

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF 10/25/2023
REFERRED FROM: COUNSEL'S OFFICE

2023- 01231

REASON FOR REFERRAL-
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY
RULING-
1 WEST 29TH STREET
NEW YORK, NY

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 10/25/2023 determined:

Robert W. Romano
Attorney at Law
7 West 96th St, 17D
New York, NY. 10025
(914) 500-3196
Romanolaw@gmail.com

May 4, 2023

Shannon Kearney Sarfoh, Esq.
General Counsel
Mr. Michael Ammirato, Esq.
Mr. Lawrence Schwartz, Esq.
New York State Liquor Authority
80 South Swan Street, Suite 900
Albany, New York 12210

***Re: Request for Declaratory Ruling Under 200 Foot Law
Premises at 1 West 29th Street, New York, NY***

Dear Counselors:

I have been retained by Ms. Wendy Rubin to represent her with regard to the subject matter above. Ms. Rubin is intending to file an application for an On Premises 252 License on behalf of a yet to be formed entity in the next few weeks. For purposes of this request, her intended location is presumed to be within 200 feet on the same street or avenue of an entrance regularly used for ingress in the building at 1 West 29th Street; more commonly referred to as the Marble Collegiate Church (“the Church”).

This letter is to request a declaratory ruling from the members of the New York State Liquor Authority pursuant to Rule 98.1 that the Church’s building is not used exclusively as a house of worship, nor does it retain the character of one within the meaning of the 200-foot law. A ruling as such would remove any bars to an application for an On Premises liquor license as far as the 200-foot rule is concerned pertaining to the Church’s building.

The Applicable Statutory Provision

Under ABCCL section 64(7)(a), no retail license for on-premises consumption may be granted for any premises which shall be on the same street or avenue of a building used exclusively as a school, church, synagogue or other place of worship. In 2007 (L. 2007, Ch 406), the legislature amended the law to clarify what uses would not affect or destroy the exclusivity requirement of the statute. ABCCL 64(7)(d-1). These are “incidental uses” that include but are not limited to the following, which are enumerated in the statute:

-the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups;

-use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups;

-the use of the building by other religious organizations or groups for religious services or other purposes;

-the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease;

- the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions.

-the building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

As indicated herein, a substantial portion of the Church building is actively marketed and regularly rented, through a separate corporation owned by the Church, for third party commercial, business and social events and functions that go far beyond any of the enumerated uses set forth above, and which render it non-exclusive within the meaning of the statute

Marble Collegiate Church

The Church is part of the Reformed Church in America Church and the United Church of Christ; I do not question that it is indeed a church offering worship services. However, the Church, through a separately formed Delaware non-stock corporation, Collegiate Asset Management Corp. ("CAM"), pro-actively rents out multiple rooms and venues within its building, and solicits these rentals with a full staff dedicated full time to securing bookings and arranging events. A substantial portion of the Church's website is devoted to describing and marketing these spaces (<https://www.marblechurchevents.com/>) by which it solicits the rental of various rooms within its building for social as well as corporate and commercial uses, such as weddings, lectures, concerts, movie shoots, showings, conferences, gallery showings and live streaming. Anyone wishing to use these spaces will be served by "professional Event Planners, Audio & Video Technicians and Reliable Maintenance Staff [sic]."¹ As noted below, and on its website, the Church "**encourages**

¹ The Church aggressively markets the space, so much so that when you open the page on space rentals and are dormant for just a few seconds, a pop-up box appears in the middle of the screen that says in large, bold letters

a broad usage of its facility.” Although I believe just a quick study of this webpage alone is more than sufficient to make my points herein, I will further explain.

The Church’s Events & Space Usage Manager, Rick Harper, is available (according to the Church website) for information, or to book a tour of the available space. There are ten (10) spaces within the Church that are advertised for social, corporate or commercial events. They include the Sanctuary which can accommodate over 800 guests for a private event, the Labyrinth Room for up to 125 guests, the Peale Parlor, Suite 307 which includes a baby grand piano, wall monitors, microphones and amplifiers for use during an event, and suites 213, 116 and 207. Other spaces available for rent include the chapel, children’s chapel and prayer room. In all, the Church can accommodate 1,236 guests for events. This is all shown on its website which proactively markets and advertises the availability of these spaces, and on the attachment hereto.

In addition to the Events Manager referred to above, the Church also employs an events Coordinator, Mr. Gary Thompson. It also provides accessories for events; including a baby grand piano, coffee stations, sound systems and audio-visual equipment, floral pedestals, table swatches, chairs and tables, photographers, candle stands, music equipment including three pianos, two organs, a drum set, as well as security and a security consultant. <https://www.marblechurchevents.com/prices>.

The Church utilizes a form Facility Use Agreement.² Notably, section 7.01(3)(i) of that Facility Use Agreement, specifically refers to the availability of the various spaces for commercial events, and states as follows:

“For use of the Sanctuary or when space in the Facility *is used for commercial purposes (including but not limited to recording films, televisions or commercials or fashion shoots)*. Facility User must provide MCC with excess liability insurance indicated in Section 7.01 (1), (2), (3), (5) and (6). The limit for this Section 7.01(4) will be Four Million and 00/100 Dollars (\$4,000,000.00) per occurrence and Four Million and 00/100 Dollars (\$4,000,000.00) in the aggregate excess over Facility User’s general liability, automobile liability and employer’s liability insurance. [Emphasis added.]”

Section 7.01(5) of the Facility Use Agreement also makes reference to functions where alcohol is served, in which event the host must provide the Church with liquor liability insurance of not less than \$1,000,000.00.

A critical factor here is that the Church does not merely offer space rentals for social events. To the contrary, its Usage Policy & Procedures (<https://www.marblechurchevents.com/rental-usage-policyprocedures>) confirms that the Church “encourages a broad usage of its facility.” According to its Policy & Procedures, any user must advise the Events and Space Manager

“**Book it Now,**” and offers “quick answers to your questions,” inviting the viewer to either email or call for information.



² <https://www.marblechurchevents.com/rental-agreement>

“whether the applicant is a not-for-profit, religious, government or *commercial entity*, or an individual” (emphasis added). It further specifically requests the user to state whether it will charge an admission fee in connection with the intended use. There are also rules if the user is going to market or advertise its event “including but not limited to marketing, public relations, emails, posters, tee-shirts, hats, other clothing, websites, banners, signs, handouts, and any and all other public dissemination of the Function.”

A recent example of commercial use of the Church was a third party booked and ticketed fashion show by the designer Willy Chavarria that took place at the Church in September 2022. Willy Chavarria Presents Refined View of American Fashion | News | CFDA³. Despite the fact that Madonna herself (aka Madonna Louise Ciccone) was seated in the front row at the show, this was clearly a commercial endeavor; certainly not a church affiliated use of the space.

These room rentals are not occasional. This is a full time, on-going enterprise, and events are booked regularly and months in advance. Clearly their space rental business is thriving, and as further evidenced by the marriage scene in the 1984 movie “Splash” (filmed in the Church’s main sanctuary), has gone on for a significant period of time.

In summary, CAM rents out its spaces for third party commercial uses, including allowing these for-profit third parties in turn to charge its guests or customers for the events it books the spaces for. **This is not a use merely incidental to church uses.**

The Church Events Go Beyond those Permitted in ABCL 64(7)(d-1)

As noted above, by statute there are permitted uses of churches, schools and houses of worship that may take place without the facility being deemed to lose its essential character as such. The space rentals promoted here by the Church, though CAM, do not fall within those permitted uses. The events are not bingo or games of chance, they are not limited to fund raising for not for profit religious or other not for profit organizations, they are clearly not limited to social activities for congregants, or for bereavement or disease counseling, or for blood drives, and are not even limited to rentals for private social functions.

The website pages referred to above show that the Church, through CAM, runs its multitude of event space rentals like a business, with at least two full-time staff members in charge of marketing, promoting, scheduling and running these events in 10 distinct venues in the Church, with a full set of amenities. Furthermore, as made clear in its form contract, these events, they are not limited to not-for-profit events, or even social events. To the contrary, the Church markets and allows the space to be used specifically for commercial purposes, that, as their own documentation shows, can include ticketing or admission fees by the holder of the event.

In Divisional Order 319, the Authority set forth its policy with respect to the 200 Foot Law. It expressly applies a broad interpretation of the statute, affording the fullest protection of the law

³ <https://cfda.com/news/willy-chavarria-presents-refined-view-of-american-fashion>



to those institutions “in which activities of a non-educational or religious nature are present so long as those activities bear a logical relationship to the educational or religious purpose of the institution, and are fairly to be considered subsidiary to its main purpose.” Here, the activities of the Church in running what is essentially a private event and facility do not bear a logical relationship to the educational or religious purpose of the institution.

The statute expressly permits the “conduct of *social activities* by or for the benefit of congregants,” and “use of the building by non-congregant members of the community for private *social functions*.” [Emphasis added.] In either case, the law also permits the church to accept “the payment of funds to defray the costs related to another party’s use of the building.” ABCL Section 64(7)(d). Thus, in Declaratory Ruling 2022-01025, the use of space in a church for funerals, weddings, baptisms, AA meetings and community events “fall within the language of ABCL 64(7)(d-1) describing incidental uses” and did not detract from its predominant character as a church. In Declaratory Ruling 2022-01028, a not-for-profit organization provided care and services to the elderly in the basement of the church. This included yoga, concerts, and cooking classes. The Authority ruled there that these uses by a not-for-profit fall within the statutory language defining what does not change the predominant character of the building. The not-for-profit’s use was found to be “consistent with overall spiritual mission of the church.” See also, Declaratory Ruling 2016-01137E, where the Authority found that “[t]he rental of portions of the church to third parties for *private social functions* is within the Legislature’s 2007 amendment permitting use of the building by non-congregant members of the community *for private social functions*, even for remuneration.” [Emphasis added.] Rather, here, **the Church specifically and actively markets these spaces for third party commercial uses, such as the fashion show referred to above, which have no relationship to the educational or religious purposes of the institution.**

While the 2007 amendments are broad, nothing therein authorizes regular and ongoing third-party commercial use within a church. See Declaratory Ruling 2016-0113E where space was rented to a design firm for a commercial use, and the building was thereby held not to be exclusively used as a church. And in *Society of the Free Church of St. Mary the Virgin v. New York State Liquor Authority*, 2012 N.Y. Slip Op. 30714, a copy of which is attached hereto, rental of space by third party theatre groups which then charged tickets for admission to the public was held not to be related to the church or its mission and was not incidental.

The third-party commercial uses within the Church as explained above, occur regularly and are actively marketed. They do not bear a logical relationship to the educational or religious purpose of the institution, and renders the building as non-exclusive for 200-foot law purposes. I respectfully request a ruling to that effect, and I remain,

Very truly yours,



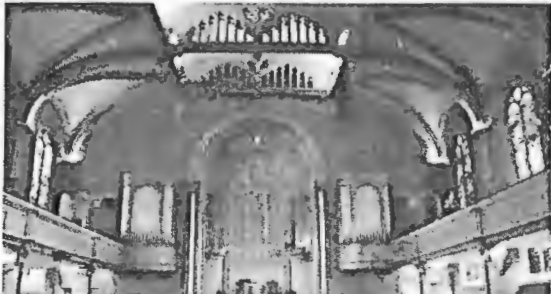
Robert W. Romano



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"MOVIE SHOOTS"

Hold your event in one of the most renowned churches in the world at Marble Collegiate Church. We can't wait to show you our spaces in person so you can learn why we are ideal to host your events, meetings, classes, and gatherings. You will be served with professional Event Planners, Audio & Video Technicians, and Reliable Maintenance Staff with all new modern cleaning protocols. Book a tour or contact [Rick Harper](#), (212) 686-2770.

Hosting Your Events: Room Rentals



This is an official companion site to MarbleChurch.org. Questions, email [Rick Harper](mailto:Rick.Harper@marblechurch.org), (212) 686-2770



[Columbarium](#) [Overview](#) [Event Spaces](#) [Weddings](#) [Memorials](#) [Fees & Samples](#) [Event Archives](#) [Rental Forms](#)



Book it Now

Get quick answers to your questions including date availability, quotes and COVID protocols.

Email

Call

This FACILITY USE AGREEMENT, made on between Marble Collegiate Church ("MCC"), on behalf of The Ministers, Elders, and Deacons of the Reformed Protestant Dutch Church of the City of New York, also known as the Collegiate Church Corporation, having an office at 1 W 29 Street, New York, NY 10001 and First Name Last Name (herein referred to as the "Facility User"), having an address at: Renter's Address

SECTION 1. DESIGNATED SPACE.



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 " MOVIE SHOOTS, Gallery, Concerts, etc... "

Hold your event in one of the most renowned churches in the world at Marble Collegiate Church. We can't wait to show you our spaces in person so you can learn why we are ideal to host your events, meetings, classes, and gatherings. You will be served with professional Event Planners, Audio & Video Technicians, and Reliable Maintenance Staff with all new modern cleaning protocols. Book a tour or contact

This is an official companion site to MarbleChurch.org. Questions, email [Rick Harper](mailto:RickHarper@MarbleChurch.org), (212) 686-2770 ×

- Columbarium
- Overview
- Event Spaces
- Weddings
- Memorials
- Tees & Samples
- Event Archives
- Rental Forms

Sanctuary

**Seats 837 • Max
Occupancy 882
\$600/Hour**

View this room

Suite 307 Assembly

**Max Occupancy: 55
\$225/Hour**

View this room

Labyrinth Room

**Seats 75 • Holds 125
\$200/Hour**

View this room

Suite 213/Board Room

**Seats 16
\$85/Hour**

View this room

Chapel

**Seats 50 • Max
Occupancy 74
\$175/Hour**

View this room

Suite 116/Youth Room

**Seats 16
\$85/Hour**

View this room

Suite 207

Children's Chapel

Holds 10
\$100/Hour

10 seats or more

Holds 15
\$85/Hour

15 seats or more

Peale Parlor

Seats 15 • Holds 25
\$125/Hour

15 seats or more

Prayer Room

Holds 12-18
\$100/Hour

12 seats or more

Upgraded Cleaning Protocols

Since the COVID-19 outbreak, Marble follows suggested guidelines submitted by New York State for the cleaning and disinfection for

**Soc'y of the Free Church of St. Mary the Virgin v. New York State
Liquor Auth.**

2012 N.Y. Slip Op. 30714
Decided Mar 21, 2012

Index No. 110285/11

03-21-2012

In the Application of THE SOCIETY OF THE
FREE CHURCH OF ST. MARY THE VIRGIN,
Petitioner, For a Review Pursuant to Article 78 of
the Civil Practice Law and Rules, v. NEW YORK
STATE LIQUOR AUTHORITY, LOGAN
SANCTUARY LLC, Respondents.

Barbara Jaffe

Motion Date: 12/6/11

Motion Seq. No.: 001

DECISION & JUDGMENT

BARBARA JAFFE, JSC:

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-----| 212-246-2400 ||| +-----
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|For p etitioner; |For SLA: |For
Logan's: | +-----+-----
-----| |Roger Juan
Maldonado, Esq.;|Donald T. Martin, Esq.;|Terrence
R. Flynn Jr., Esq.; | +-----+-----
-----| |Dennis P.
Doyle, Esq. |317 Lenox Ave. |Flynn & Flynn
PLLC | +-----+-----
+-----| |Balber Pickard et al.
|New York, NY 10027 |198 Beach 102nd St. | +-----
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-----| |1370 Ave. of the Americas |518-474-
3114 |Rockaway, NY 11694 | +-----
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|New York, NY 10019 | |718-945-1000 | +-----

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By order to show cause dated September 12, 2011
and verified petition dated September 8, 2011,
petitioner brings this Article 78 proceeding
seeking a judgment annulling, vacating, and
setting aside a determination rendered by
respondent New York State Liquor Authority
(SLA) on June 30, 2011, revoking the
determination, and awarding petitioner its costs,
disbursements, and attorney fees. Respondents
oppose.

I. BACKGROUND

Petitioner The Society of the Free Church of St.
Mary the Virgin (the Church) owns real property
located at 133-145 West 46th Street and 134-144
West 47th Street in Manhattan. * Respondent
Logan's Sanctuary LLC (the Hotel) owns real
property located at 132 West 47th Street, next
door to the Church's property. The Hotel's main
entrance is within 200 feet of a public entrance of
the Church. (Affidavit of Reverend Stephen Gerth,
dated Sept. 8, 2011 [Gerth Affid.]).

The Church's property consists of a complex of
buildings, including the Church, the Rectory, the
Mission House, and the Rector House. The
Church currently permits a non-profit theater
group to use, at specified times, part of the third
floor of its Parish House and storage space in the

Church basement. Until February 2009, the Church had the same arrangement with another theater group. (Gerth Affid.).

On January 9, 2007, the Hotel submitted a first liquor license application to the SLA. (Verified Petition, dated Sept. 8, 2011 [Pet.], Exh. A). Pursuant to section 64(1) of the Alcoholic Beverage Control Law, any person may apply for a license to sell liquor at retail to be consumed on the premises where it is sold, and such a license "shall be issued to all applicants except upon good cause shown." Section 64(7)(a) of the Law prohibits the grant of such a license, as pertinent here, on the same street and within 200 feet of a building used exclusively as a church (200-foot rule). Section 64(7)(d-1) provides that a place of worship does not cease to be used "exclusively" as a place of worship "by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship . . ."

By letter dated August 6, 2007, the SLA asked the Church to respond in writing as to how its premises are occupied and used. (*Id.*, Exh. B). By letter dated September 12, 2007, the Church stated that it permits two not-for-profit theater groups to use certain space at the premises at specified times. (*Id.*, Exh. C).

By notice dated December 27, 2007, the SLA disapproved the Hotel's application based on its proximity to the Church and the 200-foot rule, and the Church's September 2007 letter stating that the premises were used exclusively as a church. (*Id.*, Exh. D).

By letter dated September 15, 2008, the Hotel asked the SLA to reconsider its application on the grounds that two theater groups were operating within the Church's premises, that the groups' presentations were unrelated to church activities and produced for the general public, and that they charged admission for their shows. (*Id.*, Exh. F).

By request dated September 22, 2008, counsel for the SLA recommended that the Chairman of the SLA's Board deny the request for consideration on the ground that the two theater groups were not-for-profit organizations and therefore their use of the Church's premises constituted an incidental use. The Chairman denied the request the same day. (*Id.*, Exh. G).

By letter dated September 24, 2008, SLA denied the Hotel's request. (*Id.*).

However, on September 26, 2008, SLA's counsel submitted a request for reconsideration to the Chairman, arguing that the SLA had wrongly relied solely on the Church's September 2007 letter in concluding that the church's premises were used exclusively as a church, and counsel therefore recommended that the Chairman reconsider "whether [SLA] had sufficient information before it regarding the use of the building, since it appears that no independent investigation was done." (*Id.*, Exh. H).

On September 30, 2008, the Chairman approved the request and directed that the Hotel's application be returned to SLA's Licensing Bureau for a "complete, documented investigation" into the issue presented. (*Id.*, Exh. H).

By letter dated November 5, 2008, the Church again informed the SLA that both groups were not-for-profit entities using the Church's space, and that their addresses were separate from the Church's premises. (*Id.*, Exh. E).

By facsimile dated December 5, 2008, the Church informed the SLA that each theater group agreed to pay \$16,979 for its use of the premises for the 2008-2009 season. (Verified Answer, dated Oct. 26, 2011 [Am], Exh. I).

At a full SLA board meeting held on December 18, 2008, the SLA denied the Hotel's application by a vote of two to one based on its investigation revealing that the two theater groups were non-profit charitable organizations that used part of the Church's premises for rehearsals and performances

with their offices located elsewhere, and that although they charged admission for the performances, they derived most of their income from donations. The SLA thus concluded that the Church's premises are used exclusively as a church. (Pet., Exh. I).

In 2010, the Hotel commenced an Article 78 proceeding against the SLA seeking an order setting aside the denial of its request for a liquor license. (*Id.*, Exh. J). By stipulation dated March 18, 2010, the parties agreed that the SLA would grant reconsideration of and allow argument on the Hotel's application. (*Id.*, Exh. K). In June 2010, the parties advised the court that they had settled the proceeding. (*Id.*, Exh. M).

By letter dated March 16, 2010, the Hotel again asked the SLA to reconsider its request for a license before the SLA's full board. (Ans., Exh. 7). On April 5, 2010, counsel for the SLA submitted a request for reconsideration based on its investigation into the Church's use of the premises. (*Id.*, Exh. 8).

5 By letter dated April 30, 2010, the Church responded to a third inquiry by the SLA *5 regarding the theater groups' use of its space, observing that one of the groups was no longer operating there, and that receipts from ticket sales from the shows went to the other theater group that still operates there. The Church also enclosed a copy of a contract between it and the group which required that it make monthly or bi-monthly "donations" toward certain charges associated with its use of the premises, which totaled \$17,522 between 2009 and 2010, and which reflected that the group presented Shakespearean plays. (Pet., Exh. I).

On May 6, 2010, the SLA determined that the Church's premises were not used exclusively as a church. (Ans., Exh. 6).

By letter dated August 24, 2010, the SLA issued the Hotel a conditional letter of approval. (Ans., Exh. 5).

On February 3, 2011, the SLA issued the Hotel a main liquor license. (Ans., Exh. 6).

On June 30, 2011, the SLA permitted an alteration to the license by allowing the Hotel to install two additional bars on its premises; it did not consider or reconsider its determination to grant the main liquor license. (*Id.*, Exh. E).

II. CONTENTIONS

The Church argues that the SLA's decision to grant the Hotel a liquor license is arbitrary and capricious and an abuse of discretion as it issued no written opinion explaining its decision to reverse itself and grant the license and failed to notify the Church of its decision. It also contends that the determination is affected by an error of law as the license was issued in violation of the 200-foot rule and its premises are used exclusively as a church. (Pet.).

6 The SLA asserts that its determination that the Church's premises were not being used *6 exclusively as a church is rationally based on the documents submitted to it and its own investigation, that it provided the Church with the required notice of its proceeding and determination, and that it was not required to issue a written determination when it granted the license to the Hotel. It also maintains that the Church failed to challenge its determination to grant the license in a timely manner, and may not extend the statute of limitations by challenging its June 2011 decision on the Hotel's license alteration. (Affirmation of Donald T. Martin, Esq., dated Oct. 27, 2011).

The Hotel also argues that the Church's challenge is time-barred, that the Church lacks standing to challenge the approval of the license, and that the SLA's decision to grant the license was rationally based and neither arbitrary nor capricious. (Affirmation of Terrence R. Flynn Jr., Esq., dated Nov. 9, 2011).

In reply, the Church maintains that it has standing because the SLA's grant of the license harmed it by creating an atmosphere detrimental to religious worship, which harm falls within the zone of interest set forth in section 64 of the Alcoholic Beverage Control Law, and otherwise reiterates its prior arguments. (Reply Memo. of Law, dated Nov. 8, 2011).

III. ANALYSIS

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination "is without sound basis in reason and . . . without regard to the facts." (*Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *Matter of Kenton Assoc. v Div. of Hous. & Community Renewal*, 225 AD2d 349 [1st Dept 1996]). Moreover, the determination of an administrative agency, "acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record." (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N. Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *aff'd* 11 NY3d 859 [2008]).

The SLA's interpretation of a statute is entitled to deference unless the interpretation is irrational or unreasonable. (*Matter of Rose Group Park Ave. LLC v New York State Liq. Auth.*, 2012 WL 162636, 2012 NY Slip Op 00310 [1st Dept.], *citing Matter of Fineway Supermarkets v State Liq. Auth.*, 48 NY2d 464 [1979]).

Here, the evidence before the SLA reflects that the Church had contracted with two theater groups to use space in its premises in exchange for annual rental fees, that the groups, although not-for-profit, charged admission for their shows, and that

the shows were apparently not related to the Church or its mission. Consequently, the SLA's determination that the groups' uses of the premises were not incidental, and that the Church's premises were not being used exclusively as a church, is neither arbitrary nor capricious, nor irrational. (*See Matter of Le Pare Gourmet, Inc. v New York State Liq. Auth.*, 95 AD2d 855 [2d Dept 1983] [church building not occupied exclusively as church as it was used by commercial theater group and for private teaching program and concerts]; *Matter of Taft v New York State Liq. Auth.*, 84 AD2d 623 [3d Dept 1981] [church rented out premises by written lease to non-profit organization, which engaged in non-religious activities, was not funded by church, and over which church had no *s control, thus indicating independent rather than incidental use]; *compare also Brasero Rest., Inc. v New York State Liq. Auth.*, 176 AD2d 462 [1st Dept 1991] [premises not exclusively used as church where it was rented out for baseball card and jewelry shows, oriental rug sales, and as embassy], *with Matter of Favez Rest., Inc. v State Liq. Auth.*, 66 NY2d 978 [1985] [church premises occupied exclusively as church where premises used as residence for pastor's family and pastor also conducted church-related work there]; *Matter of AJ & J Rest. Corp. v New York State Liq. Auth.*, 205 AD2d 530 [2d Dept 1994], *lv denied* 84 NY2d 805 [church premises used as guest quarters for visiting church members]).

While the SLA reversed itself in granting the license, it is undisputed that its earlier denial was based solely on the Church's 2007 letter in which it stated that its premises were being used exclusively as a church, and that its later decision was based on a full investigation and review of documents submitted to it by the Church and the Hotel. Therefore, the SLA's reversal, in itself, does not establish that its grant of the license was arbitrary, capricious, or irrational.

In any event, the Church has failed to challenge the SLA's grant of the main license in a timely manner, as that decision was rendered in February 2011, more than four months before the Church commenced this proceeding. (CPLR 217[1]; *Camperlengo v State Liq. Auth*, 16 AD2d 342 [1st Dept 1962] [SLA's reconsideration of denial of application constituted final determination that was reviewable within four months thereafter]). And the Church has not established that the SLA's grant of permission to alter the license constitutes a new and independent determination warranting reconsideration of the main license application. 9

The Church has also failed to establish that the SLA was required to provide it with actual or written notice of its determination to grant the Hotel's application, as section 54 of the Alcoholic Beverage Control Law requires only that if the SLA grants a liquor license, it shall forward it to the applicant, whereas if it disapproves the license, it must provide the reasons therefor and notify the applicant.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED and ADJUDGED, that the petition is denied and the proceeding is dismissed.

ENTER:

Barbara Jaffe, JSC

New York, New York

UNFILED JUDGMENT

This Judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).