

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: LOCAL BOARDS AND ZONE OFFICES

SUBJECT: LICENSING APPLICATIONS AFFECTED BY DISCIPLINARY PROCEEDINGS

In 1968, the Members of the Authority authorized the following licensing procedures, which were set forth in Divisional Order No. 589. At their meeting held on January 24, 1990, the Members amended subdivision 2 as to Suspension Proceedings Pending. This amendment is effective forthwith.

1. Revocation Proceedings Pending

(a) Where a REVOCATION proceeding is pending against a licensee, a new application, transfer application, corporate change application, removal petition or other application shall be processed in the usual manner and referred to the Licensing Board. If the application warrants disapproval on the merits, such action should be taken by the Licensing Board without awaiting the completion of the revocation proceeding. The disapproval should contain the further reason:

"In addition, but wholly independent of the aforesaid reasons, the Authority finds that a revocation proceeding involving the licensee and the licensed premises is pending; that the revocation proceeding may result in the revocation of the license and a proscription against the issuance of another license for such premises for two years, pursuant to Section 113 of the Alcoholic Beverage Control Law; that the approval of this application while the revocation proceeding remains undetermined would be contrary to the proper administration and enforcement of the Alcoholic Beverage Control Law, and would defeat the provisions, intent and purpose thereof.

"For each and all of the foregoing reasons, the Authority finds that public convenience and advantage would not be served by the approval of this application and the same is hereby disapproved."

(b) In all other instances where revocation proceedings are pending, the Licensing Board shall disapprove the application, stating as its reasons that a revocation proceeding involving the licensee and the licensed premises is pending, that the revocation proceeding may result in the revocation of the

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license and a proscription against the issuance of another license for the licensed premises for two years, that the determination of the application on the merits while the revocation proceeding remains undetermined would be contrary to the proper administration and enforcement of the Alcoholic Beverage Control Law and would defeat the provisions, intent and purpose thereof, and that accordingly, the application is disapproved.

The notice of disapproval should also state that the disapproval is not made on the merits of the application and is without prejudice to applicant's written request to the Authority for the review of the disapproved application within 20 days after the determination of the revocation proceeding.

The request for review should be filed with the State Liquor Authority at the appropriate Zone Office and should state that the representations made by the applicant and all other facts contained in the application and records accompanying the application, remain unchanged, or should set forth any changes. The request for review shall be forwarded by the Zone Office to the Secretary of the Authority, together with the disapproved folder and the disciplinary action folder, and then presented to the Members of the Authority in the same manner as any other request for review.

The aforementioned directions shall not apply (1) where, in the judgment of the Licensing Board, the completed revocation hearing will be presented to the Members of the Authority for determination within a short period of time (not exceeding twenty days), or (2) where the revocation proceeding alleges that the licensee has ceased to operate a bona fide premises. In such instances, the application should be held in abeyance and presented to the Members of the Authority simultaneously with the completed revocation proceeding.

All necessary processing of the application should be completed prior to the disapproval without prejudice so that upon the granting of a request for review, the application may simultaneously be acted on by the Members of the Authority without delay.

If the license fee has not been refunded to the applicant, no further fee shall be required. If refund has been made, the appropriate fee shall be paid to the Authority. No additional filing fee shall be required.

2. Suspension Proceedings Pending

Where SUSPENSION proceedings are pending against the licensee, the applicant or the incoming principals shall be afforded an opportunity to accept, in writing, the full penalty which may be assessed against the licensee. Upon such acceptance, the Licensing Board may act on the pending application. However, where the charged licensee has a good record and in the usual course of business the Members of the Authority, because of the licensee's good record, would impose a deferred penalty plus bond claim, the Licensing Board may approve the license without the assumption of the penalty by the incoming applicant, provided that the Licensing Board obtain from Counsel's Office a copy of the charges, a copy of the Investigative Report, which preceded the charges, and a copy of the incumbent licensee's disciplinary history. These materials must be included in both the incumbent licensee's file and the applicant's file. Attached to the aforementioned materials should be Form LB-589-A.01 indicating that the Licensing Board has reviewed this material and is satisfied that the licensee would normally be entitled to Good Record treatment.

In the event that incumbent licensee's record fits the description outlined above, the Licensing Board may, absent extraordinary circumstances, grant approval of the license.

3. Local Board Action

The licensing procedures outlined above do not require any change in the procedures of Local Boards. Knowledge by local boards of the new procedure is essential so that informed guidance can be given to applicants.

4. SLA Processing Action

The present processing procedures by personnel of the Authority should continue to be followed.

STATE LIQUOR AUTHORITY

Thomas A. Duffy, Jr.
Chairman

STATE OF NEW YORK
LIQUOR AUTHORITY

Re: Serial No. _____

Applicant _____

Address: _____

A suspension proceeding is pending at premises wherein the captioned applicant has applied for a license: Serial No. _____

Licensee _____

Address _____

Pursuant to the provisions of Divisional Order No. 589-A, the following documents (which are attached hereto) have been examined.

Notice of Pleading and Hearing

Copy of Investigative Report
(which preceded the institution of charges)

Copy of the current licensee's disciplinary history.

____ Upon review of the above material, the current licensee would normally be entitled to Good Record treatment, and accordingly, the Licensing Board may act on this application.

____ Upon review of the above material, the current licensee is not entitled to Good Record treatment and the Licensing Board will defer action on this application.

Deputy Commissioner

Deputy Commissioner