
DECLARATORY RULING

Solicitor Permittee as Trustee of Trusts with Indirect Interest in Retailers

Agenda # 2023-00113

Introduction

The State Liquor Authority (SLA) has received a request for a declaratory ruling on behalf of a corporate entity with multiple wholly owned subsidiaries that either hold retail licenses or have applied for retail licenses, and are partially owned by trusts featuring a trustee who holds an active solicitor's permit, as to whether the trustee/solicitor may continue to hold a New York State solicitor's permit. The retailers and trustee/solicitor agree that (i) the trustee/solicitor plays no role in any aspect of the business operations or purchasing decisions of the retailers; (ii) the trustee/solicitor will not market or seek to sell brands of alcoholic beverages he solicits to the retailers; and (iii) the retailers will not purchase or sell any brands of alcoholic beverages the trustee/solicitor solicits on behalf of.

Question Presented

May a solicitor permittee be a trustee of trusts with minority ownership interests in several active retail licenses?

Statutes Involved

Alcoholic Beverage Control Law (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 on 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."

Analysis

The Authority has adopted in recent years an increasingly narrow interpretation of the term "indirect interest" in the context of tied-house questions, deciding that the term need not extend to any business arrangement between a manufacturer or wholesaler and a retailer. In deciding that an owner of a manufacturer did not violate the "indirect interest" prohibitions of ABCL Secs. 101(1)(a) and 106(13) by also being employed as general manager of a licensed retailer, the Authority found the term "interest" to be limited to "equity/ownership interests, debt/lending interests, or their equivalents."¹

¹ Declaratory Ruling #2022-00963, Retail Employee w/Equity Interest in Manufacturer, June 24, 2022.



In this case, the trustee/solicitor has stipulated that he plays no active role in the day-to-day operations of the retailers – noting that the trusts for which he serves as trustee only hold minority interests in the retail licensees. The trustee/solicitor has also stated that his compensation is merely his expenses, and not any revenue percentage or even salary derived from the retail licensees. The trustee/solicitor has further stipulated that he will not solicit brands of alcoholic beverages from his book of business to the retailers who are partially owned by the trusts on which he serves. Finally, the trustee/solicitor and the retailers agree the retailers will not purchase the alcoholic beverage brands solicited by him, and also that he will not be involved in purchasing or inventory decisions of the retailers. Assuming that no other undisclosed facts exist that would otherwise raise an improper “indirect interest” issue, there is none here and none will be assumed.

Determination of the Members

Given the stipulated restrictions limiting the involvement of the trustee/solicitor in the retail businesses’ operations, the Members hereby find that the ABCL does not prohibit the solicitor permittee from simultaneously acting as trustee of trusts that hold minority ownership interests in licensed retailers.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on January 18, 2023 before Chairman Vincent Bradley and Commissioner Lily Fan. The above written ruling was approved by Chair Fan on behalf of the Members on October 23, 2024.

Dated: 10/23/24

A handwritten signature in black ink, appearing to read "Donald Roper".

Donald Roper
Secretary to the Authority