

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 05/24/2023
REFERRED FROM: COUNSEL'S OFFICE

2023- 00635

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING-
132 2nd AVENUE
NEW YORK, NY 10003

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 05/24/2023 determined:



April 25, 2023

Via Email Only: mark.frering@sla.ny.gov

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

*Re: Request for Declaratory Ruling
Serial No.: 1360815*

Dear Mr. Frering:

Our firm represents Host 132 LLC ("Applicant"), an entity formed for the purpose of operating a bar and restaurant on the ground floor and basement of 132 2nd Avenue in Manhattan ("Premises"). The undersigned's Notice of Appearance is enclosed. On April 3, 2023, Applicant's application ("Application") was booked into the Authority's system and assigned the above-referenced serial number. The Applicant hereby 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". 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, 1993,² premises protected by this exception are commonly said to enjoy "grandfathered" status.

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

² See Alcoholic Beverage Control Law §64(7)(c).

The Applicant 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 consider whether the Premises are "grandfathered" under the circumstances set forth herein. Assuming the premises are grandfathered, the Applicant submits that the 500 Foot Rule hearing scheduled for April 28, 2023, should have no effect on the Application whatsoever.

As the enclosed records of the Authority demonstrate, the Premises was continuously licensed under Serial No. 1024394 from February 23, 1989, until January 31, 2023, when Two and Eight Gourmet LTD's on-premises liquor license expired. Applicant filed its application for an on-premises liquor license approximately eight weeks after the expiration of the on-premises liquor license held by Two and Eight Gourmet LTD. **As indicated in the lease submitted with the Application, Applicant's lease for the premises was signed in August of 2022, while Two and Eight Gourmet LTD still occupied the premises and while its on-premises liquor license was still active. Applicant's lease commenced on February 15, 2023, fifteen days after the expiration of the previous license. This timeline, considered with the enclosed affidavit from the Landlord of the Premises, clearly establish that there was no intervening use after the expiration of Two and Eight Gourmet LTD's on-premises liquor license.**

The Authority has, under circumstances where much longer periods of non-licensure have occurred, 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.³ 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

³ See New York State Declaratory Ruling 2012-00817D (March 13, 2012); New York State Declaratory Ruling 2012-01220 (April 24, 2012).



periods of several years, resulted in continuous licensure for purposes of the 500 Foot Law.

The above-referenced determinations are in keeping with New York State's 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 was no intervening use of the Premises after the date the prior licensee's license expired. In fact, the application was filed a mere sixty-two days after Two and Eight Gourmet LTD's license expired. Accordingly, the Applicant respectfully requests the Authority rule that the Application is not subject to the 500 Foot Law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael J. Paleudis', written over a light blue rectangular background.

Michael J. Paleudis, Esq.

Encl.

cc: Ronan Carter, *via e-mail*

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 05/24/2023
REFERRED FROM: COUNSEL'S OFFICE

2023- 00636

REASON FOR REFERRAL
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING-
29 CORNELIA STREET
NEW YORK, NY

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 05/24/2023 determined:

HELBRAUN | LEVEY

April 25, 2023

New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, NY 11210-8002

**RE: DECLARATORY RULING SUBMISSION
WF 1 LLC
29 Cornelia Street
New York, NY 10014
Serial #1359120**

Dear Members:

This firm serves as legal counsel to the above-named applicant. Their application is for an on-premises liquor license, and while they are within 500 feet of more than three other on-premises licenses, we believe that they meet the requirements laid out in the grandfather exception of ABCL §64(7)(c) and therefore should not be a 500-foot case. Further, we believe that previous declaratory rulings on this issue, with similar circumstances to our client, also point to this falling under the grandfather exception.

1. License History of the Premises

The space that this applicant is planning to occupy is 29 Cornelia Street, which most residents of the West Village remember as the Cornelia Street Café. This neighborhood institution was initially licensed on April 22, 1984 and ran continuously until its eventual closing in 2019. According to the NYSLA website, the license officially expired on March 31, 2019.

After about a year of vacancy, the iconic space was leased by the applicant, WF 1 LLC, on February 27, 2020, with the plan being to return the space to its former glory as a dining destination. There was no intervening occupancy between Cornelia Street Café and our client. As we all know, the world changed drastically in March 2020 due to the COVID 19 Pandemic, forcing the applicant to put their plans for this space on hold. Now that the city has gotten back to normal, our client is able to open the restaurant that they had always planned on.

2. Grandfather Exception

ABCL §64(7)(b) prevents any applicant from obtaining an on-premises liquor license within 500 feet of three or more other on-premises liquor licenses without first proving public interest and advantage at a hearing. We fully acknowledge that this location, in the heart of the West Village, is within 500 feet of more than three other on-premises licenses. However, §64(7)(c) allows for an exemption from the 500-foot rule. Specifically, §64(7)(c) reads:

“no license shall be denied to any premises, which is within five hundred feet of three or more existing premises licensed and operating pursuant to this section and sections sixty-four-a, sixty-four-b, sixty-four-c, and/or sixty-four-d of this article, at which a license under this chapter has been in existence continuously on or prior to November first, nineteen hundred ninety-three...”

As this premises has had a full liquor license since April of 1984, well before the November 1, 1993 cutoff, one can reasonably conclude that this premises should be covered under the grandfather exception.

3. Previous Interpretations of the Rule

This issue really comes down to what the members of the board consider to be “continuously” licensed. The premises has not had an active liquor license since March 2019, at which point the premises remained vacant until February 2020. However, the members of the board have consistently found that they do not consider vacancies of a reasonable length of time to be a break in the chain of licensure for purposes of the grandfather exception.

In Declaratory Ruling #2021-02919, a premises was vacant for several months, and the members stated that “the premises would be treated as continually licensed as long as it was vacant and not used for other purposes following license surrender.” As previously stated, after the expiration of this license in March 2019, the premises was vacant for almost a year. There were no intervening tenancies at all, let alone ones that used the space for other purposes.

While we have established that vacancies do not break the license chain, we also make it clear that the premises was leased by the applicant in February 2020, so it has been under their control for over three years now. In Declaratory Ruling #2021-02011, the members state that they “would be reluctant to consider such a lengthy gap between a prior license and a new license (more than 2 years) to be “continuous licensing,” absent circumstances explaining the gap.” In that case, the reason for the gap was a gut renovation of the space, which the members deemed to a reasonable explanation. They also gave the example of a hurricane causing a delay in licensing in Declaratory Ruling #2015-00986. Naturally, a global pandemic on the scale of COVID 19 should be a more than reasonable explanation for the time between when the space was leased and when our client applied for the license.

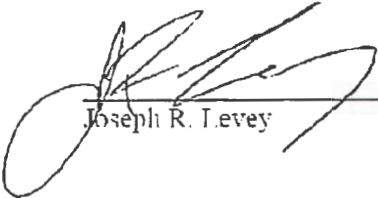
One recent declaratory ruling, #2022-00109, involves a set of circumstances that are extremely similar to our client’s. There, a premises that had been licensed since 1971 surrendered their license in September of 2017, and proceeded to not have an active license for almost four years. The location remained vacant due to COVID 19 and did not get leased until June 1, 2021. After hearing the facts of that case, the members concluded that “material to this request is the COVID 19 pandemic, which has had an uncontrollable impact on the restaurant/tavern industry since February/March 2020. Given the absence of an intervening use for the premises in the pre-COVID period and the impact on the industry during the COVID 19 pandemic, the Members of the Authority find the location should be deemed to have been continuously licensed since before 1993.” The facts of this case are quite similar to our client’s situation, and we hope that the same conclusion will be made.

Contrary to most requests of grandfathering from the 500-foot rule, we actually received Community Board support and are in no way trying to circumvent the 500-foot hearing process. This ruling is crucial because it would mean that this applicant can obtain a temporary permit, allowing them to get this iconic space up and running for the community much sooner.

To summarize, 29 Cornelia Street was continuously licensed from 1984 until March of 2019, at which point it remained vacant until February 2020, when it was leased by the applicant. COVID 19 prevented our client from opening their new establishment, and they are now looking to make good on their original plan to open a restaurant. Taking these facts into consideration, we kindly ask that the members come to the same conclusion that they did in the above declaratory rulings and find that this is not a 500-foot case.

Thank you in advance for your time and consideration to this matter, and we look forward to hearing your response.

Sincerely,



Joseph R. Tevey