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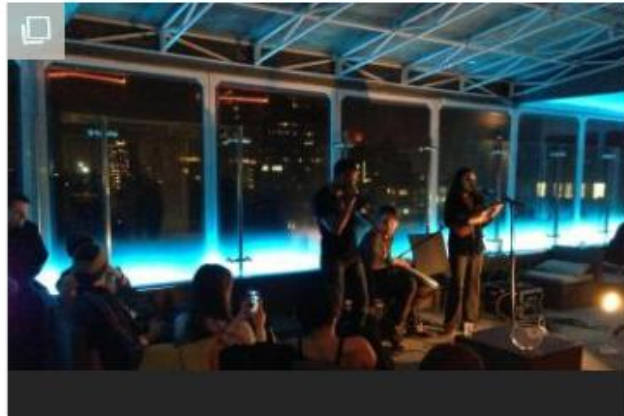


## Owners of Shuttered Rooftop Bar at Hotel Indigo Sue for Breach of Contract



By Alan Neuhauser on April 22, 2013 8:04am  
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MIDTOWN — City restaurateur **Shaun Smith** claims he was conned into opening a lounge atop the glitzy **Hotel Indigo** on West 28th Street last fall — saying hotel organizers never told him they failed to get city permission for a rooftop bar, a new multi-million dollar lawsuit alleges.



Smith's **China Latina**, an Asian-Latin restaurant on the hotel's ground floor, opened **Dragones** lounge over the building's 20th story last September, a "luminous New York City rooftop bar that resembles the grandest and most exquisite piazzas in Milan," according to the website for Hotel Indigo, an international chain that is part of the **Intercontinental Hotels Group**.

The bar was Smith's third venue — he also owns **Crema Restaurant** on West 17th Street — and it hosted deejayed parties, open mic nights and other events.

Hotel Indigo, where rooms go for about \$300 a night, charged China Latina \$120,000 per month for a 10-year lease of the ground-floor restaurant and rooftop bar, plus a cut of Dragoness' gross revenue. But just five months after opening, the party screeched to a halt, when cops showed up Feb. 1 with a summons stating that the hotel had never actually obtained a certificate of occupancy to operate a rooftop bar.

"The landlord fraudulently induced them into the lease by saying they had the authority to run this bar when they didn't," said China Latina lawyer **Jeffrey Schietzelt**, who filed a lawsuit against Hotel Indigo in State Supreme Court in March, seeking at least \$5 million. "Now they incurred the costs of not only the lease but setting the place up, hiring people, salaries. They signed a lease in what they thought would be a very profitable venture."



What's more, China Latina discovered that the hotel had intentionally hid an earlier warning from the city that it was operating illegally: Hotel Indigo had been slapped with a Dec. 3 summons, which was handed directly to a hotel employee, not China Latina, Smith and the city's Department of Building says.

"The violation on Dec. 3, 2012 was not issued to us...nor were we ever notified or made aware that such a violation had been issued," Smith said in an April 9 letter to **City Council Speaker Christine Quinn**, who had written Smith first under the mistaken impression that he was the owner of Hotel Indigo, demanding he comply with city regulations.

"Our first notification that our landlord was out of compliance with the lease was when the police came Feb. 1," Smith wrote. "Please help!"

Dragoness has been shuttered since the Feb. 1 summons was issued.

Hotel Indigo general manager **Joseph Montag** openly admitted that the hotel did not feel compelled to close the building's rooftop bar following the city's first summons from December — arguing that Smith, Smith's lawyers, the Department of Buildings and Speaker Quinn are all mistaken.

"Ms. Quinn's office doesn't understand food and beverage laws," Montag told **DNAinfo.com New York**. "A certificate of occupancy doesn't have separate parts for different parts of the building. As every building has a roof — a roof is drawn out in architectural drawings — no building would have a certificate of occupancy for a roof."

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Hotel Indigo, he insisted, has "the legal authority to keep operating the way we have. China Latina was never actually forced to shut down. They've chosen to shut down. The tenants of the hotel don't understand the certificates that are in place and allow them to operate."

But city officials and China Latina's lawyer said Montag is deluding himself.

"Whether there are other institutions in the city that would choose to ignore a summons and get more of them, I can't tell you that. But when the cops come in and give you a summons for something, it usually means you're doing something wrong," Schietzelt said.



A DOB spokesman added, "There's no uncertainty in the type of use listed in the certificate of occupancy — it has to be specific to what the usage actually is. There's no discrepancy. There's no gray area on that."

A Fire Department source agreed.

"They're sorely mistaken," the source said. "Just like you have to have a certificate of occupancy for your house, and it determines you have two stories, or one story, three bedrooms, one bathroom. That's all in there, and the same goes for commercial space."

The DOB website clearly states that certificates of occupancy bear different sections that indicate which parts of a building they apply to.

Hotel Indigo's **current certificate** lists hotel rooms, a storage room, an "accessory fitness room," and even a bathroom on the roof — but not a rooftop bar, according to the website.

An FDNY and DOB spokesman said it was unclear what penalties Hotel Indigo could face if it ignores the summonses. They could not immediately say what, if any, action the hotel is currently obligated to do, or whether it was hit with fines.

The State Liquor Authority, meanwhile, charged Hotel Indigo last week with having committed multiple violations, each carrying a penalty of up to \$10,000, a spokesman said. The hotel attended a meeting with the authority Wednesday, but the authority's press office did not return calls and emails for comment.

"You guys are incorrect in what you think a certificate of occupancy is," Montag said. "The tenants of the hotel don't understand the certificates that are in place. This lawsuit has no bearing."

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