

**Danow, McMullan &
Panoff, P.C**

To: Nia James, Committee Clerk
Evan Gallo, Chief Investigations and Counsel

From: Keven Danow
Barbara Kwon

Date: February 26, 2024

Re: **Joint Senate Standing Committee on Corporations, Authorities and Commissions and Senate Standing Committee on Investigations and Operations Public Hearing**
Hearing on State Liquor Authority and ABC Law

We, Keven Danow and Barbara Kwon, have concentrated our practice in the area of alcoholic beverage law for many years. We represent clients in all three tiers of the Industry, including suppliers, (distilleries, wineries, cideries and breweries) as well as wholesalers, and retailers such as restaurants, hotels, bars and liquor stores. We have appeared before New York State Liquor Authority (the "Authority") full boards chaired by Edward Kelly, Daniel Boyle, Dennis Rosen, Vincent Bradley and the current Chair, Lily Fan. You can learn more about us on our website: THEDANOWGROUP.COM.

When Dennis Rosen took over the Chair of the Authority, he instituted a number of reforms to resolve a large application backlog. For a while, the licensing process returned to normal. Then, during Mr. Bradley's administration, the backlog grew to its present point, in which the time to process an application grew to longer than eight months.

Mr. Bradley's explanations for the increasing backlog included: the effects of Covid, which required the Authority to work with a smaller, remote workforce and to turn its attention to health enforcement, a lack of funding (which was resolved in recent budgets), and the need to assign staff to work on computerization as part of a directive to move to an on-line application process.

Regardless of the reasons, by the time Chair Fan took office, the licensing process had stretched to periods exceeding nine months.

Immediately after she was approved as Chair, Ms. Fan turned her attention to the backlog. She solicited advice from members of the Authority, the industry and practitioners who appear before the Authority. She assembled a staff committee with instructions to:

1. Address issues of temperance, underage drinking and other state health and safety policies.
2. Address the licensing backlog.
3. Promote commerce in the State, to the extent possible within the confines of the State's Temperance Policy.
4. Eliminate impediments to market entry.

As part of this policy, Chair Fan appointed a committee of key people within the Authority to address the backlog. That committee has been working diligently and making progress. However, because of the size of the backlog that was in place when Ms. Fan ascended to the Chair and the ever increasing number of applications, the task is Herculean. This is particularly true because, although the Agency has finally received a working budget, it still has to find and train examiners. In addition, there has been a recent turnover of key Authority personnel.

There are things the Legislature can do to help. The Alcoholic Beverage Control Law requires most on-premise licensees to notify either a community board or municipality thirty days prior to filing an application with the Authority. This law serves only to delay the process. There is no reason why this notice cannot be served at the same time the application is filed. The community board or municipality still will have more than enough time to make decisions and provide input on all applications.

In addition, while the Authority can now issue temporary permits to many applicants, no such permits are available in connection with a wholesale license. This creates a particular problem in those cases where a buyer purchases the assets of a wholesaler because the closing has to be delayed until the license application process is complete. It is also a significant problem if a wholesaler wishes to move or open a new office. Temporary permits should be made available to applicants for a wholesale license.

Similarly, New York should change its procedures when a transfer is made by way of the sale of stock. New York is one of only a few states that require prior approval of a corporate change. In almost every other state, the application for a corporate change is filed either at the time of the corporate change or within a short time thereafter. For instance, under the federal rules, when a corporate change takes place, the licensee is required to file its application with the TTB within thirty days after the change. It is then permitted to continue to operate under the old license until the application process is completed. Adopting this procedure would significantly improve the licensing process. Inasmuch as this is the process followed by the federal government and almost every state, the risk involved in such a change is extremely low.

Additionally, the Authority should be able to issue temporary permits for remote locations and satellite offices for New York manufacturers. Currently, even though a New York winery, cidery, brewery or distillery can obtain a temporary permit, there is no way to open a remote or satellite location until the permanent license is issued. This is a large impediment to the plans of a new business, which can easily be cured by allowing the Authority to issue temporary permits for these remote locations.

It is worth noting that a temporary permit allows the Authority, community board, municipality, and the public to see how a potential licensee will operate. Consequently, it can be used to advance the interest of the public and good operators and to weed out the bad.

In short, the Legislature could assist the New York State Liquor Authority in resolving the backlog issue by allowing the notice to the community board or municipality to take place at the same time the application is filed and by allowing the Liquor Authority to issue temporary permits for any and all license applications.

Thank you for the opportunity to comment. If you have any questions or wish additional information, please contact us.

Respectfully submitted,

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