

Mark Koslowe – ABC Lawyer Written Testimony

I thank you and your Committee for the invitation and privilege of testifying at the upcoming March 1st Hearing regarding the New York State Liquor Authority (“SLA” or the “Agency”) and the current licensing backlog. I am, unfortunately, unable to attend in person. In lieu of attending, I respectfully submit the following comments for your consideration.

As a matter of introduction, I am the Managing Partner of Buchman Law Firm, LLP and have been practicing law since 1977, almost exclusively in the area of beverage alcohol law in New York and throughout the United States (federally and select state issues). With respect to NYS Alcoholic Beverage Control Law (“ABCL”), I testified at and supplied materials to the 2008 NYS Law Revision Commission, Chaired by Robert M. Pitler, which Commission was formed to review the ABCL and propose action to address deficiencies in the law. Further, I was a Member of the 2016 New York State Liquor Authority Working Group, Chaired by Vincent Bradley, formed to consider the reorganization of, and revisions to, the ABCL. Finally, I was a Member of the recently concluded 2023 Commission to Study Reform of Alcoholic Beverage Control Law (also Chaired by Vincent Bradley).

First, I am well aware of the backlog of applications before the SLA. The backlog consists of both new applications for licensing as well as various applications for changes, removals and alterations for current Licensees, all subject to Agency review and approval as statutorily required. This is aside from renewals of licenses, brand label registrations and issuance of various types of permits.

When I first started as an attorney in 1977, the SLA had over 100 employees just in the Wholesale Bureau; today it has fewer than 100 employees for the entire Agency. In addition, due to the size of the Agency, even with normal attrition, there were plenty of experienced staff members who could monitor and help facilitate uniform review of the required information in applications. Today there is a smaller number of experienced staff with increased work-load, which has placed great demands on their time. Training takes longer, and mentoring younger staff requires time. This causes delay in processing applications. I would therefore suggest that, notwithstanding the progressive steps taken by the Governor and Legislature to provide the SLA with additional funds to hire examiners and related personnel, I would urge more funding earmarked for the hiring and training of personnel and the ability to retain senior staff with appropriate increase in salary.

With respect to the backlog of new license applicants, the first step is to determine whether the applicant can obtain a temporary permit. I recommend legislation (some of which is in the Governor’s current proposals) to allow temporary permits for both wholesale license applicants and importers. There are already temporary permits for manufacturers and various retail licensees. Further, with respect to on-premise retail applicants, I believe that unless the Community Boards (“CB”) will accommodate on the

issuance of temporary permits for all retail license types, a backlog of license issuance will remain.

With respect to the backlog involving current licensees (e.g., premises removals, alterations, corporate changes, endorsements), I would suggest legislation to allow for: 1) filing within 30 days of the change in question, and 2) allowing the licensee to proceed during the pendency of SLA review and ultimate approval. Again, due to various statutes/regulations regarding on-premise retail licenses and CB involvement, removals or alterations by these retail licensees could be made subject to prior approval by the SLA. With respect to corporate changes and endorsements for all retail licensees, provided the "new" controlling party adheres to any stipulated CB conditions, corporate changes and endorsements should proceed without the need of prior approval (similar to a new licensee receiving a temporary permit). Manufacturing and wholesale licensees could proceed with licensing changes as there is no CB involvement for such licensees, provided reporting is made within 30 days.

The two suggestions combined would allow applicants to proceed (at their own risk of compliance, which is true for all licensees and/or applicants) and eliminate the pressure on the Agency ... the backlog is there, but business can proceed in a timely manner. Ultimately, with sufficient personnel, the backlog will be eliminated.

The new Chair, Lily Fan, has taken great strides to make reforms a priority at the Agency, including implementing the new Advisories issued over the past 2 years which reduce the application forms required and the process and integrating a new computer system designed to make online licensing more efficient. Members of our firm and attorneys from other firms who practice before the Agency, have graciously been invited to meet with Chair Fan and her Senior staff to create a better working relationship between the trade and the SLA. This has helped to explain the current SLA situation and better prepare trade representatives with the current timing issues. All of these initiatives require continued funding for the Agency.

I believe that with modest legislative reform to the process (without attempting to change basic laws that require lengthy review and discussion, such as a code re-write or tied-house revisions, etc.), combined with directed funding, the backlog can be eliminated. In turn, business needs could be met in a more timely fashion, improving economic conditions with respect to new and current liquor licensees.

Respectfully submitted,

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