STATE OF NEW YORK: LIQUOR AUTHORITY

Application of the 200 Foot Law on property located at 1501 Second Avenue in Manhattan

DECLARATORY RULING 2014-01487

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. Section 64 of the Alcoholic Beverage Control Law governs the issuance of on-premises liquor licenses for establishments such as restaurants. Paragraph a of subdivision seven of that statute prohibits the Authority from issuing such a license for any premises which is on the same street and within 200 feet of a "building occupied exclusively as" a school or place of worship. This licensing restriction is commonly referred to as the "200 Foot Law." The Authority is in receipt of a request from Alan Gardner, Esq., on behalf of a prospective applicant for a declaratory ruling as to whether a location is subject to the 200 Foot Law.

As set forth in Mr. Gardner's May 16, 2014 letter, the relevant facts are as follows:

- The proposed licensed establishment is located at 1501 Second Avenue, at the northwest corner of Second Avenue and East 78th Street.
- JRC Group, Inc. held an on-premises liquor license at the location from 2007 until January 2014, when the license expired. [The Authority's licensing records indicate that JRC Group. Inc. was issued an on-premises license at this location in February, 2008 and the location was continuously licensed until January 2014 when the license expired.]
- 1501 Corporation held an on-premises license at the location from 1995 until 2007. [The Authority's licensing records indicate that 1501 Corporation was issued an on-premises license at this location in November 1995 and the location was continuously licensed until February 2008 when the license was transferred to JRC Group, Inc.]
- The location was leased to 1501 Caterers, Inc. from 1990 until 1995. The landlord "believes" that the business had an on-premises license during that period.
- Temple Shaaray Tefila is located at the corner of southwest corner of Second Avenue and East 79th Street. For purposes of this request, Mr. Gardner concedes that, given the presence of Temple Shaaray Tefila, the proposed licensed establishment is subject to the 200 Foot Law.

Notwithstanding the general prohibition created by the 200 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. One of these exceptions is the "grandfather" provision, contained in paragraph c of subdivision seven. This provision actually creates two separate exceptions. The first provides that a license that was in effect on December 5, 1933, may continue to be renewed even if the location is subject to the 200 Foot Law. The second exception, and the one relevant to Mr. Gardner's situation, states that "no license shall be denied [as a result of the 200 Foot Law] to any premises at which a license

under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within 200 feet of said premises has been occupied exclusively as a school [or place of worship]." Put another way, if there was a license issued for the location before the school or place of worship came into existence, and a license has remained in effect at the location since that time, the 200 Foot Law does not apply.

This second part of the "grandfather" exception to the 200 Foot Law requires that two findings be made. First, did the licensed premises precede the school or place of worship? Mr. Gardner has not provided any information as to when the location at the southwest corner of Second Avenue and East 79th Street was first used as a place of worship. It would appear that Mr. Gardner is suggesting that, whenever that date was, there was already a license issued for 1501 Second Avenue. Supporting Mr. Gardner's argument is the fact that the Authority issued licenses to both 1501 Corporation (in 1995) and JRC Group, Inc. (in 2008). There are three different conclusions that can be drawn from that fact. The first is that the Authority made a determination that both licenses were "grandfathered" under the 200 Foot Law. The second is that one or both licenses were issued before the location at the southwest corner of Second Avenue and East 79th Street was first used as a place of worship. In either case, the conclusions favor Mr. Gardner's client and the remaining question is whether the location has been continuously licensed.

The second finding to be made is whether 1501 Second Avenue will be considered "continuously" licensed. Over the last few years there has been some inconsistency in the Authority's interpretation of the word "continuously." Prior to 2006, the Members of the Authority, on a case by case basis, allowed applicant's to be "grandfathered" even if there was a break of months, and sometimes years, since the last license was in effect. In or about 2006, the Members of the Authority adopted the common dictionary definition of the word, requiring that there be no break in the licensing of the location. More recently, however, the Authority has reverted to the more flexible interpretation of the word. In this matter, the only "break" in licensing since at least 1995 is the period since January, 2014 when the most recent license expired. As noted by Mr. Gardner, the location has not been used for any other purpose since that time.

Based on the record before us, we find that the subject location is "grandfathered" under the 200 Foot Law and, accordingly, its proximity to Temple Shaaray Tefila would not prohibit the issuance of an on-premises liquor license for the site.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on June 20, 2014.

Jacqueline Held
Secretary to the Authority