

**Matter of 338 Wallabout Ligs. Inc. v New York State
Liq. Auth.**

2025 NY Slip Op 34733(U)

December 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 520298/2025

Judge: Peter P. Sweeney

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 520298/2025

Motion Date: 10-20-25

Mot. Seq. No.: 1-2

-----X
In the Matter of the Application of

338 WALLABOUT LIQUORS INC.

Petitioner,

-against-

DECISION/ORDER

THE NEW YORK STATE LIQUOR AUTHORITY,

Respondent,

-----X

The following papers, which are e-filed with NYCEF as items 1-59, were read on this petition:

In this special proceeding pursuant to CPLR Article 78, Petitioner 338 Wallabout Liquors Inc. ("Petitioner") seeks a judgment vacating and annulling the determination of the Respondent, The New York State Liquor Authority ("Respondent" or "SLA"), dated May 14, 2025, which disapproved the Petitioner's application for an Off-Premises Liquor License, and directing the Respondent to issue said license to the Petitioner.

BACKGROUND

Petitioner filed an application for a license to sell liquor and wine at retail for off-premises consumption (a "package store") for the premises located at 338 Wallabout Street, Brooklyn, New York. After the Respondent's Full Board initially heard the matter and disapproved the application. Petitioner requested reconsideration. On May 14, 2025, the Full Board granted the Petitioner's request for review but, upon review, adhered to its prior determination disapproving the application.

The Respondent's stated grounds for denial were that the issuance of the license would not serve "public convenience and advantage." Specifically, the Respondent found that there were eight other liquor stores within six-tenths of a mile of the proposed site. The Respondent noted that seven of the closest existing stores reported gross sales figures that, when compared

001
002

between 2022 and 2023, showed a decrease of \$181,060 for the immediate area. Additionally, the Respondent expressed concern regarding the applicant's history, noting the principal had previously obtained a license in June 2021 and surrendered it in January 2024 to "make money," which the Respondent viewed as a potential circumvention of the law and a risk that the applicant might flip the proposed license in a saturated market.

Petitioner commenced this Article 78 proceeding arguing that the decision was arbitrary and capricious because the proposed store would be the only "100% exclusive kosher wine and spirits store" in a neighborhood with a large Orthodox Jewish population. Petitioner alleges that existing stores offer little to no kosher selection and that the community is underserved in this specific niche. Petitioner further alleges that the Full Board "hushed" the Petitioner and refused to entertain new evidence or community support during the May 14, 2025 reconsideration hearing.

DISCUSSION

The Petitioner contends that the SLA's denial was arbitrary, capricious, and lacked a factual basis. Petitioner argues that the SLA failed to consider the "public advantage" of providing a dedicated kosher wine and spirits store in an Orthodox Jewish community, where existing stores primarily serve non-kosher products. Petitioner asserts that the community does not wish to patronize stores with limited kosher selections. Furthermore, Petitioner claims a denial of procedural due process, arguing the Board "refused to permit the Licensee to provide new or additional facts" at the reconsideration hearing.

In opposition, the Respondent argues that it acted within its broad discretion under ABCL §§ 2 and 17 to determine whether a license would serve public convenience and advantage. Respondent contends the decision was rational based on the record, which showed an oversaturation of the market (eight stores within walking distance) and declining sales trends in the area. Respondent argues that has the authority to weigh these factors and limit the number of licenses. Respondent further argues that mandamus does not lie to compel the discretionary act of issuing a license.

That branch of the petition in which Petitioner seeks an order vacating and annulling the determination of the Respondent dated May 14, 2025, is DENIED.

Judicial review of an administrative determination is limited to whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion (CPLR § 7803(3)). Where "the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency" (*Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 431 (2009)). The courts will not disturb an administrative agency's determination unless its action was arbitrary and capricious (*Matter of Fiore v. O'Connell*, 297 NY 260 (1948)).

The SLA is vested with broad discretion to determine whether public convenience and advantage will be promoted by the issuance of licenses (*Matter of Sled Hill Cafe v. Hostetter*, 22 N.Y.2d 607, 612 (1968)). "Public convenience" refers to the accessibility of stores and involves considerations of distance and overcrowding, while "public advantage" involves social and similar problems and the State's general policy to regulate the sale of alcoholic beverages. (*Forman v. New York State Liquor Authority*, 17 N.Y.2d 224, 225-226 (1966)). The weight to be accorded to these factors is a matter delegated to the Authority (*Sinacore v. N.Y. State Liq. Auth.*, 21 N.Y.2d 379, 383-84 (1968)).

Here, the record reflects that the Respondent considered the saturation of the area, noting eight existing package stores within 0.6 miles of the proposed premises. The Respondent also relied on data showing that gross sales for most of these nearby stores were declining. Specifically, "Grain & the Vine LLC is located four-tenths of a mile away from the proposed site and reported a decrease of \$600,000 since 2020. Courts have consistently held that the Authority may rationally deny a license where the area is adequately served by existing stores and there is no evidence of increased demand (*Matter of Urbanite Wine Merchants, Inc. v. New York State Liquor Authority*, 189 AD3d 593 (1st Dept. 2020); *White Plains Fine Wine & Spirits LLC v. New York State Liq. Auth.*, 184 A.D.3d 1068 (3d Dept. 2020)).

While Petitioner argues that the specific demand for a broad selection of kosher wine is not being met, the Respondent rationally balanced this claim against the evidence of market saturation and declining sales. The Respondent considered the applicant's argument regarding kosher products but determined that "the general lack of increased demand for alcoholic beverages, the close proximity of eight existing stores, and the risk of the applicant selling the store outweighed the products that the applicant would offer." The Respondent's conclusion that the area was adequately served was within its discretion. Even if the proposed store offers a larger variety of products, the Authority may reasonably conclude that existing stores are sufficiently addressing consumer needs (*White Plains Fine Wine & Spirits LLC*, 184 A.D.3d at 1070). Petitioner admitted in their affidavit that competitors in the area were reporting annual losses in income. Therefore, the Authority's reliance on these figures was rational.

Regarding Petitioner's claim that they were "hushed" or denied the opportunity to present evidence at the May 14, 2025 hearing, the record indicates that the Board allowed the applicant to speak but noted that the arguments regarding kosher products and demographics had previously been made at the March 12, 2025 meeting. The Board found that the applicant failed to submit new information that would lead to a reconsideration of the original decision. The Petitioner has not met the burden of showing the determination was "without sound basis in reason and without regard to the facts" (*Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231 (1974)).

That branch of the petition in which Petitioner seeks an order directing the Respondent to issue an Off-Premises Liquor License to the Petitioner is DENIED. A writ of mandamus is not available to compel a purely discretionary act (*Matter of Yager v. Massena Cent. Sch. Dist.*, 119 AD3d 1066 (3d Dept. 2014)). The power to issue or refuse to issue a license is vested in the discretion of the Authority (ABCL § 17(1)). Therefore, this Court cannot substitute its judgment for that of the Authority and order the license be issued (*In re: Roccaforte v. O'Connell*, 271 AD 831 (2nd Dept. 1946)).

Based on the foregoing, it is hereby

ORDERED and ADJUDGED that the petition is DENIED in its entirety and the proceeding is DISMISSED.

This constitutes the decision and order of the Court.

Dated: December 10, 2025

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020