

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 04/10/2019
REFERRED FROM: COUNSEL'S OFFICE

2019- 00638

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING - 339 EAST 75TH STREET
NEW YORK, NY 10021

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 04/10/2019 determined:

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Telecopier Transmission

Date: February 21, 2019
To: Christopher Riano, Counsel
State Liquor Authority
Fax No: (212)962-8326
From: Alan J. Gardner
Number of Pages (including this cover page): 5
Comments: Hi-Life New York, LLC; 339 East 75th Street, New York, NY
Petition for Declaratory Ruling enclosed.

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VIA TELECOPIER

February 21, 2019

Christopher Riano, Counsel
State Liquor Authority
317 Lenox Avenue
New York, NY 10027

Re: Hi-Life New York LLC
339 East 75th Street, New York, NY 10021
Petition for Declaratory Ruling

Dear Counsel Riano:

This is a petition for a declaratory ruling pursuant to Authority Rule 64 (9 NYCRR §98).

Ruling Requested

I represent Hi-Life New York, LLC, a New York limited liability company, which intends to apply for an on-premise (OP) liquor license under §64 of the Alcoholic Beverage Control Law for restaurant space it has leased at 339 East 75th Street, New York, New York 10021 (the "Premises"). The Premises are within 200 feet of a building on the same street or avenue which is occupied exclusively as a synagogue. The Authority is requested to issue a declaratory ruling that an OP license shall not be denied for the Premises by virtue of the "grandfather" exception contained in §64(7)(c) of the ABC Law.

Facts

History of Synagogue

The building at 325 East 75th Street, within 200 feet of the Premises, is owned by Manhattan Sephardic Congregation ("Congregation") and is occupied exclusively as a synagogue within the meaning of §64(7). According to its website, the Congregation was established in 1990, but met at a different location until it purchased its current building on August 8, 1995 (copy of deed to Congregation annexed hereto). There is no indication that the synagogue building, which was initially constructed as an apartment building, had ever been used as a place of worship before being purchased by the Congregation.

License History

The Authority's website shows an OP license for the Premises issued to Sangam Restaurant Corp., effective 07/21/95, which was prior to the date on which the Congregation purchased the synagogue, with licenses continuously in effect ever since (except for short breaks between licenses attributable to the usual delays in finding new tenants and the preparation of new applications. My client, which signed its lease in January, 2019, had been advised that the most recent licensee, JBird One LLC,

Christopher Riano, Counsel

February 21, 2019

had vacated the Premises in or about August, 2018). There is no evidence that the Premises were ever used for anything other than a restaurant, whether since 1995, or otherwise.

It should be pointed out that pursuant to FOIL requests, we learned that the licensees since 1995 apparently failed to disclose to the Authority the existence of the synagogue, although that may have been unintentional because the building was initially constructed as an apartment building and does not look like a traditional synagogue or house of worship. As a result, we would not rely on the Premises being deemed "grandfathered" because the previous licenses had been issued without the Authority having been aware of the synagogue.

In view of this license history, and the current relatively short break in licensing while the landlord has been seeking a new tenant, we believe that it would be consistent with its usual policy for the Authority to treat the Premises as having been continuously licensed since a date prior to the date on which the Congregation acquired its building and started to occupy 325 East 75th Street as a synagogue, all within the meaning of §64(7)(c) of the ABC Law.

Conclusion

Under the circumstances, the Authority is requested to issue a declaratory ruling that the Premises are "grandfathered," and that the issuance of an on-premises liquor license at 339 East 75th Street, New York, New York 10021, should not be denied because of the existence of a synagogue within 200 feet.

Respectfully submitted,

VERINI & GARDNER

By: 

Alan J. Gardner

enc.

cc (via email): Christopher Riano, counsel

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 3 day of August, nineteen hundred and ninety-five
BETWEEN GALIP GULMEZ and SENAY GULMEZ, his wife, having an address at
325 East 75th Street, New York, New York

party of the first part, and MANHATTAN SEPHARDIC CONGREGATION, having an address at
c/o Sikenik, Segal & Graff, P.C., 417 Fifth Avenue, New York, NY 10016

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County, City and State of New York as more particularly described on Schedule A attached hereto and made a part hereof.

BEING commonly known as 325 East 75th Street, New York, New York

SUBJECT TO covenants, conditions, easements and agreements of record.

SUBJECT TO that certain consolidated mortgage held by Flushing Savings Bank dated August 24, 1987 in the amount of \$750,000 and recorded August 28, 1987 in Liber 1282, page 370, the obligations of which party of the second part has agreed to assume.

TAX MAP
DESIGNATION

Dist.

Sec.

Blk. 1450

Lot(s) 15.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Chia P. C.

Galip Gulmez
GALIP GULMEZ

Senay Gulmez
SENAY GULMEZ

MANHATTAN SEPHARDIC CONGREGATION

By: *Joseph Chet*

CONTINENTAL ABSTRACT CORPORATION

POLICY NO:

SCHEDULE A

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of East Seventy-fifth Street, (E. 75TH STREET) distant three hundred and forty-five feet easterly from the corner formed by the intersection of the said northerly side of Seventy-fifth Street and the easterly side of Second Avenue;

RUNNING THENCE northerly parallel with Second Avenue and part of the distance through a party wall one hundred and two feet, two inches;

THENCE easterly parallel with Seventy-fifth Street, twenty feet;

THENCE southerly again parallel with Second Avenue one hundred and two feet, two inches to the northerly side of Seventy-fifth Street; and

THENCE westerly along the northerly side of Seventy-fifth Street, twenty feet to the point or place of BEGINNING.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 04/10/2019
REFERRED FROM: SECRETARY'S OFFICE

2019-00728

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DELEGATION OF POWER-
LICENSING BOARD

(DELEGATION OF POWER)

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 04/10/2019 determined:



State Liquor Authority

ANDREW M. CUOMO
Governor

VINCENT G. BRADLEY
Chairman

LILY M. FAN
Commissioner

GREELEY FORD
Commissioner

DELEGATION OF POWER

Delegation of Power with respect to Licensing Board

Agenda #2019-~~00527A~~ 00728

Pursuant to Section 17 of the Alcoholic Beverage Control Law, the Members of the State Liquor Authority hereby delegate the following powers with respect to applications to the following employees of the Authority, collectively known as the Licensing Board:

- The power to act on any license, permit or renewal application statewide – Jacqueline Held, **and** Sharif Kabir **and Adam Roberts**;
- The power to remove members of the Licensing Board when they are no longer employed by the Authority – Jacqueline Held;
- The power to act on any license, permit or renewal application statewide that has no opposition or no complex or controversial issues – Amy Male, Michael Jones, David Edmunds, Nancy Smith, **Susan Cappuccitti**, Peter Klein, Andrea Pomeroy, Stephanie Kehn, Christine North, Brian Christy, Maureen Hughes, James Martin, Juan Herrera & Jennie Eastman;
- The power to issue a 20 Day Temporary Letter: 1) when the only conditions of approval that have not been submitted to the Authority are: Certificate of Authority, Workers' Compensation & Disability Insurance, Newspaper Affidavit, photos showing the applicant is ready to open and operate and/or surrender of the current license in effect: or 2) for good cause shown – Jacqueline Held, David Edmunds, Vincent Bradley, Sharif Kabir & Amy Male;
- The power to act on all types of permit applications statewide Lorraine Maloney, Sarah Ashton, Jennifer Cramer & Courtney Moore;

Delegation of Power with respect to Licensing Board

Agenda #2019-~~00527A~~ 00728

- The power to act on Temporary Retail Permit and Liquidation Permit applications ~~in Zone 4~~: Thomas Kelley, Crystal Vanderpool, Jennifer Marzolf, Joseph Severance, ~~John Manion~~ Christina Crasto & Ana Poscidonio;
- The power to act on any renewal application that has no opposition or no complex or controversial issue – ~~Emily Ercolano~~ Lisa Marie McHale, Ashley Stevens and Christina Mastroianni;

Notwithstanding the aforesaid delegation of powers, the following licensing matters must be presented to the Full Board for consideration unless there is a statutory provision requiring the disapproval of the application by the Licensing Board:

- All new package stores, except for removals when there is no change in the four closest stores and the new location is:
 - 1) In New York City and is no more than 400 feet from the current location;
or
 - 2) In Nassau County and is no more than 1,500 feet from the current location; or
 - 3) Outside of New York City/Nassau County and is no more than one-half mile from the current location; or
- Applications where an application filed by the applicant or for the location has been disapproved within the last 2 years;
- Applications for a premises where the prior license was revoked or cancelled must be forwarded to the Full Board. The following are exceptions where licensing may act in these situations:
 - 1) The prior license was cancelled and there is nothing in the record to show a connection between the prior licensee and the applicant;
 - 2) The prior license was revoked and there is nothing in the record to show a connection to the applicant and there is no "public convenience and advantage" or "focal point" issue involved;
 - 3) The application is subject to the 500 Foot law, there are no objections and the applicant has submitted a "public interest" statement in support of the application;
 - 4) An application where the prior license was cancelled or revoked and that penalty was based solely on the prior licensee having been a prohibited person by revocation; and
 - 5) The prior license was cancelled due to non-payment of a civil penalty and no other complex or controversial issues exist.
- Applications where the Full Board has issued an emergency summary order of suspension regarding the proposed licensed premises within the last five years;
- Applications where there is a STOP on the applicant or premises;

Delegation of Power with respect to Licensing Board

Agenda #2019-00527A **00728**

- Applications involving questions of eligibility of the applicant (citizenship, conviction record, police officer);
- Reconsiderations of Licensing Board determinations disapproving an application when a Member of the Authority has determined that reconsideration is warranted by the Full Board;
- Reconsiderations of prior Full Board licensing determinations;
- Applications where a protest to an application has been received from a governmental/elected official, police agency or municipality;
- Applications for on-premises licenses in the Village of Spring Valley, Rockland County; and
- All other applications which, in the judgment of the Deputy Commissioner of Licensing, involve unusual, complex matters or those involving the public interest.

This delegation of powers shall be effective immediately and replace all prior delegations of power with respect to action on licensing applications.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on April 10, 2019 before Chairman Vincent Bradley, Commissioner Lily Fan and Commissioner Greeley Ford. The above written delegation of power was approved by Chairman Bradley on behalf of the Members of the Authority on April __, 2019.

Dated:

Thomas J. Donohue
Secretary to the Authority

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 04/10/2019
REFERRED FROM: COUNSEL'S OFFICE

2019- 00742

REASON FOR REFERRAL
RE-SCHEDULING PUBLIC HEARING

PROPOSED CHANGES TO AUTHORITY
RULES REGARDING TERMS OF SALE
AND DELINQUENT LIST

The Members of the Authority at their regular meeting held at the Zone 2 Albany office on 04/10/2019 determined:



State Liquor Authority

ANDREW M. CUOMO
Governor

VINCENT G. BRADLEY
Chairman

LILY M. FAN
Commissioner

GREELEY FORD
Commissioner

To: Members of the Authority

From: Thomas J. Donohue, Secretary to the Authority

Subject: Proposed changes to Authority's rules regarding terms of sale and delinquent list

Date: March 21, 2019

At the 3/20/19 Full Board meeting, you rescheduled the public hearing regarding the above matter. The hearing was moved from the 4/17/19 Full Board meeting to the 5/1/19 Full Board meeting to accommodate changes made to the Full Board meeting schedule. As I noted in my 3/12/19 memo, I had been advised by Counsel's Office that there were no restrictions as to the date you could select for the hearing.

After advising Counsel's Office that the you had rescheduled the hearing to the 5/1/19 Full Board meeting, Counsel's Office informed me that it had already submitted a notice for publication to the State Register to advise the public that the hearing had been rescheduled to the 5/29/19.

Given the actions taken by Counsel's Office, the Full Board is now requested to reschedule the 5/1/19 hearing to 5/29/19.