STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of the 200 Foot Law on property Located at 289 North 7th Street, Brooklyn

DECLARATORY RULING 2014-02682

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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 an emailed request for a declaratory ruling from Elke Hoffman, Esq. regarding the application of certain provisions of the ABCL on a premises located at 289 North 7th Street in Brooklyn. Specifically, Ms. Hoffman 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 an on-premises liquor 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.

289 Lemon Squeeze LLC (hereinafter "the applicant") seeks to construct a restaurant at 289 North 7th Street in Brooklyn and thereafter obtain an on-premises liquor license for the establishment. On-premises liquor licenses for restaurants are governed by ABCL section 64. That section, as well as the other sections governing on-premises liquor licenses, contains a provision prohibiting the issuance of such 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. This licensing restriction is commonly referred to as the 200 Foot Law. The applicant has submitted a request for a declaratory ruling to determine whether the "200 Foot Law" would prohibit it from obtaining an on-premises liquor license for its restaurant.

The request for the declaratory ruling is set forth in a July 29, 2014 letter from Elke Hoffman, Esq. As is more fully explained in that letter, the applicant had general discussions for opening a restaurant at this location in 2011 and began taking steps to prepare for the construction of the restaurant in late 2013. In or about May, 2014, the applicant became aware of the fact that construction had begun on a school at 299 North 7th Street. As set forth in Ms. Hoffman's letter, the applicant does not dispute that, upon completion of the school and the restaurant, the building at 299 North 7th Street would be exclusively occupied by the school and would also be on the same street and within 200 feet of the restaurant.

The issue raised by the applicant concerns the application of the "grandfather protection" afforded to establishments that are licensed before a nearby location becomes a school or place of worship. Paragraph c of subdivision seven of section 64 provides, in part that "no license shall be denied to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school... or place of worship."

To the best of our understanding, there are no court decisions addressing whether, for purposes of the 200 Foot Law, the relevant licensing date is the date an application is filed, the date the application is approved, or the date that the license certificate is actually issued. Nor is

there any guidance provided by the courts with respect to whether a school or place of worship that is under construction is occupying, for purposes of the 200 Foot Law, a building.

As noted in Ms. Hoffman's letter, the Members of the Authority addressed a similar situation in Declaratory Ruling 2011-0314A. In that case the fact that a school was being proposed and the building was being renovated for use as a school was well known before there was any plan to open a restaurant at a nearby location. The property owner in that case argued that the building would not be occupied by the school until students started attending classes or, at a minimum, until a Certificate of Occupancy was issued for the building. In that case we determined that the premises was subject to the 200 Foot Law, relying on the fact that the school was well on its way to opening for students and no applicant, or even a potential applicant, was in place to operate the restaurant.

In Declaratory Ruling 2011-03141A we expressly declined to provide guidance as to: when a building becomes occupied by a school or place of worship; and whether the relevant licensing date is the date an application is filed, the date the application is approved, or the date that the license certificate is actually issued. Instead, the Members stated that each application must be determined on a case by case basis. As more fully explained in Ms. Hoffman's letter, the applicant seeks to distinguish its situation from that considered in Declaratory Ruling 2011-03141A and argues that it is entitled to the "grandfather" protection set forth above. Notably, she points to the fact that the application for this license has already been filed.

Based on the record before us, we find that the 200 Foot Law is applicable to the subject location and, accordingly, an on-premises license cannot be issued for the site. As discussed in Declaratory Ruling 2011-03141A, without a clear standard in the statute or case law, we must decide these matters on an individual basis. In this matter we give great weight to the fact that the construction of the school was known before the application was filed. To allow applications to be filed after it is clear that a school or place of worship is being constructed would, in our view, allow applicants to circumvent the intent of the 200 Foot Law.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on November 4, 2014.

Jacqueline Held
Secretary to the Authority