

# IS ORGANIZED CRIME BUYING ABC LICENSES?

Or, Whose Bar Is This Anyway ?

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Not really from a screenplay:

**Tony Soprano:** It's getting too hot at this end. We gotta branch out.

**Paulie Walnuts:** More trash trucks; more clubs? What?

**Tony:** No. It's Jersey. The whole east side. We gotta get the --- outta here.

**Silvio Dante:** Outta Jersey? What's outta Jersey?

**Christopher:** Hollywood. Movie Studios.

**Tony:** Nah.

**Paulie:** More trash; more clubs. But not in Jersey?

**Tony:** Bars. Bars in California.

**Christopher:** Hollywood. I'm on the way.

**Paulie:** F'rgetabout it. Not you. We need a front.

**Tony:** Yeh. I'm thinkin' Carmella's cousin in LA. His name. Our money.

**Silvio:** One bar, two bars. Ten bars.

**Tony:** Yeah. The cousin's name on the license. Our money up. Our money back.

**Christopher:** Maybe a house at the beach.

Or maybe it's not the Soprano's. Maybe it's John Gotti's family. Wouldn't the late Teflon Don's heirs love to have a string of bars and licensed restaurants in California where the Gotti family only finances the deals and takes the profits? Of course, the Gotti family could end this partnership expeditiously. As the Dapper Don said: "Every time we got a partner that don't agree with us, we kill him." What Tony Soprano and the Gotti family should know is that False Ownership of a licensed premises in California violates state law. All too often the apparent and factual owner of licensed premises is not the person on the ABC license. All those niceties about disclosing past criminal history and past ABC violations are all about the applicant for the license. Financial sources are provided so the ABC will know who it's licensing. Tony Soprano's past won't be disclosed because Tony's true ownership won't be disclosed. Carmella's cousin will be the licensee and Tony will reap the profits after putting up the front money.

Rest assured there are persons and groups wholly not qualified to be on an ABC license who are the de facto licensees through investment, control and by deriving profits from sales. The ABC would dearly love to find out who these folks are so those licenses can be revoked.

It's important to know that false ownership can lead to the revocation of the affected license as a violation of the ABC act. Where two or more individuals agree to violate the ABC act (in this and in other ways) the participants may be engaging in a conspiracy, a felony. For example, an attorney, a consultant and a licensee conspired in 1988 to violate the ABC Act. The Court of Appeal upheld the conspiracy conviction of the attorney in *People v. Anderson* (1991).

Four occurrences of false ownership come to mind: 1) There are the unsophisticated participants who just don't know what they're doing and end up buying and selling a business without actually finishing the transaction with a license transfer. 2) Then there's the knowledgeable seller taking advantage of the unwitting buyer who ends up paying a lot of money for nothing. 3) There are the criminal conspirators who agree to a fraud. 4) Lastly there's any one of those three groups being guided by either someone who is also unaware of ABC law or is helping one party take advantage of the other or is architect or willing participant in the fraud. Note that there are attorneys out there who sadly don't understand that a purchase and transfer of an ABC licensed business entails an application process.

Sometimes the de facto owner isn't the true culprit. Innumerable bar "owners" really don't intend to violate the law when they pay exorbitant sums to the true licensee in order to take over a bar business without ever actually filing for a license transfer. Unfortunately, and unlike lawyers who are licensed by the State Bar, unscrupulous ABC consultants (there are some of those) who engineer this type of fraud can do so without much fear of retribution since consultants are not licensed by any governmental agency and are neither supervised nor regulated by the ABC or any other state agency for that matter.

What's left after Mr. Smith pays licensee Jones \$100,000 for Mr. Jones' bar? Smith has a bar; has all the risk and responsibilities of bar ownership but has no license and therefore no administrative rights. If Jones wants his bar back, there's no ABC regulatory recourse for Smith to follow. Jones could surrender or even cancel the license. If Jones cancels the license, does Smith get the \$100,000 back? Good luck, Mr. Smith.

Sometimes the selling licensee intentionally defrauds the naive buyer. Sometimes both buyer and seller don't understand that the license must be transferred through the application process before true ownership can vest in the buyer. In both of those instances, the respective rights of the parties would be protected if only they would seek legal counsel to guide them through the process. Sometimes both buyer and seller knowingly and willingly agree to circumvent the legal requirements involved in a true transfer of ownership. A legal transfer requires the purchase money to be put into a proper escrow and the buyer to apply to the ABC for that license transfer.

False owners have gone to great lengths to defraud the government. For example, the Appeals Board in *Sandhu v. Department* AB 7411 and 7413 (2000) upheld license revocations where applicant actually used his brother's driver's license to apply for an ABC license transfer. The application was signed in the brother's name (under penalty of perjury), and a seller's permit was obtained from the Board of Equalization under the brother's name. The false owner represented himself to others as the true owner. The Board noted: "In every false ownership case, the license has been issued to a person or persons who are either not owners in any capacity, or are only co-owners with others unnamed."

In another case, *Perez v. Department* AB 7868 (2002), the false owner unwittingly explained to the ABC investigator that she didn't want to disclose her ownership interest to the ABC because of a prior "B" Girl problem at a place she owned earlier. Similarly in *Robbins v. Department* AB 6866 (1998), the Appeals Board upheld a license revocation where the licensee was "at best the nominal owner" since the de facto (unlicensed owner) paid the bills, took the money, pocketed 80% of the profits and ran the bar.

Now you be the judge. With the following facts, does the ABC find an "undisclosed partner?"

1. State quarterly tax return with Appellant's (licensee's) name.
2. Appellant's son files for a federal employer identification number with the son indicated as owner. The son is not a licensee.
3. Later, appellant offers to sell the business to the son (the sale to include a bar, license, sales of commodities, and takeover of the lease).
4. Federal quarterly tax return signed by the son as owner.
5. Federal tax deposit coupon book sent to son as general partner at the premises address.
6. U.S. Partnership returns of income show son as general partner at 50% of profits and losses at the premises address.
7. Son files forms for, and qualifies as, manager of the premises.

At the administrative hearing appellant testified she didn't remember if she had entered into a partnership agreement with her son, but she and her son shared in the profits of alcohol sales.

Along with a shopping list of other violations, the Appeals Board found the above facts sufficient to affirm a revocation of the license based on the false ownership allegations and noted: “The false owner violation is a revocation violation....”

It should be clear even to the casual observer that the ABC wants and needs to know who its licensees are and scrupulously enforces its obligations in that arena. Sorry Tony, that bar business you had planned probably won't work here. The false owner, whether naïve and unknowing or criminally conspiratorial, faces a lot of grief. The true licensee can take back the business or cancel the license; or the ABC can revoke the license outright. This is particularly more likely in the intentional fraud context. Competent and trustworthy counsel can protect the buyer and seller. For all these parties, that's advisable. For the unsophisticated, really, it's mandatory.

Solomon, Saltsman & Jamieson are attorneys practicing in the areas of ABC law, ABC Appeals Board cases, and all related Land Use Matters such as City and County Conditional Use Permits, Variances, Police and Fire permits, Entertainment law, and Gambling Law; as well as Business and Personal Injury litigation. Solomon, Saltsman & Jamieson can be reached at 800 405 4222."