

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of Application of, :

The Cloister East, Inc. D/B/A Cloister Café, :  
Drobenko Bros Realty Inc., :  
Jaroslaw Drobenko, Nicholas Drobenko, :  
John Drobenko, and Walter Drobenko :

Petitioners, :

For an Order and Judgment Pursuant to :  
CPLR Article 78 :

-against- :

The New York State Liquor Authority, :  
VINCENT BRADLEY, as chairman, :  
New York State Liquor Authority; LILY FAN, :  
as commissioner, New York State Liquor :  
Authority; GREELEY FORD, as commissioner, :  
New York State Liquor Authority; :  
GARY MEYERHOFF, as general counsel, :  
New York State Liquor Authority; :  
MARGARITA MARSICO, as associate :  
counsel, New York State Liquor Authority; :  
THOMAS DONOHUE, as secretary to the :  
Authority, New York State Liquor Authority; :  
CHARLES STRAVALLE, as investigator, :  
New York State Liquor Authority :  
each sued in their individual capacities. :

Respondents. :

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Index No.:

**Oral Argument Requested**

**VERIFIED PETITION**

Petitioners The Cloister East, Inc. D/B/A Cloister Café, Drobenko Bros Realty Inc., Jaroslaw Drobenko, Nicholas Drobenko, John Drobenko, and Walter Drobenko (collectively, "Petitioners"), by and through their undersigned counsel, as and for their Verified Petition, allege as follows:

**PRELIMINARY STATEMENT**

1. Petitioners bring this action to challenge the due process of the Respondents' deprivation of Petitioners' liquor license. More specifically, Respondents suspended Petitioners' liquor license purportedly under Section 401, subd.3, of the New York State Administrative Procedure Act ("SAPA 401") without any notice to licensee or any pre-suspension opportunity to be heard. SAPA 401 requires that proceedings for such a summary suspension of a license "shall be promptly instituted and determined." The SLA has no such procedure in place and summarily suspends licensees' licenses without any meaningful or adequate post-deprivation process, which violates the Fourteenth Amendment of the United States Constitution. Thus, Petitioners respectfully request that the Court:

- a) To join with Judge Kaplan in holding that the SLA's deprivation procedures are prima facie unconstitutional and / or unlawful;
- b) To hold a prompt and meaningful post-deprivation hearing with evidence presented from both sides on the two issues raised in the order of suspension; or
- c) To decline to hold such a hearing.

**THE PARTIES**

2. Petitioner The Cloister East, Inc., d/b/a Cloister Café is a restaurant hospitality company with offices at 238 East 9th Street, New York, New York 10003.

3. Petitioner Drobenko Bros Realty Inc is the owner of the premises located at 238 East 9th Street, New York, New York 10003, and the licensee's landlord.

4. Petitioner Jaroslaw Drobenko is an owner of Drobenko Realty Inc, as well as an owner of The Cloister East, Inc., d/b/a Cloister Café.

5. Petitioner Nicholas Drobenko is an owner of Drobenko Bros Realty Inc, as well as an owner of The Cloister East, Inc. d/b/a Cloister Café.

6. Petitioner John Drobenko is an owner of Drobenko Bros Realty Inc, as well as an owner of The Cloister East, Inc. d/b/a Cloister Café.

7. Petitioner Walter Drobenko is an owner of Drobenko Bros Realty Inc, as well as an owner of The Cloister East, Inc. d/b/a Cloister Café.

8. Respondent, the New York State Liquor Authority is a government agency of the State of New York established as part of New York's Alcoholic Beverage Control Law.

9. Respondent Vincent Bradley is the Chairman of the New York State Liquor Authority.

10. Respondent Lily Fan is a Commissioner of the New York State Liquor Authority.

11. Respondent Greeley Ford is a Commissioner of the New York State Liquor Authority.

12. Respondent Gary Meyerhoff is General Counsel of New York State Liquor Authority.

13. Respondent Margarita Marsico is Associate Counsel of New York State Liquor Authority.

14. Respondent Thomas Donohue is Secretary to the Authority of the New York State Liquor Authority.

15. Respondent Charles Stravalle is an Investigator of the New York State Liquor Authority.

#### **NATURE OF THE ACTION**

16. Petitioners seek injunctive relief and declaratory relief in relation to Respondents' failure of due process.

#### **JURISDICTION**

17. Jurisdiction lies within the New York Supreme Court pursuant to CPLR 7804.

18. In a letter submitted to the Hon. Lewis Kaplan of the Southern District Court of New York, dated August 28, 2020, Respondents, through counsel, stated that "the SLA agrees that its Orders of Summary Suspension, issued pursuant to N.Y. Admin. Proc. Act §401(3), can be subject to judicial review in New York State Supreme Court pursuant to Article 78 of the N.Y. Civ. Proc. Law and Rules." Affirmation of Jacob Pargament ("Pargament Aff.") filed herewith, Ex. A.

19. The letter also stated" [i]f [Petitioners] commence an Article 78 proceeding in New York State Court seeking judicial review of the Order of Summary Suspension of License dated August 7, 2020 . . . , SLA further agrees that it will not raise as a defense or objection in point of law that such court lacks jurisdiction to review the August 7<sup>th</sup> Suspension Order on the grounds that it is a non-final order or otherwise.

20. Venue properly lies in New York County pursuant to CPLR 506(b), as it is the County where one or more of the Respondents made the determination that Petitioners seek to

reverse, where the offices of the Respondents are located, and where the material events took place.

21. Jurisdiction and venue are also proper in this court pursuant to CPLR 301 because the action arises out of activities engaged in and real property located in the State and County of New York.

22. Petitioners herein each have standing to bring the claims asserted herein as each possesses an interest in the suspended liquor license, whether direct or indirect, and thus, each Petitioner will be harmed should Respondents' disregard for due process and the suspension of the license be allowed to continue.

#### **STATEMENT OF FACTS**

23. For over thirty years, Petitioners have owned and operated a restaurant space in the premises located at 238 East 9<sup>th</sup> Street, New York, New York 10003.

24. The Cloister Café is a well-known-themed longstanding East Village restaurant which also has an outside dining area.

25. The Cloister Café is also developing a street-dining concept called Café Tucano as part of the new street-side Phase 2 NYC Open Restaurants Program, which has not yet been implemented.

26. In accordance with the New York City Department of Transport guidelines that street dining must be "attractive installations that enhance neighborhood streets and provide an amenity to support walking and vibrant street life," Cloister Café hired a talented artist to create a 12 Foot Café Tucano mural in anticipation of opening the street-dining concept.

27. At all relevant times, Cloister Café has held a valid on-premises liquor license serial no. 1024379 issued by the SLA for the premises The Cloister East, Inc. (“License”).

28. The License records the trade name as Cloister Café.

29. The principals on the License are listed as Jaroslaw Drobenko, John Drobenko, Nicholas Drobenko and Walter Drobenko.

30. The License was filed on May 6, 1987.

31. The expiration date of the License is July 31, 2021, if not renewed.

32. Cloister Café is a reservation only restaurant and requires a liquor license in order to attract sufficient customers to sustain its business.

33. Cloister Café consists of four spaces according to the New York Department of Buildings (the “DOB”): a cellar, an indoor restaurant space, a back patio outdoor space, and a courtyard.

34. The back patio and courtyard, although abutting and adjoining, are identified by the DOB as two separate outdoor spaces.

35. The maximum occupancy for the indoor space is 62 people.

36. The maximum occupancy for the outdoor back patio is 74 people.

37. The maximum occupancy for the courtyard is 60.

38. As the outdoor spaces are adjoining, then, the maximum capacity of the outdoor space is 134 people.

39. By architectural, DOB, FDNY guidelines, and SLA definitions, both the patio and courtyard are outdoor spaces, open to the sky with two sides each being open-air. The patio

contained a DOB approved cloth canopy for protection from the elements supported by a metal frame.

40. Prior to re-opening following city-wide closures due to COVID-19, management of Cloister Café took numerous steps to ensure the safety of its patrons as it planned to use the outdoor spaces.

41. In addition to following government directives relating to table spacing, mask distribution, and social distancing, Cloister Café installed equipment to further increase airflow and circulation, including multiple exhaust and ventilation systems with filters.

42. On or about July 11, 2020, following the New York City guidelines for “Phase 2” reopening, Cloister Café implemented the required policies and reopened its outdoor spaces.

43. Between July 11, 2020 and August 1, 2020, the New York Sheriff’s Office, the office tasked with checking for Covid-19 compliance, came to Cloister Café on two (2) occasions and found both times that Cloister Café was in full compliance with the guidelines.

44. On or about August 4, 2020, an article was published on Gothamist.com, alleging that Cloister Café was hosting “illegal, illicit pandemic parties” and making numerous uninvestigated and uninformed statements based on a sole Instagram post from one @kristinaformayor, identified as Kristina Alaniessa (the “Gothamist Article” and “Alaniessa”).

45. Seemingly, having read the Gothamist Article, the New York Sheriff’s Office, despite having recorded no such illicit conduct in its two prior site visits, allegedly provided Defendants with “social media” showing dancing, no social distancing, and partying.

46. At 11:15 pm on August 6, 2020, a COVID task force arrived at Cloister Café and inspected the operation, finding no violations nor threat to public health.

47. At 12:20 am on August 7, 2020, SLA investigator Stravalle arrived at Cloister Café and inspected the operation.

48. Upon information and belief, unaware of the DOB law, the investigator mistook the canvas covering as a ceiling and failed to notice that there were only two walls.

49. The investigator questioned Nick Drobenko, the owner of Cloister Café, on several topics, none relating to COVID-19 enforcement.

50. Mr. Drobenko fully cooperated, provided the required affidavits, and ultimately closed the establishment at the request of the SLA investigator.

51. The same night, without any notice to Cloister Café, the SLA held a Special Full Board Meeting via video conference to vote on whether to suspend Cloister Café's liquor license.

52. Upon information and belief, the proceedings lack any form of procedural due process.

53. According to Ms. Marsico, SLA counsel prosecuting ("SLA Counsel"), the investigation was prompted based on information having been received by the Sheriff's Office that "illegal parties – pandemic parties" were being held at Cloister Café.

54. Given this verbiage, language contained in the headline of the Gothamist Article – and the timing of the investigation, three (3) days after publication of the Gothamist Article, it is clear that the Gothamist Article prompted the investigation.

55. SLA Counsel stated the Sheriff's Office "showed the investigator social media . . . of a party with people dancing, standing shoulder to shoulder."

56. Upon information and belief, the social media was from Alaniesse's post.



57. SLA Counsel stated that the investigator arrived to find ten (10) people waiting outside to get in, but also that “apparently, they got wind of the fact that the Sheriff was on his way, so people sort of disappeared.”

58. The statement is neither relevant nor probative, as people waiting outside would be required, advisable and lawful if the space was deemed to be approaching capacity.

59. No evidence was presented supporting the statement that people disappeared.

60. SLA Counsel used hyperbole stating that the investigator was compelled to gained entry.

61. Upon information and belief, the investigator was let in and simply walked through the interior space, observing no patrons gathering inside, as Cloister Café would not allow it.

62. SLA Counsel again used hyperbole calling the rear outside dining spaces a “secret backyard.”

63. SLA Counsel failed to inform the Board that the outdoor spaces have been legally permitted as drinking and eating establishments for many years.

64. SLA Counsel incorrectly informed the Board that the outdoor spaces were “secret premises that he’s created.”

65. Upon information and belief, this language was designed to mirror the language used by Alaniesse and the Gothamist Article.

66. SLA Counsel incorrectly and without reasonable investigation stated that there was “an illegal structure that was really three walls of neighboring buildings with a ceiling on top.”

67. The SLA Counsel failed to inform the Board that the “ceiling” allegedly seen by the investigator is a cloth awning over a metal frame, providing partial cover.

68. The SLA Counsel failed to inform the Board that there are only two walls of neighboring buildings.

69. The SLA Counsel failed to inform the Board that one side of the rear yard is open to the courtyard and the other side is an open-air half-wall.

70. The SLA Counsel failed to inform the Board that the temporary enclosure was approved by the Department of Buildings and the space is deemed to be outdoor space.

71. Mr. Meyerhoff, general counsel, made incorrect assertions of fact and law to the Board that there were seventy (70) people “inside” and the presence of patrons at Cloister Café was illegal.

72. The SLA Counsel failed to inform the Board that the side not open to the courtyard is a half-wall with the upper half open for air flow.

73. The New York Department of Health Guidelines, which state “[f]or the purposes of this guidance, ‘outdoor space’ is defined as an open-air space designated for the consumption of food and/or beverage, which may have a temporary or fixed cover (e.g. awning or roof) so long as such cover has at least two sides open for airflow.”

74. The SLA Counsel failed to inform the Board that the “Ceiling” was not in fact, a ceiling, but a lawful fabric covering, and the outside space was lawful according to the New York Department of Health Guidelines.

75. The SLA Counsel failed to inform the Board that it is clear from the Certificate of Occupancy that the space is considered an outdoor space, as it is designated as “OS P.”.

76. SLA Counsel informed the Board that the investigator saw remnants of food, but no one eating.

77. SLA Counsel failed to inform the Board the time period and the circumstances of such observations.

78. SLA Counsel informed the Board that the investigator reviewed the food receipts but found them to be suspicious since all of the items per table were not split by patron.

79. SLA Counsel failed to inform the Board that the practice of one table, one receipt is regular and is not a reasonable source of suspicion.

80. While SLA Counsel informed the Board that there was food in the kitchen and the kitchen was operational, she failed to correct a clear error of a commissioner who stated that there was no food.

81. SLA Counsel incorrectly informed the Board that Cloister Café's Public Assembly permit was expired.

82. SLA Counsel failed to inform the Board that upon being questioned Mr. Drobenko explained that he did not have the display form because they were not being printed due to COVID-19.

83. SLA Counsel failed to inform the Board that Mr. Drobenko showed the investigator the receipt of renewal of the Public Assembly permit.

84. SLA Counsel incorrectly informed the Board that the maximum amount of people permitted at Cloister Café was "half of seventy-four" and were "way over occupancy."

85. SLA Counsel failed to inform the Board that the amount of people present in the Cloister Café was within the parameters permitted occupancy.

86. SLA Counsel states that there was a “rolled down gate” that made the environment dangerous.

87. SLA Counsel failed to inform the Board that a television crew from “Inside Edition” accompanied the investigator to the premises.

88. SLA Counsel failed to inform the Board the gate was rolled down gate to preclude the bright camera lights from media from causing a hazard.

89. SLA Counsel failed to inform the Board that there were two (2) FDNY certified fire guards on staff that also manned the roll down gate.

90. SLA Counsel failed to inform the Board that Cloister Café had a valid Hookah Establishment license.

91. SLA Counsel incorrectly informed the Board that there was a live DJ on the premises.

92. SLA Counsel failed to inform the Board that there was an audio-visual technician onsite responsible for monitoring the systems.

93. Investigator Stravalle failed properly to investigate the allegations prior to compiling his report.

94. Investigator Stravalle caused an erroneous report to be submitted to the Board.

95. Upon information and belief Investigator Stravalle failed to include relevant facts in his report.

96. Upon information and belief, Investigator Stravalle included irrelevant facts in his report.

97. In breach of Plaintiffs' due process rights, SLA Counsel submitted the Gothamist Article to the Board.

98. In breach of Plaintiffs' due process rights, SLA Counsel commented upon and gave credence to the Gothamist Article.

99. Upon information and belief, the Board was well aware that the Gothamist Article was more prejudicial than probative.

100. SLA Counsel's statement that the Gothamist Article should not be relied upon was insufficient to cure the harm to Plaintiffs' due process rights.

101. SLA Counsel wrongly informed the Board that the Gothamist Article "mentions the fact that there's some talk that this might be a pop-up party promoted by Provocateur that we've previously prosecuted many times."

102. SLA Counsel has no information other than the Gothamist Article to corroborate such a claim.

103. Without any corroborative evidence SLA Counsel submitted opinion as fact in stating that she thought Mr. Drobenko was "just sorry that he got caught".

104. Without any corroborative evidence, SLA counsel submitted to the Board "from this article in the Gothamist, it seems they are trying to carry on this pop-up business."

105. SLA Counsel submitted irrelevant allegations to the Board.

106. SLA Counsel submitted prejudicial allegations to the Board.

107. SLA Counsel failed to submit relevant facts to the Board.

108. The Board placed reliance upon the irrelevant and prejudicial allegations submitted by SLA Counsel.

109. The Board placed reliance upon the erroneous conclusions of law submitted by SLA Counsel.

110. The Board wrongly placed reliance upon the pictures and statements in the Gothamist Article in arriving at its decision.

111. The Board incorrectly held that no food was being served.

112. The Board incorrectly held that the outside area was enclosed.

113. Chairman Bradley openly stated that he would recommend that Cloister Café should not get its license back permanently without any hearing.

114. Upon information and belief, Chairman Bradley sought to exert his opinion upon the Board.

115. Upon information and belief, such an opinion was biased and prejudicial.

116. In its Notice of Pleading, the Board has not charged Cloister Café with operating an enclosed structure.

117. In its Notice of Pleading the Board has not charged Cloister Café with failing to serve food.

118. Upon information and belief, the bases for emergency suspension of the license did not exist.

119. The Plaintiffs were not provided any opportunity to be heard at the hearing for the order of suspension.

120. The Plaintiffs were not provided with Investigator Stravalle's report or photographs relied upon by the Board prior to the suspension proceedings.

121. The order of summary suspension of license does not specify any mechanism for lifting or appealing the suspension.

122. The order of summary suspension does not specify a time period by which the summary suspension can be reviewed.

123. There is no provision for disclosure of Investigator Stravalle's report or photographs relied upon by the Board other than in the course of the revocation proceedings pursuant to the Notice of Pleading.

124. As there is no requirement to provide Investigator Stravalle's report or photographs relied upon by the Board, Plaintiffs have not been provided the opportunity to analyze whether the summary suspension can be reviewed.

125. Upon information and belief, the order of summary suspension was made pursuant to Section 401 (3) of the New York Administrative Procedure Act ("SAPA").

126. Upon information and belief the order of summary suspension was made pursuant to Executive Order 202.43, which extended the temporary suspension and modification of laws.

127. Executive Order 202.43 does not provide for suspension in the event of non-compliance.

128. Upon information and belief, the violations enumerated in the order of summary suspension differ markedly than those contained in the Notice of Pleading.

129. Upon information and belief, issues to be heard in the hearing on the Notice of Pleading are largely different than those contained in order of summary suspension.

130. Upon information and belief, SAPA does not provide for any mechanism to challenge an order of summary suspension at all.

131. Upon information and belief, SAPA does not provide for any mechanism to challenge an order of summary suspension separate and apart from the proceedings to cancel or revoke pursuant to a notice of pleading.

132. Upon information and belief, neither SAPA nor SLA rules and regulations provide for a notice and opportunity to be heard on the order of summary suspension at all.

133. Upon information and belief, neither SAPA nor SLA rules and regulations provide for a notice and opportunity to be heard on the order of summary suspension in a meaningful time.

134. Upon information and belief, neither SAPA nor SLA rules and regulations provide for a notice and opportunity to be heard on the order of summary suspension in a meaningful manner.

135. Upon information and belief, neither SAPA nor SLA rules and regulations provide for a provision of the evidence relied upon by the Board in the summary suspension proceedings.

136. Upon information and belief, the Board regularly opposes review by the state courts of its orders of summary suspension.

137. Upon information and belief, the proceedings arising out of the Notice of Pleading can take multiple non-consecutive days, after which an administrative law judge will issue his/her findings as to whether the charges are sustained or dismissed, which report is then submitted to the Board for review during their bi-monthly meetings. The entire process often takes a number of months.



138. Upon information and belief, that even if the Administrative Law Judge finds in favor of Plaintiffs, the findings are not conclusive.

139. Upon information and belief, the Board may overrule the conclusions of the Administrative Law Judge.

140. As Chairman Bradley has already made his recommendation of revocation to the Board, a meaningful proceeding has been rendered unavailable.

141. The current law and procedure fail to provide the Plaintiffs with a meaningful or appropriate hearing.

#### **PROCEDURAL HISTORY**

142. On August 17, 2020, Petitioners filed a Complaint in the Southern District Court of New York, along with a Proposed Order to Show Cause seeking emergency relief and injunctive relief on the basis of the above referenced failures of due process and equal protection.

143. Following oral argument of the parties on August 19, 2020, the Hon. Lewis A. Kaplan directed Respondents to file opposition and Petitioners to file a reply, denied Petitioners' request for a TRO, and directed Petitioners' to amend their Complaint.

144. Oral argument regarding Petitioners' motion for preliminary relief was held on August 27, 2020, during which Judge Kaplan questioned the SLA's vacillating position before this Court on the issues of jurisdiction and finality of a Summary Suspensions.

145. Namely, until the matter came before Judge Kaplan, the Respondents consistently argued before this Court that a summary suspension was non-final and thus, there was no jurisdiction. Before Judge Kaplan, however, Respondents argued that Article 78 proceedings

provided a meaningful and adequate process for Petitioners to be heard regarding summary suspensions.

146. While the Attorney General's Office would not commit to its position at oral argument, it did so in regard to this matter, at least, in a letter submitted to the Southern District Court later that day.

147. On September 2, 2020, Judge Kaplan denied Petitioner's motion stating "[t]his ruling, however, is without prejudice to renewal if any Article 78 proceeding they may institute does not result in disposition on the merits of their claim that the summary suspension order was unconstitutional." Pargament Aff., Ex. B.

148. While Petitioners respectfully refer the Court to draw its own conclusions from Judge Kaplan's September 2, 2020 Order, Petitioners note the following findings from the Order:

- a. The SLA's argument that "the SLA Board's practice to allow parties to request reconsiderations" is "not constitutionally adequate, at least standing alone." Thus, if this Article 78 Proceeding is unavailable to Petitioners, Judge Kaplan would likely find that Respondents' violate the Fourteenth Amendment by not providing a meaningful, timely, and adequate means to be heard on a summary suspension;
- b. "Lengthy revocation proceedings" such as those currently in place for the overall adjudication of a summary suspension "likely could seriously prejudice the [Petitioners]." However, the Court did not reach that question as a result of the potential availability of an Article 78 Proceeding;
- c. Judge Kaplan took issue with the SLA's straddling of the fence on the issue of Article 78 jurisdiction, stating "[t]he SLA changed its position on this issue several times

during this lawsuit. In its above described letter, it stated that, ‘upon further consideration, the SLA agrees that its Orders of Summary Suspension of License, issued pursuant to [SAPA Section] 401, subd. 3, can be subject to judicial review in New York State Supreme Court pursuant to Article 78 . . . . The phrase ‘can be’ makes this statement essentially meaningless, because it leaves open the possibility that the SLA believes that in some and perhaps virtually all instances, such orders *may not be* reviewed in an Article 78 proceeding.”

- d. According to Judge Kaplan’s detailed statutory and precedential analysis of both SAPA and ABC Law, “[t]here is a long line of Court of Appeals decisions discussing what it means for an order to be final under [CPLR 7801, subd.1]” and that “agency action is final for the purposes of Article 78 and CPLR 7801, subd. 1, where it ‘impose[s] an obligation, den[ies] a right[,] or fix[es] some legal relationship as a consummation of the administrative process.”

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION:  
BREACH OF DUE PROCESS – CPLR §7803**

149. Petitioners repeats and reallege the allegations contained in the proceeding paragraphs.

150. Plaintiffs’ liquor license was a valid property right, subject to the protections of the Fourteenth Amendment of the United States Constitution.

151. Without procedural or substantive due process, the New York State Liquor Authority deprived Plaintiffs of their property rights.

152. As a result of Defendants' actions, Plaintiffs will suffer irreparable harm, as well as significant financial harm.

153. As a result of Defendants' actions, Plaintiffs are unable to operate as a business, and thus, its owners and employees are unable to pursue their livelihoods.

154. As a result of Defendants' actions, Plaintiffs were not afforded notice and opportunity for a hearing before its right to operate was terminated.

155. As a result of Defendants' actions, Plaintiffs were not afforded a meaningful and appropriate hearing.

156. Pursuant Civil Practice Law and Rules § 7803(1) the Respondents failed to perform duties enjoined upon them by law.

157. Accordingly, pursuant to Civil Practice Law and Rules § 7803, the Court should annul and invalidate Respondents' Summary Order of Suspension.

158. Accordingly, the Court should grant Petitioners any and all relief that it deems just and appropriate in these circumstances.

**SECOND CAUSE OF ACTION:  
ULTRA VIRES - CPLR §7803**

159. Petitioners repeats and reallege the allegations contained in the proceeding paragraphs.

160. Respondents' Summary Order of Suspension was made pursuant to Executive Order 202.43.

161. Executive Order 202.43 does not provide for suspension in the event of non-compliance.

162. Respondents' Summary Order of Suspension is de facto *ultra vires*.

163. Under the color of law, the New York State Liquor Authority has unlawfully deprived Plaintiffs of their property rights.

164. Pursuant Civil Practice Law and Rules § 7803(1) the Respondents failed to perform duties enjoined upon them by law.

165. Accordingly, the Court should annul and invalidate Respondents' Summary Order of Suspension.

166. Accordingly, the Court should grant Petitioners any and all relief that it deems just and appropriate in these circumstances.

**THIRD CAUSE OF ACTION:  
EXCESS OF JURISDICITON - CPLR §7803**

167. Petitioners repeats and reallege the allegations contained in the proceeding paragraphs.

168. A pre-deprivation hearing was conducted by Respondents without notice to Petitioners.

169. The Respondents have failed to promulgate rules permitting a prompt and meaningful post deprivation hearing.

170. The effect of the Order of Summary Suspension of the petitioner's license is to preclude it from carrying on its customary business, since without it may not lawfully continue such business.

171. Where the exercise of a statutory power adversely affects property rights there is a requirement of notice and hearing.

172. Where a statute empowers an agency to revoke a license because of a failure to comply with or because of willful or knowing violation of the regulations of that agency, then the administrative act is of a judicial nature.

173. A party whose rights are to be determined must be fully apprised of the claims against him and must be given the opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal.

174. Petitioner was denied such rights.

175. The denial of a hearing constituted abuse of discretion and an arbitrary, capricious exercise of the administrative function.

176. Accordingly, the Court should annul and invalidate Respondents' Summary Order of Suspension.

177. Accordingly, the Court should grant Petitioners any and all relief that it deems just and appropriate in these circumstances.

**FOURTH CAUSE OF ACTION:  
PROMPT AND MEANINGFUL HEARING - CPLR §7803**

178. Petitioners repeats and realleges the allegations contained in the proceeding paragraphs.

179. A pre-deprivation hearing was conducted by Respondents without notice to Petitioners.

180. The Respondents have failed to promulgate rules permitting a prompt and meaningful post deprivation hearing.

181. The determination arising out of the pre-deprivation hearing was not supported by a valid basis at law.

182. The determination arising out of the pre-deprivation hearing was not supported by a substantial evidence

183. The violations specified in the Order of Summary Suspension is the total basis for the incorrect determination.

184. Accordingly, this Court should hold a prompt and meaningful hearing de novo providing the Petitioner an opportunity to challenge the record presented in the pre-deprivation proceeding.

**NO PRIOR APPLICATION**

185. No prior application for this or any similar relief has been made in this Court and is before this Court on order of the Southern District of New York.

**TRIAL DEMAND**

186. Petitioners demand a trial or evidentiary hearing on all causes of action so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for judgment, pursuant to Article 78 of the Civil Practice Law and Rules: any similar relief has been made in this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Avant pray for a judgment against Respondents pursuant to CPLR 7801-7806:

- a. Injunctive relief including but not limited to temporary restraints and a preliminary injunction;
- b. Annulling and vacating Respondents' Summary Order of Suspension;

- c. Holding a prompt and meaningful evidential post-deprivation hearing;
- d. Ordering Respondents to pay Petitioners their costs, fees, and disbursement incurred in connection with this action; and
- e. Such other and further relief as this Court may deem just and proper.

Dated: September 4, 2020

**GARSON, SEGAL, STEINMETZ, FLADGATE LLP  
ATTORNEYS FOR PETITIONERS**

BY:



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**WITH CO-COUNSEL**

**HELBRAUN & LEVEY, LLP**

*Maya K. Petrocelli/s/*

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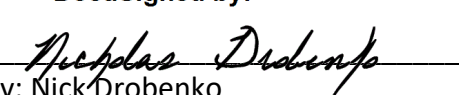
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**VERIFICATION**

STATE OF NEW YORK            )  
  ) s.s.:  
COUNTY OF NEW YORK        )

Nicholas Drobenko bring duly sworn, deposes and says that he is a shareholder of Petitioner The Cloister East, Inc. D/B/A Cloister Café and Drobenko Bros Realty Inc., that he has read the foregoing Verified Petition and knows the contents thereof; and that statements made therein are true to deponent’s own knowledge, except as matters stated to be allegation on information and belief, and that as to those matters deponent believes them to be true.

The Cloister East, Inc.  
DocuSigned by:  
  
By: Nick Drobenko  
1BE39BDAEBDC47E...

Sworn to before me this  
4<sup>th</sup> day of September 2020



**Morgan D. Romagna**  
**Registration No. 02R06400092**  
**Qualified in New York County Commission**  
**Expires November 4, 2023**

**By video pursuant to Executive Order 202.7**