

STATE OF NEW YORK: LIQUOR AUTHORITY

2010-01252Y  
FB Mtg: 3/25/10

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Application of "tied house" laws  
to a proposed transaction by a firm to acquire a brewery.

DECLARATORY  
RULING

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Preliminary Statement

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may request the Authority to issue a declaratory ruling on the application of the Alcoholic Beverage Control Law ("ABCL"), or the Rules of the Authority, on any person, property, or state of facts.

By petition dated March 11, 2010, a request for a declaratory ruling was submitted by William B. Schreiber, Esq., and E. Vincent O'Brien, Esq., both counsel to a private equity firm which owns a chain of grocery stores that hold off-premises beer licenses. This firm seeks to acquire an interest in an out-of-state brewery that currently holds a wholesale license under the ABCL.

Relevant Statutes

ABCL § 101(1)(a) provides, in part, that it is "unlawful for a manufacturer or wholesaler licensed under [the ABCL] 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."

ABCL § 105(16) provides, in part, that "no retail licensee to sell liquors and/or wines for off-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 or any personal or real property, or by any other means . . ."

ABCL § 105(17) provides, in part, that “no retail licensee for off-premises consumption shall make or cause to be made any loan to any person engaged in the manufacture or sale of liquors, wines or beer at wholesale. No retail licensee to sell liquors and/or wines for off-premises consumption shall make or cause to be made any loan to any person engaged in the manufacture or sale of liquors, wines, or beer at wholesale or to any person engaged in the sale of liquors and/or wines at retail for off-premises consumption.”

ABCL § 106(13) provides, in part, that “No retail licensee 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....”

#### Determination of the Authority

New York State regulates the trafficking of alcoholic beverages through a “three tier system”. In order to promote the orderly distribution of alcoholic beverages and to maintain the integrity of each tier, the State enacted the above referenced provisions (the “tied-house laws”) to restrict the ability of specified entities in one tier of a system to have an interest in another. The underlying purpose of these laws was to prevent monopolies and other undesirable influences within the alcoholic beverage industry.<sup>1</sup> There is no statutory grant of discretion to the Authority in the interpretation of these laws and the clear language does not allow for exceptions under any circumstances.<sup>2</sup>

ABCL § 101(1)(a) prohibits wholesalers and manufacturers licensed under the ABCL from being interested in a business engaged in the retail distribution of alcohol. Although Petitioner currently holds a New York wholesale beer license, petitioner will surrender such license immediately upon the acquisition of the brewer’s capital stock by Petitioner.

ABCL § 105(16) prohibits only those retail licensees selling liquor and/or wine from obtaining or maintaining an interest in a business engaged in the production of alcohol. The grocery chain, licensed to sell beer for off-premises consumption, is beyond the purview of this section of the ABCL.

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<sup>1</sup> See *RIHGA International U.S.A., Inc. v. New York State Liquor Authority*, 84 N.Y.2d 876 (1994).

<sup>2</sup> *Id.* at 879.

ABCL § 105(17) strictly prohibits the licensee grocery store chain from loaning any money to the out-of-state brewery. Petitioner has represented that there will be no loans between the grocery chain and the brewery; there will be no loans from the funds owning the grocery chain to the brewery; and there will be no loans between the two equity groups/owners.

ABCL § 106(13) prohibits on-premises licensees from obtaining or maintaining an interest in a business engaged in the production of alcohol. The grocery chain, licensed only to sell beer for off-premises consumption, is beyond the purview of this section of the ABCL.

The petitioner represents that: (i) the out-of-state brewery will surrender its wholesale license immediately upon the completion of the transaction; (ii) the grocery chain or the fund owning the grocery chain will not make any loans to the out-of-state brewery and (iii) the grocery chain will not sell any beer produced by the out-of-state brewery without the prior written permission of the Authority and such permission shall be subject to the guidelines established by the Authority.

After considering the record before the Full Board in this matter, the representations of the petitioner, and the relevant statutory law, the Members of the Authority determine in the instant matter that the acquisition by the out-of-state brewery, by a private equity firm which owns a chain of grocery stores licensed to sell beer for off-premises consumption, is permissible.

Dated: 5/24/2010