

RE: DeLuca's Market, Inc.
Virgil J. Aiello
Address: 11 Charles Street
Boston, MA 02114
Heard: October 19, 2010

Memorandum And Order

The Alcoholic Beverages Control Commission held a hearing to determine whether alcoholic beverages have been damaged by fire or other casualty pursuant to M.G.L. c. 138 § 2 and therefore, must be destroyed. During the course of the hearing, several witnesses testified and several exhibits were entered into evidence. A Commission Investigator entered Exhibits 1 through 15. Exhibits A through G were entered on behalf of the licensee.

At the commencement of the proceedings, the Commission Investigator requested that the Commission take a view of the licensed premises. At the time, the Commission indicated that it would be inclined to do so. However, upon reconsideration *sua sponte*, and in light of this order and for expediency, the Commission reconsiders and reverses its prior ruling.

Instead, the Commission orders the licensee to procure the services of a licensed public adjuster of insured losses of alcoholic beverages to render an opinion to the Commission as to the salvageability of the alcoholic beverages at issue. The identity and qualifications of the public adjuster shall be submitted to the Commission for approval within 14 days of the date of this Order. The identity and qualifications shall include the name, address, phone number and curriculum vitae of the public adjuster, as well as the number of this type of appraisals that he or she has conducted.

If the Commission is satisfied with the qualifications of the named adjuster, it will issue a further Order for a submission in writing, on an expedited basis, of the substance of all facts and opinions as to which the adjuster would be expected to testify, and a detailed summary of the grounds of the adjuster's opinion as to the salvageability of the alcoholic beverages at issue. Failure to comply with this Order or any other Order within the time specified will result in the Commission issuing an Order of Destruction forthwith.

The Commission notes that several witnesses testified during the hearing. Testimony of some of these witnesses suggests that they consumed alcoholic beverages that were on the licensed premises at the time of the 4-alarm fire in the premises. This

action was done at the request and permission of the licensee, in contradiction of an express request by Commission Investigators not to remove any alcoholic beverages from the premises. Therefore, the Licensee is further ordered not to remove any alcoholic beverages from its premises without express advance Commission permission, forthwith.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____

I hereby certify that I have reviewed the record in this matter and concur in this Memorandum and Order.

Susan Corcoran, Commissioner _____

Dated in Boston, Massachusetts this 26th day of October 2010.

cc: Donald McNamee, Esq.
Frederick G. Mahony, Chief Investigator
Caroline Guarino, Investigator
File