

Lessons Learned

NYSLA Proceedings Can be Eye-Opening Experiences for All Licensees

BY KEVEN DANOW

The New York State Liquor Authority full board proceedings are posted on the Authority's website at <http://www.abc.state.ny.us/live-and-archived-media>. Watching it can be instructive; it crystallizes issues previously raised in this column.

Caution: Temporary Permits

Temporary permits are available to an applicant who purchases the stock or assets of an operating licensed business, and for applicants for a new on-premise license outside the five boroughs of New York City, which does not require the 500-foot hearing described below. These permits can be a tremendous aid because the premise can be open and operating in less than 45 days. But, when the temporary permit is issued, the applicant will usually make significant capital expenditures. Additionally, a provision in a lease which allows the tenant to cancel in the event the liquor license is denied may extinguish when a temporary permit is issued or when the premise opens for business. While it is always a hardship for an applicant to be denied a permanent license, it may be real tragedy for an applicant who has been granted a temporary permit.

Such was the fate of two men who "purchased" a bar in the Village of Hempstead, obtained a temporary permit and then met with strong community opposition to their application for a permanent license. When there are more than three on-premise liquor licenses within 500 feet of a proposed establishment, the Alcoholic Beverage Control Law requires a 500-foot hearing at which the applicant has the burden of demonstrating that a new license would be in the public interest. At the hearing for the Hempstead bar owners, a lieutenant from the police department testified in opposition. At the

full board hearing which followed, the village mayor, a community activist and local residents argued passionately that the neighborhood is inundated with bars. There was also testimony that the man who sold them the bar had opened a new premise across the street, thereby adding to the neighborhood congestion. The applicants were ill-prepared, did not demonstrate why their bar would be in the public interest and were denied a permanent license. They are left with a lease, a bar, furniture and fixtures, but no liquor license. It was a victory for the Village of Hempstead, but a devastating loss for two would-be entrepreneurs.

Consult an Attorney Before your SLA Appearance

Earlier that day, a licensee gave an object lesson on the importance of having a full understanding of the charges levied against you prior to arguing. The attorney for a licensee, who had been charged with a series of violations including failure to maintain adequate records, made a conditional no contest offer of \$5,000. The members indicated that they intended to accept the offer. When the licensee, who appeared without his attorney, argued for a lower fine, Chairman Rosen explained the seriousness of the charge of failure to keep adequate records. Because the licensee could not show where the beverage alcohol he was selling was purchased, the members worried over whether the inventory had been purchased out-of-state, without payment of New York State excise taxes.

There is also a risk that goods which do not come through the three-tier system are counterfeit, in which case, the public's health and safety may be at risk. In response to a probing question as to why he could not show purchase orders

for goods on hand, the licensee argued that some of the wholesalers that sold him goods had gone out of business. Unable to explain why his receipts would disappear because the wholesaler closed its door, the licensee argued that he was in the habit of accepting free goods from wholesalers for tastings and other promotional events. Free goods may indeed be the explanation, but it is hardly a defense. It is illegal for a retailer to accept free goods from a wholesaler. Consequently, the licensee had admitted to a violation for which he had not been charged. Although the members ultimately decided to accept the \$5,000 originally offered, they did consider imposing an increased penalty.

A Corporate Change

Watching the proceeding also provided instruction on the importance of obtaining the Authority's permission in the event of a change in ownership or management of the licensed premise. The Authority denied a license renewal because the application had been signed by the licensee's brother. The Authority suspected an unauthorized corporate change. During the course of the hearing, the attorney explained that the licensee had left the U.S. to arrange for the immigration of members of his family into the country. The licensee had left his brother in charge of his business. When questioned, the attorney told the members that the licensee would be out of the country for close to one year. The members of the Authority found that there was either an unauthorized corporate change or the brother was renegeing on the license. Either way, the license renewal was denied.

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