

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 01/15/2020
REFERRED FROM: COUNSEL'S OFFICE

2019- 02402(OVER)
2020-00066

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING - DEFINITION OF
HOLDEM CHESS

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 12/18/2019 determined:

John Mutchler, requestor, appeared.

After conference with Counsel:

Item held over to 01/15/2020 Full Board meeting for further review.

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 01/15/2020 determined:

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 01/15/2020
REFERRED FROM: SECRETARY'S OFFICE

2019-02403(OVER)
2020-00067

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DUTCHESS COUNTY CLOSING HOURS-
PROPOSED CHANGES FOR PACKAGE
AND WINE STORES

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 12/18/2019 determined:

Paige Flori and Tim Buzinski appeared in support.

After conference with Counsel:

Item held over to 01/15/2020 to ask for public referendum.

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 01/15/2020 determined:

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 01/15/2020
REFERRED FROM: COUNSEL'S OFFICE

2020-00140A

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY RULING-
APPLICATION OF 500' LAW ON PROPERTY
LOCATED AT 795 8TH AVE., MANHATTAN

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 01/15/2020 determined:

BERNSTEIN REDO, P.C.
-ATTORNEYS AT LAW-

1177 AVENUE OF THE AMERICAS, 5TH FL
NEW YORK, NEW YORK 10036
TEL (212) 651-3100

DONALD M. BERNSTEIN
MARTHA M. REDO

BENJAMIN SAVITSKY

November 14, 2019

Gary Meyerhoff, Esq.
General Counsel
163 West 125th Street – 8th Floor
Adam Clayton Powel Jr. State Office Building
New York, New York 10027

Re: Request for Declaratory Ruling under Grandfather Provisions of the
500 Foot Law

Dear Counsel Meyerhoff:

We represent a proposed applicant for what will be a new on-premises liquor license for the three-story building located at 795 Eighth Avenue, New York, New York 10019 (“the Premises”). This letter requests a declaratory ruling from the members of the New York State Liquor Authority (“Authority”) pursuant to its Rule 98.1, that the Premises are grandfathered under the applicable sections of the 500-Foot Rule Law, and that an application to be made for the Premises will not be subject to that law.

The original liquor license at the Premises dates back to 1959, and was issued to Blarney Stone Restaurant, Inc., serial number 1028489. (See Exhibit “A”, the Authority’s October 11, 2019 response to our FOIL request.) That license expired in or around February 2003. That same year, another license was issued for the Premises to 795 8th Avenue Corp., serial number 1136695 which remained licensed at the Premises until 2012 or 2013. In March 2012, an application was made by and a license was subsequently issued to Social 8th Avenue Corp., serial number 1261550, covering the Premises.¹ The license was last renewed effective January 1, 2019. Earlier this year, that licensee closed the restaurant, and the license is showing as “inactive” on the Authority’s website. (See pages from Authority’s Public Query showing the aforesaid license history, annexed hereto as Exhibit “B.”)

¹ It appears that Social 8th Avenue Corp.’s application stated that it was subject the 500 foot rule. We cannot know if the applicant there was fully aware of the license history and the possibility that the premises was grandfathered. In any event, we do not believe that controls or alters the facts indicating that grandfathering is appropriate here.

Section 64 of the Alcoholic Beverage Control Law contains an exemption, known as the "grandfather clause," for locations that have been continually licensed prior to November 1, 1993. Here, a license for the Premises was originally issued in 1959 according to the Authority's response to our FOIL request. It further appears clear from Exhibit "B" hereto that the Premises have been continually licensed since at least sometime this year.

The proposed applicant has already commenced the licensing process by notifying the local community board of its intention to file an application with the Authority. It is anticipated that our application will be filed with the Authority by the time this matter comes up before the full board for determination.

The question therefore is whether the premises has been "continuously licensed" since before November 1, 1993. The attached pages from the Authority's website would certainly appear to indicate that it has been. There does not appear to have been any intervening use. Furthermore, the short gap between the time the last licensee ceased operating, and the time the new applicant will file does not break the "continuously licensed" requirement.

This precise issue was raised before the Authority and is the subject of Declaratory Ruling 2017-01724, Application of 200 and 500-Foot Laws On Property Located at 260 6th Avenue, Manhattan. There, the prior licensee surrendered its license in January 2017. In August of that year, the Authority ruled that although the premises were unlicensed "for a brief period, given the fact that it has not been used for any other purpose while unlicensed," it was still deemed "continuously licensed" under both the Five Hundred and Two Hundred Foot Law. The Authority noted there that that decision was consistent with other prior rulings in such circumstances.

Under that rationale, the Premises here should similarly be deemed grandfathered. We therefore request that the Authority issue a ruling as requested.

Very truly yours,

Donald M. Bernstein

Encl.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 01/15/2020

2020-00140B

REASON FOR REFERRAL
REPORT OF LITIGATION

1257169, NEW YORK L 1257169
151ST STREET DISCOUNT LIQUORS INC

DO#1710-2019/Case # 133661

2868 8TH AVE
NEW YORK NY 10039

1. SALE TO MINOR ON 04/09/19

ON 11/6/19 THE FULL BOARD ACCEPTED THE LICENSEE'S PLEA OF NO CONTEST TO THE ABOVE CHARGE AND IMPOSED A PENALTY OF CANCELLATION AND BOND CLAIM.

LICENSE ISSUED: 01/27/2012
LICENSE EXPIRES: 07/31/2020

ADVERSE HISTORY:

1. SALE TO MINOR ON 10/19/16; FB ON 3/16/17 IMPOSED \$3,500 CP (PD)
2. SALE TO MINOR ON 10/18/17; FB ON 1/24/18 IMPOSED \$7,500 CP (PD)
3. SALE TO MINOR ON 1/25/18; FB ON 4/4/18 IMPOSED \$11, 000 CP (PD)