

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 08/18/2021
REFERRED FROM: COUNSEL'S OFFICE

2021- 02224

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING - MELIO METHOD OF
OPERATION

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 08/18/2021 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

June 24, 2021

Sent via E-Mail: Gary.Meyerhoff@sla.ny.gov

Gary Meyerhoff, Esq.
Counsel

New York State Liquor Authority
80 South Swan Street, Suite 900
Albany, New York 12210-8002

Re: Request for Declaratory Ruling Regarding Melio
Cloud-Based Accounts Payable & Payment Facilitation Platform

Dear Counsel Meyerhoff:

We represent Melio Payments Inc. (“**Melio**”), an unlicensed entity that provides an online account organization platform which can facilitate bill payment between small- and medium-sized businesses in the United States. Melio’s platform is available to users in any industry and, as used in the hospitality and greater alcoholic beverage control industry provides New York alcohol retailers a centralized interface to review invoices and make payments to vendors, wholesalers and other alcohol and non-alcohol suppliers. This letter shall constitute a request for a declaratory ruling pursuant to Rule 98.1 of the Rules of the New York State Liquor Authority (“**Authority**”) that, under the facts presented below, the proposed method of operation is not inconsistent with the Alcoholic Beverage Control Law (“**ABCL**”).

This request does not seek Authority review or approval for Melio to facilitate retailer credit card payments to wholesalers. Representatives of Melio had previously engaged legal counsel to informally inquire with the Authority about its method of operation’s compliance under the ABCL, focusing primarily on the use of credit cards as a method of payment in the industry. The Authority subsequently notified certain wholesalers in New York of an investigation into payments made using Melio. Out of abundance of caution, Melio has turned off the ability of retailers in New York to make payments via credit card.¹ That, however, is not the issue presented here. Melio is not asking in this request for a ruling whether Melio’s prior credit card offering is proper or legal. Instead, Melio submits this request to provide the Authority with clarity on the platform’s revised operations and to obtain confirmation that the services it currently offers in New York are not inconsistent with the ABCL.

It is Melio’s position that the platform as currently operating in New York is fully compliant with the ABCL and the rules and regulations of the Authority. As explained in greater

¹ The vast majority (97%) of Melio’s business with New York liquor and wine retailers and wholesalers do not involve the use of credit cards. This declaratory ruling is limited to these non-credit card aspects of Melio’s business.

detail herein, Melio’s platform organizes accounts payable information and can facilitate a retailer’s payment of bills and invoices. Neither of these functions of the platform – its account organization feature and its payment facilitation option – conflict with any provisions of the ABCL or the rules and regulations of the Authority; Melio is not exerting control over any retailer, it is not making decisions on behalf of the retailer and, most importantly, it is not making payments on behalf of a retailer. Further, the facilitation of payment from retailer to wholesaler (via EFT or physical check issued from a banking institution) pursuant to terms and timing that are standard in the banking industry involves no extension of credit. Melio is not availing any retail licenses in violation of ABCL Section 111 nor is it unlawfully extending credit in contravention of ABCL Section 101-aa.

I. Questions Presented

1. Whether a New York licensee participating in the use of the Melio platform, as currently constituted and described herein, is availing its license in contravention of ABCL Section 111.
2. Whether a New York licensee participating in the use of the Melio platform, as currently constituted and described herein, is benefiting from or allowing for an unlawful extension of credit in contravention of ABCL Section 101-aa.

II. Statutory Authority & Application

1. Availing

Pursuant to ABCL Section 100(1), “[n]o person shall manufacture for sale or sell at wholesale or retail any alcoholic beverage within the state without obtaining the appropriate license therefore required by this chapter.” ABCL Section 110(h) provides that only individuals and entities disclosed to the Authority may benefit from the sale of alcohol and ABCL Section 111 prohibits licensees from making their licenses available to person not approved by the Authority. Specifically, ABCL Section 111 states:

License to be confined to premises licensed. A license issued to any person . . . for any licensed premises shall not be transferable to any other person or to any other premises or to any other part of the building containing the licensed premises except in the discretion of the authority. It shall be available only to the person therein specified, and only for the premises licensed and no other except if authorized by the authority.

The Authority’s analysis, developed over years of considering third-party provider arrangements, considers two factors; (i) the role of a licensee, and (ii) the financial interest an unlicensed entity has in such licensee.² The Authority has approved arrangements involving unlicensed entities where a licensee retains its traditional retail responsibilities (pricing, advertisements, sales, inventory selection, etc.) and the financial interest of an unlicensed entity in

² Application of Six88 Solutions, Inc. d/b/a ShipCompliant for a Determination on Legality of Internet Advertising, Declaratory Ruling 2013-01006A (N.Y. Liquor Auth. April 9, 2013).

the sale of alcohol is nominal.³ Alternatively, the Authority has found entities or individuals to be availing themselves of the privileges of a license where undisclosed individuals are financially benefiting from sales of alcohol or controlling traditional retail functions of a licensee. Currently, the Authority is considering and finalizing a draft advisory which would identify certain TPP arrangements as *de facto* permissible under the ABCL, namely agreements where an unlicensed entity has no control over a retailer and collects a percentage of a licensee's transaction revenue not exceeding 10%.

As demonstrated below, Melio is not availing any license issued by the Authority.

2. Unlawful Extension of Credit

The ABCL requires strict terms of payment with set credit periods built into the statute. Pursuant to ABCL Section 101-aa (2), manufacturers or wholesalers may only sell or deliver liquor or wine to a retailer:

- (a) for cash to be paid at the time of delivery; or
- (b) on terms requiring payment by such retail licensee for such alcoholic beverages on or before the final payment date of the credit period for which delivery is made.⁴

The "credit period" means a thirty-day period "beginning on the date alcoholic beverages are delivered." (ABCL Section 101-aa(1)(a)). Failure to enforce the ABCL Section 101-aa(2) credit period or providing an alternative payment period is considered an unlawful extension of credit by a wholesaler.⁵ Pursuant to the ABCL Section 101-aa, "cash" which can be used to pay invoices to wholesalers, includes "currency and coin of the United States of America, certified check, money order, electronic funds transfer, bank officer's check or draft, or a check drawn on the account of the retail licensee payable to the manufacturer or wholesaler."

The Authority has charged unlawful extensions of credit against wholesalers where the terms of an invoice were not followed or where a retailer was permitted more than 30 days to make payment. The Authority also considers it unlawful for a wholesaler to not report a retail licensee as delinquent where payment was not timely made, or if a wholesaler made a sale on credit to a delinquent account rather than demanding cash-on-delivery terms.

As demonstrated below, Melio is not unlawfully extending credit to retailers on behalf of wholesalers, nor are any licensees benefiting from non-existent extensions of credit.

³ See *id.*; see also Application of Alcoholic Beverage Control Law with Respect to On-Line Coupon Service, Declaratory Ruling 2011-03001 (N.Y. Liquor Auth. Oct. 5, 2011); Application of Alcoholic Beverage Control Law with Respect to On-Line Coupon Service by Living Social, Declaratory Ruling 2011-03527C (N.Y. Liquor Auth. Nov. 30, 2011).

⁴ There is a parallel statute, ABCL Section 101-aaa, which covers the credit period permitted for the sale of beer and wine product.

⁵ Pursuant to ABCL Section 101-b it is also unlawful for a wholesaler to "discriminate, directly or indirectly, . . . in discounts for time of payment . . . between one retailer and another."

Background & Method of Operation

Melio⁶, an accounts payable provider offering “banking as a service” (BaaS) for tens of thousands of small business customers in the United States, was founded in 2018 by Matan Bar, Ilan Atias, and Ziv Paz. The company currently employs more than 300 people and is rapidly expanding in the business-to-business (B2B) payments space. Melio’s ultimate goal is to make accounts payable solutions more user friendly for small- and medium-sized businesses (SMBs), an area of the accounting industry that had been significantly overlooked prior to the introduction of the Melio platform.

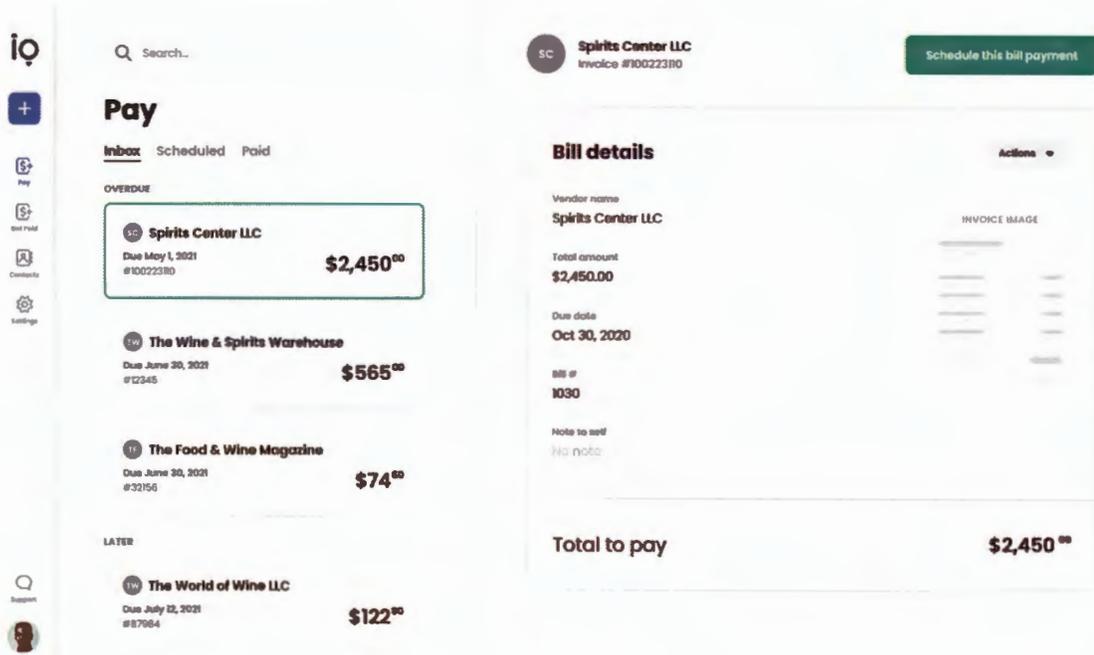
The innovation offered through Melio’s easy-to-use cloud-based platform is the ability for users to digitize invoices and digitalize payments, thus allowing *any* business to pay *any* bill to *any* vendor at *any* time.⁷ Despite the near ubiquity of peer-to-peer electronic payment facilitators working with advanced smartphone and banking technology, the B2B space still has trillions of dollars being transferred via paper checks even though there seems to be little demand for preserving the use of this traditional payment method. With Melio, businesses gain options to quickly pay invoices electronically, allowing more freedom for users to organize and schedule payments, thereby ensuring both timely payments to vendors and better cash flow for the business.

Melio’s method of operation is best explored by reviewing the actual experience of retailers, the “users,” with the platform and understanding how the product addresses their needs for interacting with wholesalers if purchasing inventory.⁸ Without Melio, a retailer operating in the industry has an account with each wholesaler from whom it purchases. Some wholesalers operate multifunctional sites; retailers can often enter their new purchase orders for product and accept wholesaler invoices that include terms of payment and, thereafter, may even setup payment through the portals. Other wholesalers operate in hard copy only, and still others use a sort of hybrid between the two. Regardless of the exact details – the account setup, the purchase orders, the invoicing, the payment, etc. – all interactions between a retailer and each of its many wholesalers are occurring through separate portals, platforms, websites and paper transactions. By introducing Melio, a retailer can centralize all of these separate accounts and transaction onto a single platform and interface: invoices that were not all in one place now are side-by-side; total outstanding amounts for specific payment periods are organized and tabulated; payment dates are identified in an easy-to-understand format; and tax and other accounting forms can be automatically generated. Melio’s platform unifies multiple streams of information onto one display, a technological innovation that has been well-received in the hospitality industry as incalculably helpful.

⁶ Melio, as a name, is derived from the Latin *Melior*, which means, better or to better, a nod to the company’s mission of providing a better B2B product for accounts payable than previously existed.

⁷ The digitalization of payments refers to the integration of digital technologies into the accounts payable system, which digitization concerns the distillation and maintenance of records in electronic form. Melio does both.

⁸ Melio is open to all users and industries and, as such, is available for use in New York by both on- and off-premises licensees. This ruling request uses the term retailers to refer to retail licensees and discusses their relationship with wholesale licensees and the invoices issued by wholesalers to retailers.



Screenshot of Melio Platform's Centralized Interface

Obvious from the above, Melio is retailer-facing. However, on the other side of each transaction originated by a retailer is an alcohol wholesaler. Although they are part of the transaction, wholesalers that send invoices to retailers that use Melio are not impacted by a retailer using the platform to organize their bills and invoices. Further, if a retailer wants to pay a wholesaler by using Melio, the wholesaler is still not effected as it is neither required nor prompted to sign-up with Melio to receive the payment. A wholesaler is notified that a retailer is using the Melio platform via an automated e-mail which ensures wholesalers are aware that funds are being pushed to their account from the retailer or, alternatively, that a paper check is being printed and sent to their attention through the direction of Melio (as requested by the retailer). The notification e-mail is as follows:



Notification E-mail to Wholesalers

A wholesaler receiving payment from a retailer using Melio receives funds within 2-3 business days after a successful ACH or debit card payment initiation – the same as any transaction from or through a retailer’s usual financial institution – while a paper check initiated by the retailer with Melio is issued within a day from the same date (and arrives at the wholesaler based on regular mailing times).⁹ Melio, as a platform facilitator, is made known to wholesalers through notifications and, as compared to normal industry practices, wholesalers are not impacted by a retailer using Melio to organize their invoices and are not delayed in receiving payment.

These basic services that the Melio platform provides to retailers/users are free; a retailer that wants to use Melio to organize its invoices, schedule payments, have a global view of its accounts payable, maintain its books and records, and integrate its accounts payable with QuickBooks or other third-party accounting software does not pay anything to Melio. A retailer that would like to use Melio to facilitate payment of a wholesaler invoice through normal industry channels also does so with zero charges or fees. Reciprocally, the wholesaler receiving payment from the retailer through Melio never pays any fees.¹⁰

III. Flow of Funds & Payment Structure

Melio's digitization of invoices, its maintenance of accounts payable records, and the unified view of transaction activity are arguably the most beneficial aspects of the platform, but the most used and well-known feature is the above-referenced payment function whereby users can send payments to vendors for outstanding invoices. Under Melio’s current operations, vendor payments from retailers to New York wine and spirit wholesalers may only be through two channels: (i) ACH payments, and (ii) debit card payments.¹¹ An ACH payment is an “automated clearinghouse” payment (an electronic fund transfer through an established ACH network from bank to bank) which pulls money from a payor’s account directly to a new account, while a debit card payment, though also an electronic fund transfer that debits directly from payor’s financial institution account, has an extra step for a credit card processing network to verify activity against fraud before funds are pulled to a new account.

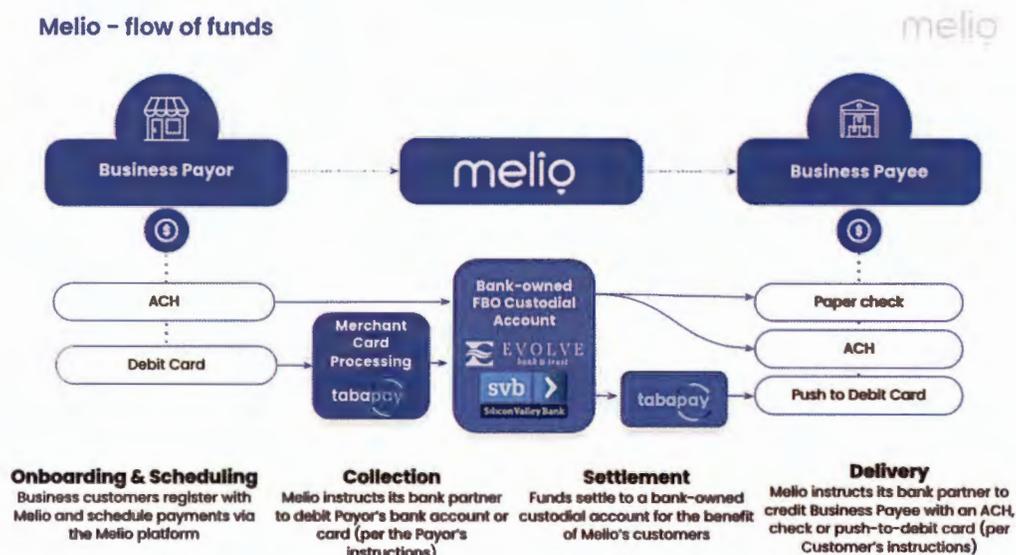
In recent years, ACH and debit card transactions have become commonplace for both businesses and the public. Melio transactions, from the perspective of the payor and payee, are identical to any fund transfer that an individual or entity could initiate at or through their own

⁹ Payments via traditional check take longer than ACH payments in that Melio needs to instruct its bank partner to actually cut paper checks from the custodial accounts for the benefit of retailers.

¹⁰ Melio derives revenue from premium services, not from the general use of the platform by retailers and other users organizing invoices and making payments. For example, if a retailer would like to accelerate the payment of an ACH from two or three business days to same day, or send a check more quickly, Melio charges a fee. Melio provides sufficient notice to the user of the fees prior to processing and such fees are generally avoidable. Notably, financial institutions charge these fees for accelerated payment as well.

¹¹ Historically, Melio offered three options for payment, ACH payment, debit card payment and credit card payment. As noted above, Melio recently shut down the program in response to information from various users about the Authority’s opinion of the credit card use. Melio intends to seek approval to offer credit card facilitation via a separate declaratory ruling request and will not permit the form of payment before the issue is heard by the Members.

financial institution. The difference, however, is that Melio is not a financial institution.¹² Instead, Melio has partnered with several financial institutions to enable users to schedule payments via the Melio platform. The simplified flow of payment in a Melio facilitated transaction from retail user to vendor payee, with the partnership of a financial institution, is as follows:



Melio's role and activity in a payment transaction thus runs parallel to the actual transfer of funds, providing oversight and instructions to its partner banks on how a user is requesting that their money is moved to pay an invoice, installing guardrails for the movement of funds, and monitoring all transactions.

As depicted above, a fund transfer using Melio involves several steps but, again, is virtually identical to any other B2B or peer-to-peer transaction. First, a payor identifies the invoice that it would like to pay and the method by which it would like to make the payment, either via ACH or debit card. The payor's decision on payment is an instruction to Melio about the direction the platform will provide to its bank partner on how the funds should be "pulled" from the payor's account and "pushed" to the payee's account. Depending on what option the payor selects, the payment will take one of two similar tracks:

ACH Payment: If a payor would like to use an ACH payment, the instruction from payor to Melio is to direct the bank partner to debit the payor's identified bank account – the traditional well-known financial institutions where payor maintains its account like a Wells Fargo, Bank of America, Chase, etc. – to pull the amount into the bank partner's custodial account maintained for the benefit of the retailer; or

Debit Card Payment: Alternatively, payor can decide to use their debit card to make a payment to a vendor, a transaction which is nearly identical to an ACH

¹² Melio facilitates payments through bank partners, but is not a bank itself. Regardless, Melio provides the highest level of security by using state-of-the-art, bank-level security technologies, and follows the strictest safety and privacy regulations with bank details fully encrypted on Melio's servers.

payment except for one extra step where Melio first contacts one of its merchant card processing partners to ensure the request is not fraudulent.

Over the two-to-three business days following the initiation of the fund transfer by payor, the funds from the payor's account "settle" into the bank partner's custodial account. Over the settling period, Melio's bank partner is communicating with the payor's bank to determine whether the payor's account has sufficient funds to cover the requested transfer amount. If the payor does not have sufficient funds, the funds are never debited from the payor's account and the payee never receives money. The failed transaction is never communicated to the payee, and the payor, if they would like to actually make the payment, would need to submit the request again when they have sufficient funds.

Assuming that the funds can settle, they do so in the bank partner's aforementioned custodial account for the benefit of (FBO) the payor retailer. The custodial account is not accessible by Melio, but Melio does maintain visibility into the custodial account and of the transactions without any control of the account itself or the funds.¹³ Once the funds are settled in the custodial FBO account Melio requests that the bank partner push the funds from the FBO account to the payee's account. At this point the payee is notified by e-mail that payment is being sent by the payor.

At the successful close of both an ACH transfer and a debit card payment the processed funds have been moved from retailer payor's account into wholesaler payee's account. For a normal transfer (i.e., no request for expedited services has been requested by payor or it is not an international transfer), neither the retailer nor the wholesaler has paid a fee to Melio or the bank, the funds were moved without ever touching a Melio bank account, and the time from initiation of the transfer to completion (roughly two or three days) is the same as if the payor had initiated the ACH payment or debit card transaction directly from its own financial institution.

To summarize:

- (i) Melio is Not Availing a License:
 - a. Retailers use the Melio platform to organize wholesaler invoices from multiple sources on a unified interface;
 - b. Retailers can pay outstanding invoices to wholesalers via the Melio platform through either an ACH payment or a debit card payment;
 - c. The basic services of Melio are free to retailers, Melio receives no payment from retailers or wholesalers, and Melio does not directly or indirectly handle or control any alcohol; and
 - d. Melio's involvement in facilitating payment at the direction of a retailer is disclosed to vendors.

- (ii) Melio is Not Extending Credit at All:
 - a. Melio does not advance funds to retailers for payment to wholesalers, nor does it provide any credit to retailers when a

¹³ The visibility into the account allows Melio to track payments and provide instruction, assistance or customer service, as necessary.

payment is initiated – funds are debited directly from the retailer’s financial institution account according to the good-funds model;

- b. All payments are made through a Melio bank partner according to banking industry standards and all funds are held in bank-owned (not Melio-owned) custodial accounts FBO the retail payor;
- c. All ACH payments directed by Melio flow through NACHA channels, the same as any ACH payment initiated directly by a financial institution, and the Melio transaction takes the same amount of time as any other ACH payment; and
- d. All debit card payments flow through a merchant card processor, the same as any debit card payment initiated directly by a financial institution, and the Melio transaction takes the same amount of time as any other debit card payment.

Again, concerning invoice organization, Melio is not operating in any of the traditional roles of a licensed retailer or handling alcohol. Melio also does not make payments on behalf of retailers or even advance funds in anticipation of payment. Melio does not handle or process the fund transfer at all. In the context of bill payment, Melio’s role is to serve as traffic director by taking direction from a payor and guiding a financial institution to pull and push funds from retailer account to a wholesaler account. Further, inasmuch as Melio’s bank partners that process transfers are financial institutions, the bill payment is structured according banking industry standards and NACHA guidelines (as applicable) and takes the same amount of time as traditional ACH or debit card payments that are typically directly from payor’s financial institutions. Finally, and it should go without saying, Melio is not handling or trafficking in alcohol.

In consideration of the above, we respectfully request the Authority issue a declaratory ruling identifying that Melio’s accounts payable and payment facilitation platform as currently constituted with EFT payments is permissible and that Melio, through the platform, may operate in New York to facilitate payments to wine and spirit distributors.

Respectfully,

Donald M. Bernstein

Donald M. Bernstein

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 08/18/2021
REFERRED FROM: COUNSEL'S OFFICE

2021- 02225

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLATORY
RULING – 977 SECOND AVENUE
NEW YORK, NY

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 08/18/2021 determined:

June 10, 2021

Mark Frering, Esq.
Assistant General Counsel
New York State Liquor Authority
80 South Swan Street
Albany, NY 12210

Re: Request for Declaratory Ruling: Application of 500 Foot Law
at 977 Second Avenue, New York, NY

Dear Mr. Frering:

Our firm represents Ergroupholdings LLC, an entity formed for the purpose of operating a restaurant in the ground floor and basement of 977 Second Avenue in Manhattan (our client being referred to herein as "Applicant" and 977 Second Avenue being referred to as the "Premises"). My Notice of Appearance is enclosed. The Applicant expects to submit an application for a full on-premises liquor license within three weeks of the date of this correspondence. The Applicant seeks a determination from the New York State Liquor Authority (Authority) with respect to the application of the "500 Foot Law" at the Premises.

Various statutes¹ in the Alcoholic Beverage Control Law prohibit the Authority from issuing a retail license for the sale and/or consumption of liquor (an "on-premises" license) for any premises that is within five hundred feet of three establishments that are currently operating with on-premises licenses. This licensing restriction is commonly referred to as the "500 Foot Law". The Alcoholic Beverage Control Law sets forth the procedures to be used in measuring the distance between the proposed licensed premises.²

Notwithstanding the general prohibition created by the 500 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued even after the 500 Foot Law has been triggered. One of the exceptions exempts from the 500 Foot Law establishments which are within five hundred feet of three or more existing premises, and which have also been licensed continuously since on or before November 1, 1993,³ premises protected by this exception are commonly said to enjoy "grandfathered" status.

The Applicant hereby requests that the Authority determine whether the ground floor and basement of the Premises have been "continuously licensed" since on or before November 1, 1993, and further requests the Authority to consider whether the Premises would be "grandfathered" under the circumstances set forth herein and, assuming an otherwise acceptable

¹ See Alcoholic Beverage Control Law §§64(7)(b), 64-a(7)(a)(ii), 64-b(5)(a)(ii), 64-c(11)(a)(ii) & 64-d(8)(b).

² See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

³ See Alcoholic Beverage Control Law §64(7)(c).

application, be approved without the Applicant being required to attend the additional hearing required in cases where the 500 Foot Law applies.

As the enclosed records of the Authority demonstrate, the Premises have been continuously operated as “Murphys” from 1987 until September 22, 2020, when the most recent license for the premises was surrendered. During its thirty-four-year tenure, each of the two prior operators of Murphy’s held on-premises liquor licenses. In May of 2021, one of the Applicant’s principals purchased the building of which the Premises forms apart. The Applicant met with Manhattan Community Board 6 on May 27, 2021, and CB6’s Business Affairs and Licensing Committee voted unanimously to support the anticipated application for a full on-premises liquor license that will operate until 4:00 am daily. Applicant expects to file its application for an on-premises liquor license within three weeks of the date of this request, approximately nine months after the surrender of the on-premises liquor license held by the prior operator.

The Authority has, under similar circumstances, concluded that premises initially licensed prior to November 1, 1993, were “continuously licensed” notwithstanding a surrender-period (for purposes of this request, the term “surrender-period” shall mean the period of time between the date of a licenses surrender and the date of the Authority’s decision as to the applicability of the 500 Foot Law). In those cases, the Authority ruled that despite surrender-periods continuing for months, and even up to nearly a year, premises nevertheless qualified as “continuously licensed” for purposes of the 500 Foot Law.⁴ For example, in Declaratory Ruling 2012-00817D, the Authority ruled that the subject premises had been “continuously licensed” despite the fact that the previous licensee had surrendered its license approximately six months earlier. Furthermore, in Declaratory Ruling 2012-01220, the Authority similarly ruled that the premises in question had been “continuously licensed” despite an approximately eleven-month surrender-period. Upon information and belief, the Authority has determined that longer surrender periods, even periods of several years, resulted in continuous licensure for purposes of the 500 Foot Law.

The above-referenced determinations are in keeping with Governor Cuomo’s stated objective of fostering business development within New York State, New York’s “open for business” motto, and the ABCL’s stated purpose of “supporting economic growth, job development, and the state’s alcoholic beverage production industries.” In this case, the Premises have historically and continuously been operated as a restaurant serving beer, wine, and liquor and there has been no intervening use of the Premises since the date that the prior operator’s license was surrendered. Accordingly, the Applicant respectfully requests the Authority rule that upon the Applicant’s timely filing of an application for a full on-premises liquor license said application shall not be subject to the 500 Foot Law.

Respectfully submitted,



Michael J. Paleudis, Esq.

Encl.

cc: Edward Mcghie, *via e-mail*

⁴ See New York State Declaratory Ruling 2012-00817D (March 13, 2012); New York State Declaratory Ruling 2012-01220 (April 24, 2012).

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 08/18/2021
REFERRED FROM: COUNSEL'S OFFICE

2021-02294

REASON FOR REFERRAL
REQUEST FOR DIRECTION

PROPOSED REGULATIONS FOR
ELECTRONIC PLEADINGS

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 08/18/2021 determined:

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 08/18/2021
REFERRED FROM: COUNSEL'S OFFICE

2021- 02329

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING – 20 W 20TH STREET,
NEW YORK, NY

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 08/18/2021 determined:

BERNSTEIN REDO, P.C.

-ATTORNEYS AT LAW-

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DONALD M. BERNSTEIN
MARTHA M. REDO

BENJAMIN SAVITSKY

July 27, 2021

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

Re: 20 West 20th Street, New York, New York, 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 a ground floor and mezzanine space in a thirteen-story commercial building located at 20 West 20th Street, New York, New York 10011 (“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 1989, and was issued to Dezer Entertainment Concepts Inc., serial number 1024726 according to the internal records of the Authority. See Exhibit “A,” the Authority’s July 13, 2021 response to our FOIL request.

That license was surrendered in or around October 2002. That same year, another license was issued for the Premises to West 20th Enterprises Corp., serial number 113338. That license expired on October 31, 2020. See pages from Authority’s Public Query showing the aforesaid licensee history, annexed hereto as Exhibit “B.”

The landlord of the Premises has confirmed that the former licensee, West 20th Enterprise Corp., vacated the premises on February 8, 2021 when its lease expired. See Exhibit “C” hereto, a letter from Richard Angel, the General Manager for the landlord, Dezer Properties II LLC dated July 22, 2021. That letter further states that the Premises has been vacant since February 8, 2021, and that a new lease has been signed for the space which is the lease to our client.

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 filed in 1989 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 October 31, 2020 and that it has been vacant since that time.

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 within the next 45 days.

The question therefore is whether the premises has been “continuously licensed” since before November 1, 1993. The attached pages from the Authority’s website indicates 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

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Encl.