STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on property
Located at 33 Peck Slip in Manhattan

DECLARATORY
RULING
2015-00986

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.

The Authority is in receipt of a request for a declaratory ruling from Victor & Bernstein, PC (Donald Bernstein, Of Counsel) regarding the application of certain provisions of the ABCL on a premises located at 33 Peck Slip in Manhattan. Specifically, Mr. Bernstein seeks a ruling as to whether the "200 Foot Law" would prevent the issuance of an on-premises liquor license for the premises. The 200 Foot Law prohibits the Authority from issuing 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.

The premises consists of a seven story building which includes a hotel and full service restaurant. It was first licensed to Vox U.S.A., Inc. in December 2009. That license was renewed regularly and the last license certificate in effect was to expire on July 31, 2014. However, Vox U.S.A., Inc. vacated the premises and submitted its license certificate for surrender in October 2012. The property owner planned to obtain a new operator for the premises. However, those plans were immediately impacted by the damage caused by Hurricane Sandy. The restaurant and hotel were flooded and business was closed. The property owner discontinued its efforts to obtain a new operator for the venue.

In late 2013 work began on the construction of an elementary school at the site of a former Post Office on Peck Slip. For purposes of this declaratory ruling, Mr. Bernstein does not dispute that the school will be on the same street and within 200 feet of the restaurant and hotel. The issue raised in this matter concerns the application of the "grandfather protection" afforded to establishments that are licensed before a nearby location becomes a school or place of worship. In order to have "grandfather" status, the Authority must find that restaurant and hotel have been continuously licensed from a date prior to the existence of the school until present.

This premises is designed and intended to be used as a hotel and full service restaurant, including the sale and consumption of alcoholic beverages. Based on the representations made in this matter, it appears that it was the intent of the owner of the premises to continue that use, whether it was Vox U.S.A Inc. or another entity holding the license. But for a natural disaster the location would have, in all likelihood, remained licensed. After renovations necessitated by the hurricane, the premises is once again operating as a hotel and restaurant, albeit without alcoholic beverages. Based on these facts, we hold that the premises, for purposes of the 200 Foot Law, have been continuously licensed and, therefore, may be licensed again notwithstanding the surrender of the last license certificate in October 2012.

Accordingly, we hold that, under these facts, the 200 Foot Law does not prohibit the issuance of an on-premises liquor license for 33 Peck Street in Manhattan.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on May 5, 2015.

Jacqueline Held
Secretary to the Authority