

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

Third Memorandum And Order

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

On December 8, 2010, the Commission ordered the submission in writing, on an expedited basis and within 14 days from the date of that Order, a specifically detailed report of all facts and opinions to which the private adjuster will testify, and a detailed summary of the grounds of the private adjuster's opinion as to why the alcoholic beverages in issue have not been damaged by fire or other casualty. This report was ordered to include an opinion as to how much compensation the named adjuster would expect to pay in insured losses for the alcoholic beverages in issue with an itemized inventory and value for each alcoholic beverage reviewed by the adjuster. The adjuster was also ordered to attach to his report as separately identified addenda, the exhibits numbered 1 through 10 that were admitted into evidence at the previous hearing.

The Commission further ordered that no examination of the alcoholic beverages in issue will be made by the adjuster except in the physical presence of an investigator of the Commission and expressly admonished the licensee that failure to comply with this Order or any other Order on time will result in the Commission issuing an Order of Destruction forthwith.

On December 29, 2010, the Commission granted an extension of time within which to comply with the order of December 8, 2010, extending to January 7, 2011 the time for the filing of the adjuster's report.

The licensee did not have any contact with this Commission until today, the day before the time for filing of the report. The licensee failed, neglected or refused to furnish on facts to justify its delay in taking any action to comply with this Commission's order of December 8, 2010, as extended.

Today, through counsel, the licensee requests an extension of time within which the adjuster shall file his report with the Commission. Counsel failed, neglected and refused to proffer any statements under oath from witnesses other than counsel on which the request was based. So, the Commission is left to consider the factual statements in the written request from counsel as formal factual representations by counsel to this Commission.

Based on these factual representations from counsel, on which this Commission relies (subject to verification at a later date), the request for extension of time within which the adjuster shall file his report with the Commission is **ALLOWED IN PART**. The time for filing of the adjuster's report is granted up to 5:00 PM on Thursday, January 13, 2011. The request is otherwise **DENIED**. There will be **NO FURTHER EXTENSIONS** of time for compliance granted to the licensee.

Failure to comply with this Order or any other Order on time will result in the Commission issuing an Order of Destruction 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 6th day of January 2011.

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