



Upon the foregoing papers this proceeding is decided as follows:

Petitioner NSL Rest. & Bar Inc., is the operator of a bar known as Lidias Place, located at 79-18 Roosevelt Avenue, Jackson Heights, New York. Petitioner is the holder of an on-premises liquor license issued by respondent New York State Liquor Authority (SLA). On March 14, 2007 the Division of Alcoholic Beverage Control (Division) initiated a proceeding to cancel or revoke petitioner's liquor license and issued a Notice of Proceeding, which required the petitioner to answer by mail or in person at the Division on April 18, 2007 at 11:00 A.M. The notice states that the failure to answer would be deemed a "no contest" plea and that no further hearing would be held.

Petitioner asserts that it never received a copy of the Notice of Pleading, and, therefore, it was unable to either appear or answer the notice on April 18, 2007. On June 27, 2007, an order was issued on default, canceling and revoking petitioner's on-premises liquor license, effective July 18, 2007. The order stated that the SLA had met on May 16, 2007 and that based on its findings on the violations charged, the subject liquor license was cancelled. In a letter dated July 12, 2007, petitioner made an emergency request to stay the cancellation order, and the alternative to vacate the cancellation order and permit petitioner to enter a plea to the charges set forth in the Notice of Pleading. Petitioner asserts that the SLA has not responded to this request, and, therefore, it has been "deemed" denied. Petitioner asserts that it has a reasonable excuse for its default in answering the Notice of Pleading in that it did not receive the Notice, and that it has a meritorious defense to the charges contained in the Notice.

Respondent asserts that in compliance with 9 NYCCR § 54.1(a), copies of the Notice of Pleading were sent to the premises by certified and ordinary mail, and that there was no reason why petitioner should not have received the notices. Respondent also states that a copy of the Notice of Pleading was also sent to the licensee's sole principal of record, Lidia Grullon, at her home address of record, 86-10 34<sup>th</sup> Avenue, #126, Jackson Heights, New York.

Respondent asserts that a letter was sent to the petitioner on May 21, 2007, stating that the SLA had met on May 16, 2007 and had sustained the charges and imposed a penalty of \$5,000.00, payable by June 15, 2007, and in the event the penalty was not paid, a bond claim of \$1,000.00 would be imposed and the liquor license would be

cancelled. It is asserted that petitioner did not respond to this letter and, therefore, the penalty of cancellation was imposed.

Respondent's counsel, in a letter dated July 19, 2007 and addressed to petitioner's counsel, stated that the May 16, 2007 request for reconsideration had been reviewed by the Authority's Chairman, that a request for reconsideration may only be submitted to the Full Board with the approval of the Chairman, and that the Chairman had denied the request. The court deems this letter to be a denial of the May 16, 2007 request for reconsideration. Therefore, as the within order to show cause is dated July 19, 2007, this Article 78 proceeding was timely commenced.

The court finds that respondent has not established that the Notice of Proceeding was served upon the licensee in the manner specified by 9 NYCRR § 54.1(a). This section provides that "[d]isciplinary proceedings shall be commenced by serving a notice of pleading on the licensee. Such notice shall be deemed to have been duly served if delivered in person or if sent by registered or certified mail to the licensee addressed to the licensed premises and a copy thereof sent by first class mail to the residence of record of the licensee or of any officer or director of a corporate licensee, or any general partner of a partnership licensee."

Respondent has submitted a copy of a receipt for certified mail, return receipt requested, which contains an illegible handwritten address, and an illegible mailing stamp. Although a portion of the receipt contains petitioner's name and address, which was typed or printed, and the handwritten notation "nop," the court finds that this is insufficient to establish that the Notice of Proceeding was properly addressed and delivered to the petitioner-licensee.

The court further finds that respondent has not established that a copy of the Notice of Proceeding was sent to the residence of record of Lidia Grullon, or that she is "the licensee or any officer or director of a corporate licensee, or any general partner of a partnership licensee." Respondent was clearly aware of the fact that the Notice of Proceeding was not received by Ms. Grullon. A copy of an envelope submitted by respondent, which is addressed to Lidia Grullon contains the handwritten notation "nop," and bears a label stating "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." The label's date of return is illegible. In a memorandum from the "Office of Counsel" to the "Members of the Authority" dated April 30, 2007, it is stated that the licensee had failed to respond to the Notice of Pleading dated March 14, 2007 and that "[a] check of the Google Website indicates that the Notice of Pleading dated March 14, 2007 sent by Certified Mail No. 7003

3110 004 6361 7763 to the licensed premises was returned to the NY State Liquor Authority at NY New York 10027 on April 18, 2007 at 12:44 P.M." Therefore, as the Notice of Pleading sent to Ms. Grullon was returned due to some problem with the address, respondent has failed to establish that she was duly served with the Notice of Pleading.

Inasmuch as petitioner's default in answering the Notice of Proceeding was due to the failure to properly serve the licensee in the manner provided in 9 NYCRR § 54.1(a), petitioner's request to vacate the cancellation of its on-premises liquor license is granted, and the respondent is directed to permit the petitioner to serve its response to the Notice of Proceeding, within 30 days from the service of a copy of this judgment, together with notice of entry.

This constitutes the judgment of this court.

Dated: 9/24/07

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J.S.C.