

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of tied-house laws on personal guaranty
on lines of credit issued to retail licensee

DECLARATORY
RULING
2013-01029

The Alcoholic Beverage Control Law (“ABCL”) contains provisions, commonly referred to as the “tied house” laws. These provisions prohibit a person holding a retail license in this state from having an interest in a business that manufactures or wholesales alcoholic beverages,¹ as well as prohibiting a person who is a licensed manufacturer or wholesaler from having an interest in a business that sells alcoholic beverages at retail.² In addition, the tied house laws prevent a licensed manufacturer or wholesaler from making, or causing to be made, a loan to a person engaged in the retail sale of alcoholic beverages.³

The Members of the Authority are in receipt of a request from Lynda Battiste, Esq. on behalf of a client for a declaratory ruling as to whether, under the facts presented, the client would be prohibited under the tied-house laws from holding a wholesale or manufacturing license, or a broker’s or solicitor’s permit in this state. The facts upon which this ruling is based are as follows.

- The client is currently one of four principals in a corporation that holds a package store license. The client is also one of three principals (all of whom are principals in the package store business) in another corporation that holds a warehouse permit. The warehouse is used for the storage of the package store’s inventory.
- The client, along with the other principals of the package store business, executed a personal guaranty with respect to a term loan made by a lender to the business. Each principal also executed a personal guaranty for two lines of credit issued by a lender to the package store business. Finally, each principal executed a personal guaranty with respect to the financial obligations of the package store under the lease for the licensed premises.
- The client intends to sell his shares in both the package store and warehouse businesses back to the respective corporations. The client will also resign as an officer and director, and terminate his employment, with both corporations. After these steps are taken, the client’s only involvement with the retail business would be the personal guarantees described above.

¹ ABCL §105(16) & ABCL §106(13)

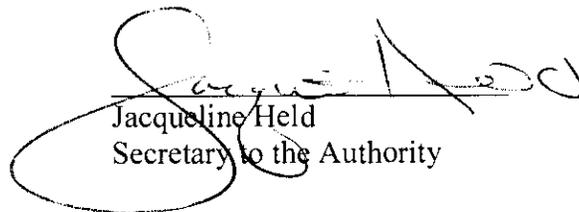
² ABCL §101(1)(a)

³ ABCL §101(1)(d)

- The client is unable to obtain a release of his obligations under the personal guarantees.

The tied house laws refer to any interest “direct or indirect” by way of “stock ownership, interlocking directors, mortgage or lien on any personal or real property or by any other means.” The client’s personal guarantees with respect to the package store’s financial obligations could be considered such an indirect interest. However, in this case the client, although cutting all other ties with the retailer, cannot obtain a release of his liability from the lender or the landlord. In such a case, the Members of the Authority find that the client’s personal guarantees would not, under the tied-house laws, disqualify him from holding a wholesale or manufacturing license, or a broker’s or solicitor’s permit in this state.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on April 24, 2013.



Jacqueline Held
Secretary to the Authority