

CLIENT ALERT: Attention: Restaurants, Catering Halls, and Bar Owners

FEATURED ATTORNEY



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Partner

Dear Friends, Clients, Restaurant and Bar Owners:

“Restaurants aren’t just economic drivers. They add to community character and connection and get us all more accustomed to using roadways for something other than cars.”^[1]

On June 18, 2020, the State Liquor Authority (SLA) issued a Letter to all Licensees stating that effective June 18, 2020 licensees are now responsible for violations of social distancing guidelines and open container ordinances that occur within a one-hundred feet of their licensed premises and if a licensee is unable to ensure that the law is being followed they must stop serving. Furthermore, pursuant to Executive Order 202.52, effective Friday July 17, 2020, all licensed establishments with on premises privileges (e.g. restaurants, taverns, manufacturers with tasting rooms, etc.) shall not serve alcoholic beverages unless such alcoholic beverage is accompanied by the purchase of a food item which is consistent with the food availability requirement of the license under the Alcoholic Beverage Control Law.

Thereafter, the SLA immediately issued Guidance on compliance to all Licensees regarding the July 17, 2020 order. In addition to these recently enacted requirements, various previous executive orders have mandated licensed establishments to require that their servers and employees wear face masks, prohibit large crowds from gathering outside, and follow the directed 11 p.m. curfew in place. Moreover, licensed establishments are required to ensure that customers and employees can maintain six feet of distance from one another (except if they are members of the same party).

The SLA has set forth that businesses found violating any Executive Order or the SLA Guidelines are breaking the law and face serious consequences, including having their license suspended or permanently revoked, with fines up to \$10,000 per violation. However, the SLA has NOT provided the public with its internal policy as to what notice the SLA must give bar and restaurant owners before

issuing a fine or suspending or revoking a license.

It is important to know, that even during the pandemic, licensees subject to an emergency suspension of their licenses are entitled to an expedited hearing before an SLA Administrative Law Judge^[2]. Failure to provide that hearing is a violation of the license holders rights. Specifically, the power which may be delegated to any employee of the SLA is the power to hold hearings, subpoena witnesses, compel their attendance, administer oath, and to examine any person under oath but not to determine whether revocation or suspension of a license is appropriate.

The attorneys at **Abrams Fensterman, LLP** are criminal and civil litigators and experts with over 30 years' experience in both State and Federal court. We regularly and presently represent restaurants and bars defending against SLA violations. We regularly prosecute Article 78 proceedings, challenging governmental actions and determinations, specifically and presently we have actions pending against NYC Dept of Consumer of Affairs, Department of Buildings, Department of Parks and Recreation, numerous and various municipalities, police departments, the Attorney General' Office and NYC, etc. An Article 78 proceeding is when a petitioner (i.e. a bar or restaurant owner) asks a state court to review a decision or action of a New York State body or officer (i.e. the SLA). The petitioner requests that the state court determine whether the body or officer proceeded, is proceeding or is about to proceed, without or in excess of jurisdiction.

Please contact **Melanie I. Wiener, Esq.** at mwiener@abramslaw.com or **Amy Marion, Esq.** at amarion@abramslaw.com if your bar or restaurant has been issued a fine, license suspension or revocation by the SLA and you would like to challenge the SLA's determination.

We have been successfully litigating and defending against wrongful governmental actions for decades prior to COVID-19. Call or email anytime, we look forward to hearing from you!

[1]<https://www.nydailynews.com/opinion/ny-oped-parking-and-progress-20200804-m4h27ynonrevdetc7yijbo6jru-story.html>

[2]New York State Administrative Procedure Act § 401(3), states that agency proceedings founded upon emergency summary suspension of a license requires that the proceedings "be promptly instituted and determined." Moreover, pursuant to SAPA § 301(1), the State has an "to conduct adjudicatory proceedings within 'reasonable time.'" *Cortland Nursing Home v. Axelrod*, 66 N.Y. 2d 169, 177 (1985).