

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 24, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-01029

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

WHETHER A PERSONAL GUARANTY  
IS A PROHIBITED "INTEREST" UNDER  
THE TIED-HOUSE LAW

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 24, 2013 determined:

**MEYERS & MEYERS, LLP**

ATTORNEYS AT LAW

RICHARD M. MEYERS  
DAVID W. MEYERS\*\*  
ADAM M. BREAUULT  
LYNDA BATTISTE

ALSO ADMITTED IN  
\* CONNECTICUT  
\* FLORIDA

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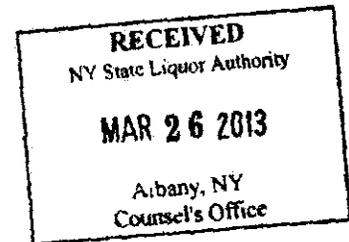
WWW.MEYERSANDMEYERS.COM

PLEASE REPLY TO:

ALBANY  
 SARATOGA

March 21, 2013

Thomas Donohue, Esq.  
Special Counsel  
New York State Liquor Authority  
80 South Swan Street, 9<sup>th</sup> Floor  
Albany, New York 12210-8002



**Re: Request for Declaratory Ruling**

Dear Mr. Donohue:

Please be advised that our office represents an individual who is presently an employee, director, officer and shareholder of a corporation licensed in the State of New York to sell alcoholic beverages at a retail store in New York City (hereinafter the "retail corporation"). The retail corporation has 300 shares of authorized common stock, of which 200 shares are issued and outstanding, and our client holds 62 shares. The remaining shares are held by three (3) other individuals, two of whom are also employees, directors, officers and shareholders, and one of whom is a director and shareholder.

Our client is also an employee, director, officer and shareholder of a second corporation that holds a warehouse permit for the storage of inventory (the "warehouse corporation"). The warehouse corporation has 200 shares of authorized common stock, all of which are issued and outstanding, and our client holds 57 shares. The remaining shares are held by two (2) other individuals (being the same two individuals in the retail corporation that are employees, directors, officers and shareholders).

Subject to the approval of the New York State Liquor Authority in separate corporate change applications, both corporations wish to redeem the shares of stock held by our client. If approval is granted, our client intends to sell his shares back to the respective corporations, resign his officer and board positions with both entities, and cease his employment with both entities. At that point, it is possible that our client's only remaining "interests" in both corporations will

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March 21, 2013  
Thomas Donohue, Esq.

stem from previously made personal guarantees for certain financial obligations of the retail corporation, described below.<sup>1</sup>

Specifically, our client executed a personal guaranty, along with the other shareholders, for a term loan made by an institutional lender to the retail corporation. They also each also executed a personal guaranty for two lines of credit issued by an institutional lender to the retail corporation. Finally, each of the shareholders executed a personal guaranty with respect to rent and other related real estate obligations under the lease agreement for the premises associated with the retail corporation. Copies of the guarantees, with identifying information redacted, are enclosed for your review.

Our client has been involved in the alcoholic beverage industry for nearly thirty (30) years. After the stock redemption, board and officer resignations, and cessation of employment, our client still wishes to engage, or otherwise have an interest in, a licensed or permitted activity in the State of New York. Our concern is whether our client's ongoing interests in the retail corporation (i.e., the personal guarantees for the financial and lease obligations of the retail corporation) will disqualify him from being a manufacturer, wholesaler, distributor, solicitor, retailer or broker in the State of New York.

Pursuant to 9 N.Y.C.R.R. §98.1, we request a declaratory ruling from the Board with respect to whether our client will be able to engage, or otherwise have an interest in, a licensed or permitted activity in the State of New York, in the event that the remaining shareholders / directors of the retail corporation are unable to secure releases of our client's obligations on the personal guarantees, even though he will at that time no longer be an officer, director, shareholder or employee of either corporation.

We would appreciate the Board's review and ruling on this matter. If I can answer any questions or provide any further needed information, please feel free to contact me at your earliest convenience.

Respectfully submitted,

Lynda Battiste

LB/dr

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<sup>1</sup> Efforts are underway by the remaining shareholders / directors to obtain releases of my client's obligations on the aforementioned guarantees. At this point, however, it is unclear whether these efforts will be successful.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 24, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-01030

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW  
FOR PROPERTY LOCATED AT:

491 HEMPSTEAD TURNPIKE, ELMONT

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 24, 2013 determined:

SENT VIA E-MAIL

John Springer  
52 Horizon View Drive  
Farmingville, NY 11738  
(631) 331-3334 phone | (631) 880-7101 fax  
[john@nybarguy.com](mailto:john@nybarguy.com)

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Thomas Donohue, Esq.  
NYS Liquor Authority  
Counsel's Office  
80 S. Swan St., Suite 900  
Albany, NY 12210

**RE: REQUEST FOR DECLARATORY RULING CONCERNING 491 HEMPSTEAD  
TURNPIKE, ELMONT, NY 11003 (200-FOOT GRANDFATERHING ISSUE)**

March 12, 2013

Dear Mr. Donohue:

I mailed an application for a special on-premise liquor license to the NYC lockbox yesterday. The applicant is BCCL Inc. and the property is 491 Hempstead Turnpike, Elmont, NY.

In the application, I provided circumstantial and anecdotal evidence that the premise was continuously licensed for full liquor back to 1989, before a church moved in. I also provided documentary photo evidence that the church had a commercial tenant as recently as October 2006.

For the sake of simplicity, I have attached a request for a Declaratory Ruling based on the grandfathering exception contained in ABCL 64(a)7(iii). The premise had an OP license until October 2012 and the lease was negotiated over the holidays before being since Jan. 1, 2013, when my own church investigation begin. The application was timely made.

Please let me know if you have any questions or desire the full history of the proposed premise and the church, going back to 1989.

Sincerely,



John Springer  
For the applicant

Attachments

**REQUEST FOR DECLARATORY RULING**  
**CONCERNING ELIGIBILITY FOR GRAND-FATHERING EXCEPTION**  
**PURSUANT TO ABCL 64-A(7)(III)**

On March 10, 2013, BCCL Inc. mailed an original on-premise liquor application to the New York State Liquor Authority for a premise known as 491 Hempstead Turnpike, Elmont, NY. The applicant disclosed a church whose entrance is 82 feet away. The applicant respectfully requests a grand-fathering exception pursuant to ABCL 64a(7)iii.

**LICENSE HISTORY**

1. On Jan. 1, 2013, the applicant corporation entered into a lease for the proposed premise and notified the Town of Hempstead of its intention to apply for a special on-premises liquor license for 491 Hempstead Turnpike, Elmont, NY.
2. An original on-premise liquor license was issued for the last tenant (#101630 El Cantinero Inc.) on 9/15/98. The license was routinely renewed every two years before voluntary surrender on Oct. 10, 2012.
3. The applicant has been in the process of negotiating the lease and researching legal issues concerning the eligibility for a license almost since the day El Cantinero Inc. surrendered its license.
4. Satisfied after his own investigation that both the applicant and the proposed premise are eligible for an OP-liquor license, on March 11, 2013, the applicant's representative mailed a timely application for the license now being sought to the NYS Liquor Authority.

**THE CHURCH**

1. Bethel International Church operates out of a storefront at 1851 Hempstead Turnpike, Elmont, which is 82 feet East of the proposed premise on the same side of the street. There is no dispute that the entrances fall well within 200 feet, so the applicant initiated an

investigation.

2. The building containing the church has a large, commercial-style garage door accessible from Hempstead Turnpike. During the winter of 2012-2013, the president of the application corporation observed a van with commercial markings entering and exiting the building from this garage.
3. Although there is no sign above the garage as of this writing, upon information and belief Elmont Windows Fashion, Inc. was a tenant of Bethel International Church for a long period a time when a special on-premise license was in existence in close proximity to the church.
4. Elmont Window Fashions, Inc. incorporated on March 29, 1999, and is still listed as an active corporation at the church address. A copy of the New York Secretary of State Division of Corporations' online database entry for the company is attached.
5. A photo showing Elmont Window Fashion's sign over the garage in the church building was uploaded to a real estate agency's website in October 2006. A copy of the photo is attached.

#### THE LAW

1. As is well known by the Authority and the applicant, §64-a(7)(a) provides that "no special on-premises license shall be granted for any premises which shall be (i) on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship."
2. §64a(7) goes on to say that "(iii) except 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, church, synaogue or other place of worship..." [Emphasis Added]

## CONCLUSIONS

1. There is incontrovertible evidence that the proposed premise was continuously operated as a bar from 1998 to October 2012.
2. There is documented evidence in the form of the photo taken in October 2006 that a commercial enterprise was utilizing space in the building that also houses as the church. Because the proposed premise had a full OP-liquor license at least back as far as 1998, the §64-a(7)(iii) grand-fathering exception should be applicable in this case.

## REQUEST FOR FINDING FAVORABLE TO APPLICANT

For the foregoing reasons and based on the exhibits and arguments contained herein, the applicant request a finding that the proposed OP-liquor premise 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 church.

Respectfully submitted,



John Springer

For the applicant

DATED: March 12, 2013

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 24, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-01031

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW  
FOR PROPERTY LOCATED AT:

2319 FREDERICK DOUGLAS BOULEVARD, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 24, 2013 determined:



**To:** Thomas J. Donohue  
Special Counsel  
New York State Liquor Authority

**From:** Theresa M. Russo

**Date:** February 19, 2013

**Subject:** Request for Declaratory Ruling on 200 Foot Rule

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Attached please find a request for a declaratory ruling and supporting documentation. Please feel free to contact me at 518-449-8893 if you have any questions or require additional information.

Thank you for your consideration.

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677 Broadway • Albany, NY 12207-2996 • p 518.449.8893 • f 518.449.8927

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## **Request for Declaratory Ruling**

I respectfully request a declaratory ruling on behalf my client who would like to obtain a full on-premise liquor license for a premise located at 2319 Fredrick Douglass Boulevard in Harlem. My client does not dispute that the United House of Prayer for All People located at 2320 Fredrick Boulevard is located within 200 feet and on the same street as his proposed establishment. However, we assert that the 200 foot rule does not apply because the church is not used primarily as a church. The church is used for a variety of purposes that that are not incidental to the house of worship or consistent with the predominant character of the building as a place of worship.

The United House of Prayer for All People owns the property along Frederick Douglas from 124 to 125<sup>th</sup> Street and rents out retail space to a Capital One Bank (please see attached photos). In addition, you will note in the pictures that the church is advertising for additional tenants. I have also included an article written by the Department of Religion at Columbia University which states that the United House of Prayer for all People doubles as a community forum offering food and music to the community. The church offers music concerts and is very popular for their soul food. Lastly, I have include an article written by the New York Times indicating that tourists came from all over the world to eat in the cafeteria that was located inside the church.

We are seeking a ruling from the Authority that the 200 foot rule would not bar my client from opening a new Buffalo Wild Wings at 2319 Fredrick Douglass Boulevard in Harlem.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 24, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-01032

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW  
FOR PROPERTY LOCATED AT:

963 LEXINGTON AVENUE, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 24, 2013 determined:

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

WARREN B. PESETSKY  
ROBERT S. BOOKMAN\*

RANDY F. BERNFELD  
Of counsel

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

March 22, 2013

Via E-Mail

Hon. Chairman & Commissioner  
New York State Liquor Authority  
80 South Swan Street  
Suite 900  
Albany, NY 12210

Re: 963 Lexington Avenue  
New York, NY 10021

Hon. Chairman and Commissioner:

The above referenced location is on the North East Corner of Lexington Avenue and 70<sup>th</sup> Street in Manhattan. The premises are currently licensed to Red Café Crop, d/b/a Lumi, with an expiration date of 1/31/14.

Located on East 70<sup>th</sup> Street is an institution called Manhattan High School for Girls. There is no question that the school located at 154 East 70<sup>th</sup> Street is within 200 feet of the restaurant entrance. It is interesting though, that there is no signage or any other identifying materials that would indicate to anyone that the premises area is a school.

The Freedom of Information requests to the SLA have been answered without the ability to specify the date in which the original license was approved; nor does the licensee have any records of that.

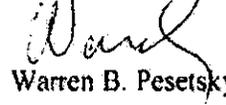
The only known details are that the application was pursuant to a lease dated November 25, 1992 (copy of front page attached hereto) which was to take effect on December 1, 1992 and that the application was filed shortly thereafter.

The school opened in the fall of 1993 according to Mrs. Weiss, the administrator.

On March 11, 2013, Brasserie Cognac East Corp., an entity in which the principals are multiple licensees of the Authority, entered into a contract to purchase the premises.

A ruling is sought, that the premises are grandfathered, and subject to an otherwise approvable application, that the purchaser can obtain an on-premises liquor license.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Warren B. Pesetsky".

Warren B. Pesetsky

WBP: mm