

Defending Your License

BY KEVEN DANOW

You have just received a letter from the New York Liquor Authority informing you that charges have been brought against you. After the initial panic, what should you do?

Remember you have a right to an attorney. Exercise that right.

The letter of charges will state the basic charge and will warn that if the charges are sustained you may be fined \$10,000 and your license may be suspended or revoked. However, it is a rare case in which the full \$10,000 penalty is assessed.

If you have been charged with a violation of the Alcoholic Beverage Control Law, the letter you receive will inform you that you may plead not guilty, no contest or guilty. You may also make a conditional offer to plead “no contest” provided the authority agrees in advance to a penalty which is acceptable to you. If you fail to respond at all, or if you plead not guilty and then fail to appear at the hearing, you will be found guilty and the result will be the same as if you had been found guilty after a full hearing.

Status: Not Guilty

You have a right to plead “not guilty” just to preserve your rights while you find out the full nature of the charges and the evidence the Liquor Authority will rely upon. In most cases, upon receipt of a not guilty plea, the Authority will provide you with information about the charges. However, when you send in your not guilty plea you should demand a bill of particulars in which you ask for details of the specific charges.

Once you have a full understanding of what the charges are, you can decide whether to continue with your not guilty plea. If you choose to do so, you will proceed to a hearing before an

administrative law judge. Keep in mind that once a hearing starts, you may no longer attempt to offer a conditional no contest plea. If you are found guilty, the administrative law judge will send his or her findings to the full board which will decide upon an appropriate penalty. At the full board hearing you may explain to the members of the Authority why a harsh penalty should be mitigated. However, you may not attempt to retry the case before the full board. For that reason, you may prefer to see if you can reach an acceptable settlement with the authority. This is done by making a conditional no contest plea.

Status: No Contest

If you make a no contest plea, you do not admit guilt, but the effect is the same as having been found guilty after a full hearing. A conditional no contest plea is an offer to the authority to make a no contest plea if the authority agrees with your penalty offer. You may not make a conditional no contest plea without permission from the counsel’s office. If you call the counsel’s office and explain that you are interested in making a conditional no contest plea, the attorney who is handling the case will discuss potential penalties with you. You may then suggest a penalty which you would find acceptable. If counsel for the Authority believes it is within reasonable parameters based upon the charges and your past history, the offer will be directed to the full board. The board will either accept your offer or make a counter offer. If you find the counter offer acceptable, you may accept it. If not, you may still elect to go forward with the hearing.

At the conclusion of the hearing, the administrative law judge will issue a report which will be forwarded to the mem-

bers of the Authority for their review. The members of the Authority make the final decision as to whether the charges are sustained or dismissed. If the charges are dismissed, the matter is over. If they are sustained, depending on the severity of the charge, the Authority has a list of penalties from which to choose.

Financial Matters

If the sustained charges are quite serious, the authority may assert a bond claim and civil penalty. In this case, the fine may be any amount of money up to and including a \$1,000 bond claim and \$10,000 and civil penalty of any amount up to \$10,000.

If the offense is sufficiently serious the Authority may demand suspension of your license for a period of time. If this happens, you must wait for a letter from the Authority telling you the dates of the suspension.

If the charges are severe enough the Authority may cancel the license which will result in the loss of license privilege. In the case of cancellation, you may apply for another license. However, if the Authority revokes the license, not only will you lose that license, all other licenses you hold also would be revoked; and you may not apply for a new license for two years. In the most egregious situations, the SLA may add proscriptio to the penalty of revocation.

One last point is worth noting: In rare situations, where good cause is presented and the Liquor Authority finds that the public welfare is in danger, it has the power to issue an order of emergency summary suspension. In such a case, the license is suspended pending a full hearing. All of this brings us full circle. If you receive a letter charging you with a violation of the Alcoholic Beverage Control Law, you would be well advised to seek legal advice.

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