

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JANUARY 3, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-00077 (OVER)
2013-00204

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 200' LAW FOR
PREMISES LOCATED AT:

41 EAST 11TH STREET, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on JANUARY 3, 2013 determined:

Joseph Levey, Esq. and Jarrod Gordon appeared

Constance Christopher, Representing Albert Apartment Complex, and David Gestile appeared in opposition

Item carried over to 1/16/13

The Members of the Authority at their regular meeting held at the Zone I New York City Office on JANUARY 16, 2013 determined:

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JANUARY 16, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-00214

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 200' LAW FOR
PREMISES LOCATED AT:

149 WEST 46TH STREET, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on JANUARY 16, 2013 determined:

PESETSKY and BOOKMAN
ATTORNEYS AT LAW
325 BROADWAY, SUITE 501
NEW YORK, N.Y. 10007

WARREN B. PESETSKY
ROBERT S. BOOKMAN*

(212) 513-1988
FAX: (212) 385-0564

RANDYE F. BERNFELD
Of counsel

November 5, 2012

Via Mail

**The Commissioners of
New York State Liquor Authority**
317 Lenox Avenue
New York, N.Y. 10027

**RE: An Entity to be Formed by James
Rosenzweig
d/b/a T.G.I Friday's
149 West 46th Street
New York, New York 10036**

To Commissioners:

Please be advised that this office represents a potential applicant for a full liquor license at 149 West 46th Street, New York, NY, 10036. Request is hereby made for a Declaratory Ruling that the location is grandfathered from the nearby church.

The location, which is currently vacant, most recently, had a full liquor license under the name Kilnock Corporation, serial number 1027837. According to the SLA web site, that license was issued on 5/1/10 and expired on 4/30/12. According to the landlord of the building, the space was operated as a Rosie O'Grady's since approximately 1994. He believes there may have even been a licensee prior to that as well. We did file a FOIL request with the SLA concerning this location, but despite repeated requests, never received a response.

Please note that there has not been any intervening use of the premises since its license expired a few months ago.

The space is well within 200' of St Mary's Times Square Church, located at 145 West 46th Street. In addition to this location, there are a number of current full liquor licensees within 200' of this Church, including Havana Central Restaurant and Bar, 153 West 46th, serial # 1159750; Le Marais Restaurant, 150 West 46th, serial #1027811; St. Andrews Restaurant, 140-142 West 46th, serial #1220928; O'Brien's Irish Pub, 134 West 46th, serial #1167159 and depending on the exact measurement, perhaps two others on 46th Street as well. (See annexed area survey.)

Given the large number of longstanding licensees on this block, and given that this does not seem to be a new church, it would seem that the SLA at some time must have ruled that the building housing the Church did not qualify under the statute for some reason, such as there were no Church related uses in the building.

It is therefore requested that the SLA rule the location grandfathered from the Church or that indeed the Church does not qualify and that a full liquor license can be issued at this location.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert Bookman', with a long horizontal flourish extending to the right.

Robert Bookman, Esq.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JANUARY 16, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-00215

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF "TIED-HOUSE" LAWS:

INDIVIDUALS WITH OWNERSHIP INTEREST
IN FOREIGN MANUFACTURERS

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on JANUARY 16, 2013 determined:

ELKE A. HOFMANN, ESQ.

• Eleven Broadway, Suite #900
New York, New York 10004

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212.487.2100 fax

e-ho@eanlaw.com

www.eanlaw.com

December 20, 2012

Mr. Thomas Donohue
New York State Liquor Authority
80 South Swan Street, Suite 900
Albany, NY 12210

Via Email: Hard Copy to Follow

Re: NYC 1294 Third Bakery LLC, and Application of Tied House Laws

Dear Mr. Donohue:

I represent the above applicant in connection with an application for an on-premises beer and wine license for a restaurant/café doing business as Maison Kayser, located at 1294 Second Avenue, New York, New York.

The personal questionnaire for each principal indicates that such principal does not hold an interest in an establishment in which alcohol is manufactured or distributed in violation of Section 101(1)(a) of the Alcoholic Beverage Control Law (the "ABC Law"), and a letter was submitted to the Authority, explaining the Applicant's reasoning and complex ownership structure and demonstrating that the concerns addressed by the tied house laws are not implicated in the present application.

The present application questions as to the applicability of the tied house laws in certain situations:

- 1) Do the tied house laws apply when the terms of the license or permit being applied for expressly prohibit the sale of the products of a producer with an overlapping ownership interest?
- 2) If the answer to the above question is no, does the Authority's imposition of a condition on the license restricting the sale of such products carry the same force and effect as if the terms of the license prohibited such sales?

The Applicant hereby requests that the Authority consider the above questions, and make a determination that the tied house laws would not apply under the circumstances, for the reasons set forth herein.

1. Tied house regulations are not necessary and should not apply when the terms of the retail license expressly prohibit the sale of the alcoholic beverage produced by a manufacturer with an indirect overlapping interest.

Following the repeal of Prohibition, tied house restrictions aimed to prevent two major concerns in the alcoholic beverage industry: the ability of large firms to dominate markets, and excessive sales of alcoholic beverages as the result of aggressive marketing techniques by large producers. As most of the statutes enacted during this period were targeted to control large wholesalers, the statutes were drafted broadly "to insure the accomplishment of the primary objective of a triple-tiered system." *See, generally, Pronto Market No. 1, Inc. v. Alcoholic Bev. etc. Appeals Bd.*, 61 Cal. App. 3d 545 (1976).

New York's ABC Law contains such a broadly drafted provision, intended to prohibit manufacturers and wholesalers from having an undue influence over retail licensees. Section 101(1)(a) of the ABC Law provides that it is unlawful for a manufacturer or wholesaler licensed under this chapter¹ 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."

While New York's tied house statute is broadly written, New York's regulatory and licensing system also prevents the undue influence by manufacturers and wholesalers over retailers by narrowly defining activities permitted by a licensee. A distillery license, for example, authorizes the holder of such a license to operate a distillery for the manufacture of liquors by distillation or redistillation.² The holder of an on-premises beer and wine license would be prohibited by law from purchasing or selling such liquors. Accordingly, a manufacturer of spirits would not be in a position to apply aggressive marketing techniques to, or otherwise exercise any influence or control over, a beer and wine retailer who is not permitted to sell distilled spirits.

Such a circumstance is also distinguishable from the situation presented in *Rihga International U.S.A. Inc. v. New York State Liquor Authority*, 84 NY2d 876 (1994). In *Rihga*, the Court ruled that the Authority does not have the discretion to make exceptions for de minimis interests under any circumstances. While the Court noted that the applicant had "agreed to refrain from purchasing the products of the stockholding manufacturers,"³ the Court did not consider a situation in which the retail licensee was not legally permitted to purchase the products of the manufacturer with the ownership interest. In such a case, the terms of the retail license would already prevent any undesirable influence by the manufacturer over the retailer. Therefore, no purpose would be served by applying the tied house regulation in such a case.

¹ This request does not address the question raised to the Authority in the application of Gustavo, Inc., and the question of whether the tied house laws apply to foreign producers not "licensed under this chapter [of the ABC Law]"; it should be noted, however, that as in that case, the foreign wineries at issue here also are not licensed "under the ABC Law."

² ABCL Section 61(1)

³ *Rihga International U.S.A. Inc.*

2. The Authority regularly requires applicants for retail licenses to agree to stipulations and conditions that restrict the activities of licensees, which conditions are enforced by the Authority as an essential term of the license.

The Applicant has submitted an affidavit stipulating that the Applicant will not carry any of the products produced by either of the two foreign wineries that have an indirect, overlapping ownership interest with the Applicant. If made a condition of the retail license, such stipulations would have the same force and effect as if the license itself prohibited the sale of such products.

In *Rihga*, the Court considered that the applicant had agreed to “refrain” from purchasing the products of the manufacturer with an overlapping interest. In recent years, however, the New York State Liquor Authority has adopted the practice of imposing conditions on the activities of retail licensees, and enforcing such conditions as if those conditions and restrictions carry the same force and effect as the terms of the license itself.⁴ The Authority regularly requires retail licensees to agree to limit their operating hours to less than the operating hours legally permitted by state or local law. The Authority has also imposed specific restrictions on the sales of certain products, having required off-premises wine stores to limit their sales to wines originating from a particular country, in order to demonstrate that the store is in the interest of public convenience and advantage. Accordingly, if a restriction on the sale of certain products is made a condition of the license, then such condition would carry the same force and effect as if the license itself prohibited the sale of such products.

The restaurant operated by the Applicant has been welcomed by the community, and the principals plan to open additional locations in the near future, but the issuance of an on-premise beer and wine license is critical to the success of the business. As set forth in the license application, the complex corporate structure of the applicant is similar to that of a public company, and the entities with an ownership interest in the foreign wineries are not in a position to exercise any operational control or influence over the Applicant. Moreover, the Applicant has submitted an affidavit stipulating that it will not sell any of the products manufactured by the foreign wineries with an overlapping ownership interest, which condition would carry the force of law. The Applicant accordingly requests that the Authority consider the questions raised herein, and approve the issuance of a restaurant beer and wine license to Maison Kayser.

Very truly yours,



Elke A. Hofmann

⁴ While the statutory basis for the Authority’s discretion to broadly impose and enforce restrictions on all retail licenses appears unclear (provisions of the ABCL grant the Authority the specific discretion to impose terms and conditions as it may prescribe with respect to certain types of licenses, *see, e.g.*, ABCL Sections 52(1), 58-b(1), 64-c(5)(a), and 78(2)), it has been the Authority’s practice to do so. *See, e.g.*, <http://www.state.ny.gov/system/files/0B/0-n-A.pdf>: “In situations where there is opposition to an application, applicants may come to an agreement on stipulations concerning the operation of the establishment (e.g. closing hours, live music, etc). In such cases, the applicant may incorporate those stipulations into the approved method of operation. **These stipulations then become conditions of the license privilege and failure to comply subjects the licensee to disciplinary action.** The SLA can impose certain conditions on the operation of the establishment without the consent of the applicant if there is good cause to do so.” (Emphasis added.)

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JANUARY 16, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-00219

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 500' LAW FOR
PREMISES LOCATED AT:

24 1st AVENUE, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on JANUARY 16, 2013 determined:



SHARMALAW

LAW OFFICES OF RAVI IVAN SHARMA, P.C.

200 PARK AVENUE SOUTH, SUITE 1511, NEW YORK, NEW YORK 10003-1536

212 537 5957

FAX 212 537 5956

VOICE 212 537 5958

RAVI@SHARMALAW.COM

October 16, 2012

BY FIRST CLASS MAIL AND EMAIL: Thomas.Donohue@sla.ny.gov

Thomas Donohue, Esq
New York State Liquor Authority
80 Swan Street, Suite 900
Albany NY 12210-8001

RE: Request for Declaration 24 First Avenue, New York, NY 10009

Dear Mr. Donohue:

I represent a putative applicant for an on premises liquor license at 24 First Avenue, New York, NY 10009.

It is important that my client know the position of the Authority in advance on the issue of whether due to continuous licensing since prior to November 1, 1993, the 500-foot rule is applicable or not.

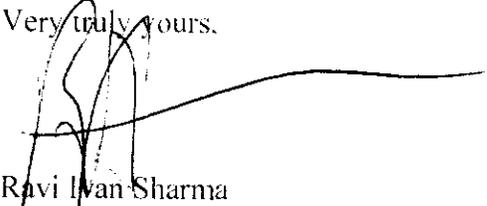
In particular, we are looking for a ruling or declaration by the Authority that 24 First Avenue, New York, NY 10009 has been continuously licensed since prior to November 1, 1993.

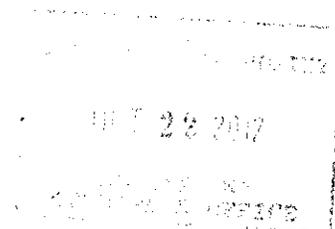
In this case, the information I have from SLA FOIL is attached and states as follows:

New York OP 6578 was issued from 1993 till 4/95 no other dates are available. It was then transferred to 1024640 Montmorenci Corp licensed from 4/95 – 8/4/02 which then was transferred to 1126063, Themed Rest Inc. licensed 8/7/02 – 7/31/14.

Thank you for your attention.

Very truly yours,


Ravi Ivan Sharma



NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JANUARY 16, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-00220

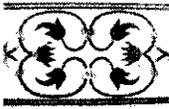
REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 500' LAW FOR
PREMISES LOCATED AT:

269 EAST HOUSTON ST., MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on JANUARY 16, 2013 determined:



SHARMALAW

LAW OFFICES OF RAVI IVAN SHARMA, P.C.

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October 16, 2012

BY FIRST CLASS MAIL AND EMAIL: Thomas.Donohue@sla.ny.gov

Thomas Donohue, Esq
New York State Liquor Authority
80 Swan Street, Suite 900
Albany NY 12210-8001

RE: Request for Declaration 269 East Houston St., New York NY 10002

Dear Mr. Donohue:

I represent a putative applicant for an on premises liquor license at 269 East Houston Street, New York, NY 10002.

It is important that my client know the position of the Authority in advance on the issue of whether due to continuous licensing since prior to November 1, 1993, the 500-foot rule is applicable or not.

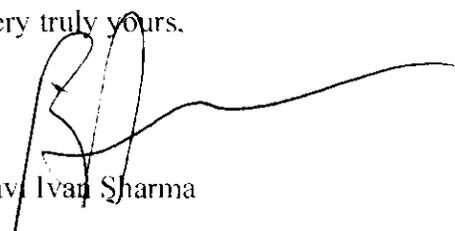
In particular, we are looking for a ruling or declaration by the Authority that 269 East Houston Street, New York, NY 10002 has been continuously licensed since prior to November 1, 1993.

In this case, the information I have from SLA FOIL is attached and states as follows:

New York OP 6526 issued from 1993-6/7/95, transfer to 1024157 -- 269 East Houston Street Corp. issued 6/7/95 - 1/7/05, transferred to 1157053 269 East Rest Group, issued 1/7/05 - 12/31/08, Operated under ST permits from 2/4/09 - 1/29/10 & 2/2/10 - 6/1/10, then licensed under 1220055, 269 East Houston Group, issued 6/14/10 - 5/31/14.

Thank you for your attention.

Very truly yours,


Ravi Ivan Sharma