

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Brescome Barton
Jonathan E. Goldstein, Permittee
Brescome Barton, Inc., Backer
Permit #LIW.506
Case No. 2008-5607

August 26, 2008

MEMORANDUM OF DECISION

This matter involves a petition submitted by Brescome Barton (hereinafter "Brescome"), 69 Defco Park Road, North Haven, Connecticut, holder of wholesaler liquor permit LIW.506, 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 August 14, 2008, at which time Jonathan E. Goldstein, permittee, appeared with counsel. The hearing was held pursuant to Connecticut General Statutes, Section 30-64a, which provides:

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.)

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.

The subject of this hearing was the schedule of proposed delivery charges, in the amount of \$3.85, filed by Brescome. In addition, Brescome has requested approval of a future delivery charge which will fluctuate, based upon an approved governmental index.

Based upon the testimony and documents submitted at the hearing, we find that the costs of delivery or transportation for Brescome are comprised of a) truck driver labor costs, b) truck diesel fuel costs and c) truck leasing costs. For Brescome, such delivery costs increased by \$2.38 in fiscal year 2007 and increased \$1.47 in fiscal year 2008, for a total of \$3.85. Prior to that time, the transportation costs had been relatively stable. The requested delivery charge would be a fixed amount per customer delivery, regardless of the number of cases delivered.

Petitioner has presented substantial evidence that the delivery and transportation costs have been substantially affected and have increased. Accordingly, the delivery charge of \$3.85 is hereby approved, to be effective upon written notice to Brescome's customers, either by posting in the Connecticut Beverage Journal or by fliers delivered by Brescome staff. 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, Brescome Barton has also requested approval for the ability to increase or decrease the approved \$3.85 delivery charge, approximately every six months, depending on the fluctuations in the Consumer Price Index. Such request is not approved. 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.

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

Elisa A. Nahas, Esq.
Presiding Officer

Angelo J. Faenza, Commissioner

Stephen R. Somma, Commissioner

Parties:

Jonathan E. Goldstein, Permittee, Brescome Barton, 69 Defco Park Road,
North Haven, CT 06473 (Via US Mail and Certified Mail L# 7007 2680
0000 7471 8685)

Brescome Barton c/o John F. Dronney, Esq., Levy & Dronney, P.C., P.O.
Box 887, Farmington, CT 06034-0887

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