

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF DECEMBER 30, 2014  
REFERRED FROM: COUNSEL'S OFFICE

2014-03189

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

APPLICATION OF THE "TIED-HOUSE" LAWS ON A  
LICENSED NEW YORK WINERY SEEKING TO HOLD AN  
OUT-OF-STATE ON-PREMISES LICENSE WITH A PERMIT  
TO MANUFACTURE WINE

(REQUEST FOR DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on DECEMBER 30, 2014 determined:

STATE OF NEW YORK: LIQUOR AUTHORITY

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IN THE MATTER OF A NY WINERY

PETITION FOR DECLARATORY RULING

OWNING & OPERATING DC ON-PREMISES

RETAIL LICENSE WITH WINERY PRIVILEGES

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Petitioner, Brooklyn Winery LLC, by its attorneys, Buchman Law Firm, LLP, hereby seeks a declaratory ruling pursuant to Section 98.1 of the Rules of The State Liquor Authority (9 NYCRR subtitle B) that a New York winery with retail privileges may hold a District of Columbia retail license with winery privileges.

#### **Applicable New York Law**

ABCL Section 101 - It shall be unlawful for a Manufacturer or wholesaler (a) to be interested directly or indirectly in any premises where alcoholic beverage is sold at retail.

ABCL Section 76(4) - A licensed winery may apply to the liquor authority for a license to sell wine at retail for consumption on the premises. All the provisions of this chapter relative to licenses to sell wine at retail for consumption on the premises shall apply so far as applicable to such application.

ABCL Section 76(4-a) - Notwithstanding any other provision of law, any winery, licensed pursuant to subdivision four of this section to sell wine at retail for consumption on the premises in a restaurant in or adjacent to the winery, may apply to the liquor authority for a license to sell beer, wine or liquor at retail for consumption on the premises of such restaurant. All of the provisions of this chapter relative to licenses to sell beer, wine or liquor at retail for consumption on the premises shall apply so far as applicable to such application.

ABCL Section 76(11)(f) – A licensed winery may engage in any other business on the licensed premises subject to such rules and regulations as the liquor authority may prescribe. In prescribing such rules and regulations, the liquor authority shall promote the expansion and profitability of wine production and of tourism in New York, thereby promoting the conservation, production and enhancement of New York state agricultural lands. Further, such rules and regulations shall determine which businesses will be compatible with the policy and purposes of this chapter and shall consider the effect of particular businesses on the community and area in the vicinity of the winery licensee.

## **Applicable District of Columbia Law**

### **Section 25-124 - Wine pub permit requirements and qualifications**

(a) A wine pub permit shall authorize the licensee to manufacture wine at one location from grapes or fruit transported from an area that produces wine to the licensed restaurant, tavern, multipurpose facility, hotel, or nightclub for on-premises consumption and for sale to licensed wholesalers for the purpose of resale to other licensees.

(b) A wine pub permit shall be issued only to the licensee under an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C or D, in conjunction with the issuance of an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C or D.

(c) The location used to manufacture wine shall be on or immediately adjacent to the restaurant, tavern, multipurpose facility, hotel, or nightclub licensed to the wine pub owner in accordance with subsection (b) of this section.

(d) The holder of a wine pub permit may also sell wine to patrons in sealed bottles or other closed containers for off-premises consumption.

(e) The minimum annual fee of the wine pub permit shall be \$5,000.

(f) A wine pub permit shall be cancelled or revoked if:

(1) The restaurant, tavern, multipurpose facility, hotel, or nightclub ceases to be operated as a restaurant, tavern, multipurpose facility, hotel, or nightclub; or

(2) The licensee's on-premises retailer's license, class C or D, is revoked or cancelled.

(g) A wine pub permit shall be automatically suspended whenever and for the same period that the licensee's retailer's license, class C or D, is suspended.

## **Proposal**

Petitioner seeks to obtain a District of Columbia retail license with winery privileges, in the absence of a DC winery license category affording retail privileges. Petitioner is a licensed New York winery with on-premise retail privileges in a restaurant on or adjacent to its winery premises. Petitioner wishes to replicate its New York winery business, including its successful restaurant and event space concept, at a location in DC. However, DC does not have a comparable law allowing a winery that has all production privileges the ability to own and operate a restaurant with full alcoholic beverage service.

Under DC law, wineries are not provided on-premises privileges (with the exception of free samplings in restricted amounts); rather, in DC, to accommodate the small manufacturer/retailer hybrid and encourage financial growth in the industry, retailers are provided manufacturing privileges. On May 1, 2013 a new such law went into effect in DC with Section 25-124 providing for a wine pub permit. This law is very similar to the New

York winery laws in that it (a) promotes local manufacturing and sales of wine and (b) it requires that the retail establishment and the winery are on the same or adjacent premises. The key difference between the New York law and the DC law is, in NY the licensee is considered a manufacturer with retailer privileges, whereas in DC the mirror-image licensee is deemed a retailer with manufacturing privileges.

Petitioner would be the first wine pub in DC. Since 2011 Petitioner has operated an urban winery in Brooklyn. A significant part of its business and brand image is the restaurant and event space where visitors can tour the winery and learn about the winery operations, and then enjoy the resulting product as well as a full menu of seasonal fare. The concept for the DC wine pub would be virtually identical to the NY establishment. Accordingly, Petitioner's activities in DC would not conflict with NY law and what has been approved already by the Authority in connection with its current operations.

Petitioner recognizes that a concern of the Authority will be that as a DC wine pub licensee Petitioner would not be restricted from obtaining other DC retail licenses. As such, Petitioner would be willing to commit to the Authority that the only retail license(s) it will hold in DC will be wine pub permit(s) with adjacent winery premises, so to match the NY law.

Finally, when the NY legislators passed the legislation allowing wineries to have limited retail privileges, this was done "to promote the expansion and profitability of wine production and of tourism in New York", as well as to support the surrounding businesses and community. See ABCL Section 76(11)(f). It is our understanding that this was the motive behind the DC legislature passing the wine pub law to permit a retailer to have a manufacturing privilege. In fact, the economic climate is influencing many state legislatures to craft bills that allow manufacturers to retail and retailers to manufacture, with the same net effect. The legislation in both states was promulgated to promote small winery business, despite countering traditional tied house laws which have the effect of restricting cross tier ownership between manufacturers and retailers. Moreover, although we are not aware of any official ruling on this issue by the DC Alcoholic Beverage Regulation Administration (ABRA), it is our belief that administratively there is no adverse position to restrict in-state licensees from holding cross-tier interests out of state and, thus, we anticipate that ABRA will not restrict a wine pub licensee from owning and operating an out-of-state winery. If that is the case, then Petitioner's only hurdle will be obtaining the Authority's consent to allow Petitioner to hold the DC wine pub permit. In many instances Courts read the laws to avoid conflict and maintain the Legislators' intent. As the laws in both states were promulgated for similar purposes (increased profitability of small wineries), they should be read in such a way that supports this intent in both locations. In short, the Authority should permit Petitioner to hold the DC wine pub permit under the condition that Petitioner's DC activities and premises comport with NY law (i.e., all retail licenses on or adjacent to winery premises). Further, to provide greater comfort to the Authority that Petitioner's activities in DC will comport with its approved activities in NY, Petitioner proposes entering into two stipulations:

- (1) that any license application filing made to the DC ABRA by Petitioner will inform the DC agency of such tiered interest, thereby insuring that in its review the DC ABRA will be aware of same when making its decision for licensing (copies of all such filings will be simultaneously filed with the Authority), and

(2) that Petitioner will adhere to all three-tier restrictions set forth under New York law concerning DC operations, namely, that it will only seek such retail licensing for on-premises consumption if a bona fide winery is on or adjacent to such retail premises.

For the aforementioned reasons, Petitioner hereby seeks a declaratory ruling that by obtaining a DC wine pub permit its NY winery and on-premises licenses will not be jeopardized, and that this does not run afoul of ABCL 101 and, instead, furthers the legislative intent of ABCL Section 76.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF DECEMBER 30, 2014  
REFERRED FROM: COUNSEL'S OFFICE

2014-03202

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

CENTURY CLUB

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on DECEMBER 30, 2014 determined:

Attn: Jacqueline Held, Secretary to the Authority  
State Liquor Authority  
317 Lenox Avenue  
New York, NY 10027

November 13, 2014

Subject: Request for Declaratory Ruling for Century Club

To the Authority:

By Section 98.1 of the Rules of the State Liquor Authority (9 NYCRR subtitle B), we are requesting a declaratory ruling on the applicability of the Alcoholic Beverage Control Law, or the Rules of the Authority, on whether a discount program, called Century Club ("the Club"), would be a permissible program under the Alcoholic Beverage Control Law of New York State.

### Overview

Using an Internet-connected smartphone and the Club app, members of the Club pay a discounted price for food and drinks at participating venues.

There are three parties participating in the Club program: a venue, a member, and the Club and a few relationships therein:

1. Members pay the Club a monthly fixed fee.
2. The Club negotiates an agreement with the participating venue.
3. Members receive a discount, no more than 50%, off regular prices at participating venues, with up to a maximum of 100 orders per month on food and beverages.
4. A portion of the monthly fixed fee is distributed to the venue for each food or drink order they serve under the program.

### Purchase process

A participating venue receives an Internet-connected tablet computer for their participation. When a member wishes to make a purchase, they select the purchase they want to make on their phone, and the venue uses the tablet to generate a confirmation code which the customer enters into their phone. This confirmation code lets the Club track purchases for a variety of uses outlined below.

### Payment process

One option we seek approval for is for each member stores a credit card with a third party, which charges the customer for the discounted item and a pre-set tip.

Alternatively, we would prefer approval to collect credit card funds ourselves and distribute these funds to venues on a weekly or more frequent basis. This would be similar to Slings, which was approved by the SLA in October 2013. However, we charge no fees and intend to distribute the entirety of the payments collected to venues.

In addition to one or both of the above, we seek to disburse a portion of the monthly membership fee to venues on a per-order basis. This additional disbursement would strictly be limited to the funds generated by the membership fees, and would not come from any part of the Club's non-operating capital.

#### Venues and customers

Venues retain full control over their menu and prices. However, the Club and participating venues may, on mutual agreement, exclude certain items from the program on basis of cost to produce and price. All establishments must include a portion of their food menu for the Club.

Venues also retain full control over identification and service. We do not expect any issues with underage or otherwise normally impermissible alcohol consumption since the app cannot be used to purchase an alcoholic beverage where and when someone could otherwise not make a purchase.

In addition, the Club can remotely cut off any member from using the app to engage in excessive consumption, either on a situational or habitual basis.

#### Legal issues

The Club does not make any profit off individual sales, nor does the Club share in any part of a venue's revenue or profit. In addition, we do not serve beverages to customers nor do we purchase beverages on the behalf of customers.

While members are entitled to purchase up to the maximum limit of food and beverages each month, we do not believe members "lose out" from not using the maximum, just as coupon book subscribers do not "lose out" from not using every coupon included in a coupon book.

In addition, while we seek to collect per-order prices ourselves, this is only to reduce overhead costs. We do not seek to keep any portion of the per-order prices and have no financial interest in participating premises.

If you have any questions, please contact us at any time. Thank you for your consideration.

Yours faithfully,

Jim An and Ayan Roy