr. Fernandez sent an email to certain of the consumers who had their reservations canceled stating:

Thank you for booking your upcoming reservation with us at Aloft Buffalo Airport. Due to unforeseen circumstances, some of our properties are overbooked for the solar eclipse, affecting upcoming reservations that had been booked recently up to four weeks prior. If you're getting this email, it is because your reservation has been canceled at Aloft; please let me know if you still would like to come to Buffalo and stay with us so I can try to arrange your reservation at a nearby location. I apologize for the inconvenience and look forward to hearing from you.

18. Consumers were understandably upset when they were informed that their reservation had been canceled less than a week prior to their anticipated arrival in Buffalo for the solar eclipse.

19. Many consumers responded to Mr. Fernandez's email, filed complaints with Marriott, filed complaints with the OAG, and contacted local media.

20. The OAG received fourteen consumer complaints about Aloft Buffalo Airport canceling their reservation.

21. On April 3, 2024, local media in Buffalo began reporting on the Aloft Buffalo Airport cancellation issues.¹

22. Several consumers who followed up with Mr. Fernandez were able to have their reservation reinstated or were provided alternate accommodation. OAG staff mediated several complaints and were able to obtain reinstatement or compensation from Aloft Buffalo Airport.

23. On April 4, 2024, OAG staff contacted Marriott's General Counsel to advise them of the sudden cancellations and allegations by several consumers that Aloft Buffalo Airport was continuing to offer rooms for higher rates after canceling consumers longstanding reservations.

24. Marriott forwarded this communication to staff for Manga and Aloft Buffalo Airport. Staff at Manga instructed Mr. Fernandez that "[i]t is vital that we do not take any reservations at a high rate or we will vindicate their claims."

25. Manga and Aloft Buffalo Airport maintain that rooms showing as available at higher rates during the overbooking period were due a computer error.

¹ <https://www.wivb.com/total-solar-eclipse-april-8-2024/more-tourists-have-stays-at-hotels-for-eclipse-canceled/>; <https://www.wkbw.com/7problemsolvers/its-bogus-two-cheektowaga-hotels-cancel-dozens-of-room-reservations-for-total-solar-eclipse>

26. The average room rate ultimately charged by Aloft Buffalo Airport on April 7, 2024, was \$132.24. A total of thirty rooms were vacant.

27. As a result of the cancelations, Mr. Fernandez responded to dozens of consumer complaints. Certain of his responses were deeply troubling, such as the following excerpts of an email sent to a consumer:

I am sorry that living a life FULL of HATE did not allow you to see beyond the bigger picture. The fact that I care for you and other guests is why I reached out. I did not have to reach out, nor did I have to waste hours of my day and had to pay for other hotels to secure rooms for you and your family to stay at. I could have simply waited until April 6th to tell you, sorry we have no rooms, bye-bye.

...

I pity people like you who cannot see a solution when a problem arises. Instead, they focus on the problem and cannot see beyond a new opportunity. People like you live life in failure after failure.

...

PS. Now that I have heard you, I believe even more in Karma. You did all of this to yourself. You need to learn to take responsibility for your own failures and stop blaming others for the things you do to yourself.

28. When one consumer noted that they planned to file a complaint with the OAG, Mr. Fernandez responded, "If you are going to use false accusations and threaten me, I will not go above and beyond to try to help you. Find your accommodations, sir."

29. To another consumer, Mr. Fernandez wrote, "Everything happens for a reason; I'm glad to hear you will not be staying in any of my hotels. You need help! And you are not welcome in my hotel. Good night lady."

30. As a result of its investigation, the OAG finds that Respondent's actions are in violation of Executive Law § 63(12) and GBL Article 22-A.

31. Respondent neither admits nor denies the OAG's assertion that its actions violated the statutory provisions cited and the OAG's Findings, paragraphs 1-30 above.

32. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of GBL Article 22-A, based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

33. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to Executive Law § 63(12) and GBL Article 22-A.

34. Specific Injunction: When Respondent cancels a hotel reservation due to overbooking, Respondent may not charge more than the rate of the canceled reservation for any future booking for those same date(s).

35. Programmatic Relief:

- a. Respondent shall adopt a written policy and training plan for preventing overbooking situations and for courteously and professionally handling consumer complaints.
- b. Respondent shall require staff to take such training at least once per year and within thirty days of starting employment with Respondent.

36. Oversight/Monitoring:

- a. *Periodic Compliance Reports*: Respondent shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraph 35 (Programmatic Relief), to be submitted to the OAG within ninety (90) days of the effective date of this Assurance. This report shall be in writing

and shall set forth in detail the manner and form of compliance with this Assurance. This report shall be signed by an authorized representative of the Respondent.

- b. *Compliance Report on Demand*: Upon thirty (30) days written notice from the OAG, Respondent shall provide the OAG with a report certifying its compliance with the requirements set forth in this Assurance. This provision shall expire three years after the effective date of the Assurance.
- c. Respondent expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 32, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 32, pursuant to Executive Law § 63(15).

37. Monetary Relief

- a. *Restitution*: Respondent shall pay to the State of New York \$9,000 in restitution (the “Monetary Relief Amount”). Payment of the Monetary Relief Amount shall be made in full upon execution of this Assurance.
- b. The OAG shall use the Monetary Relief Amount to provide restitution to consumers impacted by Aloft Buffalo Airport’s cancelation of reservations during the April 2024 eclipse. In the event that any funds remain after the OAG has distributed restitution to impacted consumers, the OAG shall retain such amounts as the costs of its investigation.

- c. Payment of the Monetary Relief Amount shall be made by certified check, attorney check or wire transfer pursuant to instructions provided to Respondent by the OAG.

MISCELLANEOUS

Subsequent Proceedings.

38. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 36, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

39. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

40. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

41. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

42. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-077, and shall be in writing and shall, unless expressly provided otherwise herein, be given by electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: Neelu Toor (Neelu.Toor@mangahotels.com), Chief Strategy Officer and General Counsel, or in his absence, to the person holding the title General Counsel, Manga Hotel Group, 10 Carlson Court, Suite 600, Toronto, ON M9W 6L2.

If to the OAG, to: Christopher L. Boyd (christopher.boyd@ag.ny.gov), or in his absence, to the person holding the title of Assistant Attorney General in Charge, Buffalo Regional Office, Main Place Tower, Suite 300A, 350 Main Street, Buffalo NY 14202.

Representations and Warranties:

43. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in the OAG's Findings, paragraphs 1-30 above. Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

44. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

45. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that the signatory to this Assurance, is a duly authorized officer acting at the direction of Respondent.

General Principles:

46. Unless a term limit for compliance is otherwise specified within this Assurance, Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

47. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

48. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

49. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

50. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

51. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

52. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

53. This Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

54. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

55. The effective date of this Assurance shall be ~~September~~ 10, 2024.
October

LETITIA JAMES
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By: Christopher L Boyd
Christopher L. Boyd, Esq.
~~Deputy~~ Assistant Attorney General in Charge
Buffalo Regional Office



Dennis Vacco, Esq.
Counsel to Respondent
Manga Airport LLC



SUKHDEV TOOR
PRESIDENT
Manga Airport LLC

On this 24th day of September, 2024, SUKHDEV TOOR, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and did depose and say that he resides in Mississauga, Ontario, Canada; that he is the PRESIDENT of Manga Airport LLC, the entity described in and which executed the above instrument; and that he signed his names thereto by like authority.

Declared before me at the City
of Toronto, in the Province of Ontario this
24th day of September, 2024



NOTARY PUBLIC

