

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Dichello Distributors, Inc.

Liquor Permit #LIW.516

Case No. 2008-6400

Docket No. 2008-1217

September 23, 2008

MEMORANDUM OF DECISION

This matter involves a petition submitted by Dichello Distributors, Inc. (hereinafter "Dichello"), 55 Marsh Hill Road, Orange, Connecticut, holder of wholesaler liquor permit LIW.516, in accordance with Section 30-64a, Connecticut General Statutes. A formal administrative hearing was held before the Department of Consumer Protection, Liquor Control Commission, on September 4, 2008, at which time Peter Deane, Vice President of Sales, appeared with counsel.

The Connecticut Package Stores Association was granted intervenor status for this hearing on August 21, 2008, and Wine and Spirits Wholesalers of Connecticut, Inc. was granted intervenor status for this hearing on September 2, 2008. Counsel for both intervenors were present at the hearing. At the conclusion of the hearing, the record was left open until September 9, 2008, to allow the intervenors to submit briefs.

Pursuant to Connecticut General Statutes, Section 30-64a:

Notwithstanding any provision of the general statutes or any regulations issued pursuant thereto to the contrary, a wholesaler, who sells any product or is authorized to sell any

product by this chapter, shall sell such product to each retail permittee in the wholesaler's geographic territory who desires to purchase such product. Such wholesaler shall not charge any retail permittee, to whom the wholesaler is required to sell by virtue of this section, a different rate for the delivery or transportation of any alcoholic liquor than such wholesaler would charge any other retail permittee. *Where distance, road conditions, travel time or any such factor substantially affects the cost of delivery or transportation of a product sold by a wholesaler, the wholesaler shall file a schedule of proposed delivery charges with the Department of Consumer Protection. Such schedule shall only apply after a hearing by and upon written approval from said department.* (Emphasis added.)

The subject of this hearing was the schedule of proposed delivery charges, according to a schedule which varied by day of delivery; the option to adjust such delivery surcharge every three months based upon AAA's Fuel Gauge Report for the New Haven/Meriden region; and the authority to eliminate the surcharge without the need to approval from the department, as needed. At the hearing, Dichello requested and presented evidence on the following schedule, which set forth a variable charge per day: Monday - \$3.50; Tuesday - \$7.00; Wednesday - \$7.00; Thursday - \$8.00; Friday - \$10.00; and Saturday - \$10.00 (Exhibit 1). Subsequent to the close of the hearing and the record for evidence, Dichello submitted a different proposed delivery charge schedule it stated it wished to substitute for the schedule which was the subject of the hearing. This is not permissible and will not be considered without another hearing scheduled and held in accordance with Sec. 30-64a, Connecticut General Statutes.

Based upon the testimony and documents submitted at the hearing, we find that the costs of delivery or transportation for Dichello have increased due to factors including the rise in diesel fuel costs, truck driver labor costs, road congestion impacting delivery time and costs, and costs attributable to weight of returned beer on trucks. Dichello believes the variable charge will result in a fair mechanism for its customers, and has calculated the daily delivery charge cost by number of deliveries for each day. The least expensive day for the delivery charge would be Monday (\$3.50); Mr. Deane testified that Dichello would honor the Monday charge, rather than the following day's charge, for a customer who requested Monday delivery even if Dichello could not deliver on that day due to the premises being closed or if suddenly Monday deliveries became popular due to cost. The delivery charge would not be contingent on the number of cases delivered, but would be imposed on each customer delivery, and there would therefore, be no discrimination.

In order to address increased costs of delivery and transportation, liquor wholesalers may avail themselves of one of two statutorily prescribed options; posting increases to the case price in accordance with Section 30-681, Connecticut General Statutes, or requesting approval of proposed delivery charges from the department following a hearing, in accordance with Sec. 30-64a, Connecticut General Statutes,

as in this case. Upon review and consideration of the evidence presented, the increased delivery charge method would appear to more accurately reflect the costs attributed to delivery, rather than a price increase posted to the case.

Petitioner has presented substantial evidence that the delivery and transportation costs have been substantially affected and have increased. Accordingly, the delivery charge of Monday - \$3.50; Tuesday - \$7.00; Wednesday - \$7.00; Thursday - \$8.00; Friday - \$10.00; and Saturday - \$10.00 is hereby approved, to be effective upon prior written notice to its customers, either by posting in the Connecticut Beverage Journal or provided in person by its drivers. Furthermore, we find that this is a properly approved charge imposed upon the purchaser and subject to Section 30-48, Connecticut General Statutes, and Section 30-6-A37a of the Regulations of Connecticut State Agencies.

As part of its petition, Dichello has also requested approval for the ability to increase or decrease in the approved delivery charge, approximately every three months, depending on the fluctuations in the AAA Fuel Gauge Report. Dichello has also requested authority to eliminate the charge without approval from the department. Neither request is granted. Section 30-64a, Conn. Gen. Statutes, clearly states that any proposed schedule of delivery charges shall apply only after a hearing and upon written approval by this department. Once approved,

there can be no changes – whether to increase, decrease, or eliminate a delivery charge - without a hearing and our approval.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY**

Elisa A. Nahas, Esq.
Presiding Officer

Angelo Faenza, Commissioner

Stephen Somma, Commissioner

Parties:

Dichello Distributors, Inc., 55 Marsh Hill Road, Orange, CT 064577
Dichello Distributors, Inc. c/o James K. Robertson, Jr., Esq., Carmody &
Torrance, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-
1110

Intervenors:

Joshua D. Hughes, Esq., Assistant Executive Director, Connecticut
Package Stores Association, 700 Plaza Middlesex, Middletown, CT 06457
Peter A. Berdon, Esq., Executive Director and General Counsel, Wine and
Spirits Wholesalers of Connecticut, Inc. 132 Temple Street, New Haven,
CT 06510

Nonparties:

Director John Suchy, Liquor Control Division
Connecticut Beverage Journal, 2508 Whitney Ave., P.O. Box 185159,
Hamden, CT 06518
Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106