

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 Alcohol Beverage Control Law (ABCL), or the Rules of the Authority, on any person, property or set of facts.

By letter dated September 23, 2015, a request was submitted by Robert Skene, Esq. on behalf of his client DP 49 LLC, a limited liability company. The principals of the company would like to redevelop a property known as the Charles Point Marina in the city of Peekskill, NY. They aim to sublet a brewery with a D101 brewery license and a craft distillery with an A-1 distillery license. They would also aim to sublet a restaurant and entertainment center with two on premises retail licenses. Mr. Skene requests a declaratory ruling on whether or not his client's plans violate the tied-house laws.

Statement of Facts

Mr. Skene's clients are as follows:

- Bill Diamond who holds a retail license.
- Louis Lanza who holds a retail license.
- Scott Vaccaro who holds a manufacturing license.
- Todd Albright who holds a wholesale license.
- Megan Vaccaro, Anthony Lanza, and Jim Diamond who do not hold any existing alcoholic beverage licenses.

Mr. Skene states that DP 49 LLC will hold the master lease for the Marina. The members of DP 49 LLC will be as follows:

- a trust formed by Bill and Jim Diamond with their children as beneficiaries;
- a trust formed by Louis Lanza with his family as beneficiaries;
- a trust formed by Todd Albright with his family as beneficiaries;
- Megan Vaccaro who will hold a direct interest.

The restaurant and entertainment center will be sublet from DP 49 LLC to:

- Bill Diamond, who will hold a direct interest;
- Jim Diamond, who will hold a direct interest;
- Louis Lanza, who will hold a direct interest;
- a trust formed by Scott Vaccaro with family members as beneficiaries;

- a trust formed by Todd Albright with family members as beneficiaries.

The brewery and craft distillery will be owned by:

- Scott Vaccaro, who will hold a direct interest;
- Todd Albright, who will hold a direct interest;
- Anthony Lanza, who will hold a direct interest;
- a trust formed by Bill and Jim Diamond with family members as beneficiaries.

Mr. Skene states that none of the proposed beneficiaries hold any licenses relevant to alcohol; meaning that there are no tied-house restrictions. Mr. Skene states that the trust beneficiaries are eligible persons to become beneficiaries and that all of the trusts will be irrevocable.

Statutes Involved

ABCL § 101(1)(a) prohibits a licensed manufacturer or wholesaler from having any interest, direct or indirect, in any premises where alcoholic beverages are sold at retail.

ABCL § 106(13) prohibits a licensed on premises retailer from having any interest in an entity that manufactures or wholesales alcoholic beverages.

Issues Presented

1. May a licensee with an interest in one tier be a grantor of an irrevocable trust that will be the landlord to other licensed premises in other tiers?
2. May a licensee with an interest in one tier be a grantor of a trust that will invest in a licensed entity in another tier?

Determination of the Members

The facts as presented by Mr. Skene entail numerous scenarios of numerous people with or without an interest in a licensed entity or tier creating trusts that will invest in another licensed entity or tier or have a landlord relationship with another tier. Rather than go through each specific trust and corporate composition the Members have addressed the underlying legal questions presented by Mr. Skene.

1. May a licensee with an interest in one tier be a grantor of an irrevocable trust that will be the landlord to other licensed premises in other tiers?

The use of trusts in license applications has been a long accepted practice at the Authority. Large numbers of business in every tier have been licensed where a trust owns at least a portion of the entity.

The Authority's practice has been to treat the trustee as the licensee since they have control over the entity. The trustee is reviewed for tied-house prohibitions, as well as felony convictions and positions with law enforcement that would bar licensure. Similarly, since 2013 the Authority began to review beneficiaries to trusts since they profit from the sales of alcoholic beverages and therefore have an interest although they exercise no control of the licensed entity.

While identified to the Authority, grantors of irrevocable trusts have not been reviewed for statutory or tied-house disqualifications because they neither exercise control over the licensed entity nor receive profits from the licensed entity. The Authority has approved license applications that included trusts that were funded by grantors with an interest in one tier funding trusts that invest in another tier.

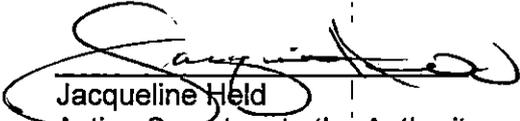
The ABCL prohibitions in Section 101(1)(a) and 106(13) deal with 'interests', and interests have in practice been defined as control over a licensed entity and or financial interests in the licensed entity. Because the irrevocable grant of money to a trust does not entitle the grantor to profits or control it has not been considered an interest for tied-house purposes by the Members of the Authority. A grantor who funds a trust irrevocably does not transfer their tier interest to the trust. The trustee is free to invest the funds in any licensed entity they see fit.

Accordingly, though the irrevocable trusts that comprise DP 49 LLC are funded by various grantors who hold licenses in relation to alcoholic beverages, the grantor's interest in those licensed entities is not transferred to the trust. The trust may enter into a landlord-tenant relationship with licensees without violating tied-house laws.

2. May a licensee with an interest in one tier be a grantor of a trust that will invest in a licensed entity in another tier?

For the same reasons as stated above, the grantor of an irrevocable trust does not transfer their interest in a licensed entity to the trust. Because the grantor exercises no control over the trust or its investments, or shares in its profits, the grantor's interest does not follow and attach to the trust. Accordingly, the trusts that are described by Mr. Skene may invest in the licensed premises as long as the trustee is qualified to hold a license and the beneficiaries are similarly qualified and do not have interests in any other tiers.

This ruling should not be considered approval for any other proposal which deviates in any respect from the representations as set forth above. The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on December 1, 2015.


Jacqueline Held
Acting Secretary to the Authority