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DECLARATORY RULING

Retail Employee w/Equity Interest in Manufacturer

Agenda # 2022-00963

Introduction

The State Liquor Authority (SLA) has received a request for a declaratory ruling on behalf of an on-premises retailer which employs a general manager who wishes to acquire an ownership interest in a licensed manufacturer. The retailer and general manager agree that (i) the general manager will be compensated with a salary (and not through receiving a percentage of the retailer's revenues or profits; (ii) the manufacturer's products will not be sold by the retailer; and (iii) the general manager will not be responsible for decisions about what alcoholic beverages the retailer purchases.

Questions Presented

May a licensed retailer employ a general manager who has an ownership interest in a licensed manufacturer without violating the State's tied-house laws? Would this arrangement implicate State legal restrictions on the provision of unlawful gifts or services to a retailer?

Statutes Involved

ABCL Section 101(1)(a) provides, in part, it is "unlawful for a manufacturer or wholesaler licensed under this chapter to be interested directly or indirectly in any premises where any alcoholic beverage is sold at retail; or in any business devoted wholly or partially to the sale of any alcoholic beverage at retail by stock ownership, interlocking directors, mortgage or lien or any personal or real property, or by any other means."

Reciprocally, *ABCL Section 106(13)* governs retail licensees, providing that "no retail license for on-premises consumption shall be interested, directly or indirectly, in any premises where liquors, wines or beer are manufactured or sold at wholesale, by stock ownership, interlocking directors, mortgage or lien on any personal or real property or by any other means."

ABCL Section 101(c) provides that it is unlawful for a licensed alcoholic beverage manufacturer or wholesaler to "make any gift or render any service of any kind whatsoever, directly or indirectly, to any person licensed under this chapter which in the judgment of the liquor

authority may tend to influence such licensee to purchase the product of such manufacturer or wholesaler.”

Analysis

With respect to the tied-house issue, what does it mean to have an “interest,” direct or indirect, in a business? Given the express reference in the statute to equity/ownership interests (stock ownership) and to debt interests (mortgage or lien), those interests plainly qualify whether held directly in a licensee or indirectly through a parent company or other corporate family member. Here, the general manager will hold an equity/ownership interest in a manufacturer, which puts him in the manufacturing tier for tied-house purposes. The tied house question, presented, thus, is whether the definition of “interest” extends to a managerial or employment interest as well? Is that enough to put the individual on the retail tier?

To our knowledge, the SLA Board has not previously issued guidance on whether the phrase “indirect interest” would apply to contractual arrangements between a licensed entity and third party that do not convey an equity or debt interest, like an employment arrangement with a salaried manager.¹ We do know, however, that the SLA has in the past interpreted the term “indirect interest” broadly to include many types of commercial arrangements. However, the Board today finds that the term “indirect interest” need not extend to any business arrangement between a manufacturer and a retailer. Such a broad interpretation is not required by the statutory language or by authoritative judicial precedent interpreting these statutes.

We thus interpret the term “interest” in a licensed business, for purposes of the tied house laws as applied to this declaratory ruling request, to be limited to equity/ownership interests, debt/lending interests, or their equivalents. For example, if the general manager here was to be compensated with a percentage share in the retail licensee’s revenues or profits (instead of with a salary), the compensation would be similar to an equity interest in the retailer. But under the facts presented by the requestor, the retailer’s general manager would not have an ownership/equity interest or debt interest in the retailer simply by virtue of his employment contract which pays him a salary. As long as the employee-manager is not compensated by receiving a percentage of his employer-retailer’s revenues or profits, he would not have an “interest” in the retail tier for tied-house analysis purposes.

With respect to the unlawful gifts and services restriction, any time a person who has an equity interest in a manufacturer is providing services to a retailer (like the general manager), it is fair to wonder whether he is doing so for the illegal purpose of influencing the retailer to purchase the products of the manufacturer. Here, the requestor has stipulated that the retailer will not purchase the products of the manufacturer, and the general manager will not be involved in purchasing decisions for the retailer. Assuming that no other undisclosed facts exist that would otherwise raise an improper gifts and services issue, there does not appear to be one here.

Determination

¹ We are, however, simultaneously issuing a Declaratory Ruling in another case, involving Amazon, that requires consideration of the same question.

Given the foregoing operational restrictions, the Members declare that the ABC Law does not prohibit the licensed retailer from employing an individual who has an ownership interest in a manufacturer as a general manager. The general manager is not prohibited by the tied-house laws from acquiring an equity interest in a licensed manufacturer.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on June 8, 2022 before Chairman Vincent Bradley, Commissioner Lily Fan and Commissioner Greeley Ford. The above written ruling was approved by Chairman Bradley on behalf of the Members on June 24, 2022.

Dated: 06/24/22



Donald Roper
Secretary to the Authority