



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

AMENDED
NOTICE OF SUSPENSION

August 25, 2016

2003 NICO ENTERPRISES INC. D/B/A CASTELLI
355 FERRY ST.
EVERETT, MA 02149
LICENSE#: 038200016
VIOLATION DATE: 04/22/2016
HEARD: 07/26/2016

After a hearing on July 26, 2016, the Commission finds 2003 Nico Enterprises Inc. d/b/a Castelli violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A.

The Commission suspends the license for a period of four (4) days of which two (2) days will be served, and two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

A request by the Licensee to reschedule the suspension for a different date has been allowed by this Commission.

The suspension shall commence on Friday, September 2, 2016 and terminate on Saturday, September 3, 2016. The license will be delivered to the Local Licensing Board or its designee on Friday, September 2, 2016 at 9:00 A.M. It will be returned to the licensee Sunday, September 4, 2016.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

This document is important and should be translated immediately.
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这份文件是重要的，应立即进行翻译.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Chris Temple, Investigator
Joe Di Cicco, Investigator
Administration, File



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Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
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Chairman

NOTICE OF SUSPENSION

August 9, 2016

2003 NICO ENTERPRISES INC. D/B/A CASTELLI
355 FERRY ST.
EVERETT, MA 02149
LICENSE#: 038200016
VIOLATION DATE: 04/22/2016
HEARD: 07/26/2016

After a hearing on July 26, 2016, the Commission finds 2003 Nico Enterprises Inc. d/b/a Castelli violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A.

The Commission suspends the license for a period of four (4) days of which two (2) days will be served, and two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

The suspension shall commence on Friday, October 7, 2016 and terminate on Saturday, October 8, 2016. The license will be delivered to the Local Licensing Board or its designee on Friday, October 7, 2016 at 9:00 A.M. It will be returned to the licensee Sunday, October 9, 2016.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

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Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

2003 NICO ENTERPRISES INC. D/B/A CASTELLI
355 FERRY ST.
EVERETT, MA 02149
LICENSE#: 038200016
VIOLATION DATE: 04/22/2016
HEARD: 07/26/2016

Nico Enterprises Inc. d/b/a Castelli (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, July 26, 2016, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Temple's report.

The following documents are in evidence:

1. Investigator Binienda's Investigative Report dated March 11, 2016;
2. Licensee's Stipulation of Facts;
3. Multiple Photos of Alcoholic Products;
4. Burke Distributing Invoice# 501846 dated 1/12/2016;and
5. Burke Distributing Invoice# 527642 dated 3/15/2016.

There is one (1) audio recording of this hearing.

The Commission took Administrative Notice of the Licensee's record.

FACTS

1. On Friday, April 22, 2016, at approximately 9:00 p.m., Investigators Di Cicco and Temple ("Investigators") along with Detectives Lavey and Crowell of the Everett Police Department ("Detectives"), investigated the business operation of Nico Enterprises Inc. d/b/a Castelli to determine the manner in which their business was being conducted and to address a complaint filed with this Commission.

2. At approximately 9:34 p.m., Investigators observed Leonard Gaudino park his car in front of the establishment, exit the car with a box with brand markings of alcoholic beverages, and carry it into the licensed premises.
3. Investigators and Everett Detectives approached Mr. Gaudino and asked him what was in the box. Mr. Gaudino stated that he was short on a few things.
4. When Investigators first questioned where the alcohol came from, Mr. Gaudino stated that he had brought it from his house. Gaudino later told Investigators he had purchased the alcohol from Burke Distributors¹ ("Burke") and delivered to the licensed premises.
5. When Investigators asked Gaudino why he did not bring the alcohol to the storage area of the premises, Mr. Gaudino offered no explanation.
6. Mr. Gaudino stated that sometimes the delivery tuck will call him when they are in the area and he will come by and load the alcohol in his pick-up truck and take it home.
7. Investigators observed that the boxes delivered from Mr. Gaudino's car had had the shipping labels removed from them. Shipping labels are placed on boxes by the wholesalers to indicate where the alcohol should be shipped.
8. Based on their training and experience, Investigators recognized this tactic (of removing the shipping labels) as one utilized by licensees to hide the purchase of alcoholic beverages from a § 15 package store license.
9. Upon questioning, Gaudino could not provide an explanation for the removed labels.
10. Investigators asked to see the invoices for the alcohol. Mr. Gaudino first stated the invoices were upstairs and then stated the invoices might be at home.
11. Investigators asked if the alcohol came from a package store to which Gaudino replied that he never buys from a package store, the alcohol came from Burke. When Investigators asked when the alcohol from his car was purchased, Gaudino stated the alcohol was delivered two weeks ago.
12. Investigators and Detectives then went into Gaudino's office in the licensed premises. Gaudino provided them with an invoice from Martignetti dated September 2015 but he was unable to provide Investigators with any invoices for alcohol purchased in 2016. Gaudino said that all his alcohol was purchased from Burke and Horizon.²
13. Investigators then searched the storage area of the premises where they observed a closed box which contained a shipping label addressed to Malden & Melrose Liquor, 619 Broadway, Malden, MA. The box contained six bottles of Cognac Salignac.
14. When Investigators asked from where the cognac was purchased, Gaudino stated that he did not know, and he repeated that everything was from Burke and Horizon. Investigators pointed out that the box was from a § 15 package store but Gaudino did not respond.
15. While in the storage area, Investigators also observed several empty and half-empty bottles of alcoholic beverages. Mr. Gaudino stated that he puts the empties on the shelf before he throws them out.

¹ Burke Distributing Co. LLC is a Massachusetts licensed wholesaler.

² Horizon Beverage Company Inc. is a Massachusetts licensed wholesaler.

16. Investigators asked Gaudino if he was pouring lesser priced alcohol into the bottles of higher priced alcohol, to which he replied he was not. Gaudino stated that he held onto the bottles because people like to use them to smoke hookah.
17. Investigators asked specifically about a bottle of Johnnie Walker Blue Label Scotch Whisky. Mr. Gaudino stated that he had a private party at the premises and brought that bottle from home.
18. Investigators then asked Mr. Gaudino when he buys alcohol from \$ 15 package stores. Gaudino replied he only buys from package stores when he is in a pinch. Investigators asked how often Gaudino purchased from package stores. Mr. Gaudino stated that the box which Investigators found was the only one purchased from a package store.
19. Mr. Gaudino informed investigators that he is only open 2 days a week, Fridays and Saturdays.
20. Outside of the storage area, Investigators observed several empty boxes with shipping labels affixed to them from the following package stores:
 - M&M Liquors, Malden – Hennessy cognac;
 - M&M Liquors, Malden – Remy Martin cognac;
 - Fernandez Brothers Liquors, Everett – Remy Martin cognac.
21. Investigators took the following cases of alcoholic beverages, which has been delivered from Mr. Gaudino's car, as evidence:
 - a) 6 bottles of Buchanan Deluxe Scotch whisky;
 - b) 6 bottles of Buchanan Special Reserve Scotch whisky;
 - c) 5 bottles of Hennessy VSOP cognac;
 - d) 6 bottles of Hennessy cognac;
 - e) 3 bottles of Rose Moet & Chandon champagne;
 - f) 1 bottle of Ice Imperial Moet & Chandon champagne;
 - g) 12 bottles of Patron tequila.
22. Investigators informed Mr. Gaudino of the violation and that a report would be filed with the Chief Investigator for review.
23. Investigators requested that Mr. Gaudino provide them with invoices for the alcoholic beverages. Mr. Gaudino did not provide any invoices to Investigators.
24. Investigators contacted Horizon Beverages Company to request copies of invoices for this Licensee. Horizon's invoice indicated only one purchase in 2016 for 15 cases of Heineken beer and 1 case of Cognac Salignac.
25. Investigators contacted Burke Distributors to request copies of invoices for this Licensee. Burke's invoice indicated the only purchases in 2016 were for Corona and Modelo beers.

25. Investigators contacted Burke Distributors to request copies of invoices for this Licensee. Burke's invoice indicated the only purchases in 2016 were for Corona and Modelo beers.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A. Therefore the Commission **suspends the license for a period of four (4) days of which two (2) days will be served, and two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: August 9, 2016

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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