

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**In the Matter of:**

KYS, Inc.  
t/a Kovaks Liquors

Application for Renewal of a  
Retailer's Class A License

at premises  
1237 Mount Olivet Road, N.E.  
Washington, D.C. 20002

Case No. 15-PRO-00051  
License No. ABRA-076573  
Order No. 2015-429

KYS, Inc., t/a Kovaks Liquors (Applicant)

Keisha L. Shropshire, Commissioner, Advisory Neighborhood Commission (ANC) 5D

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ORDER ON SETTLEMENT AGREEMENT AND  
WITHDRAWAL OF PROTEST OF ANC 5D**

The Application filed by KYS, Inc., t/a Kovaks Liquors, for renewal of its Retailer's Class A License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 15, 2015, and a Protest Status Hearing on July 29, 2015, in accordance with D.C. Official Code § 25-601 (2001).

The Applicant and ANC 5D have entered into a Settlement Agreement (Agreement), dated July 27, 2015, setting forth the terms and conditions that govern the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Commissioner Keisha L. Shropshire, on behalf of ANC 5D, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 5D of this Application.

Accordingly, it is this 16th day of September, 2015, **ORDERED** that:

1. The Application filed by KYS, Inc., t/a Kovaks Liquors, for renewal of its Retailer's Class A License, located at 1237 Mount Olivet Road, N.E., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 5D in this matter is hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 11(B) (Enforcement and Notices) – The second sentence shall be modified to read as follows: “Should any of the conditions of this Agreement be breached, it is understood by all parties that ANC 5D, or others shall immediately file a complaint with the ABC Board to enforce the provisions of this Agreement.”

Section 11(D) (Enforcement and Notices) – The following term shall be removed: “and assignors.”

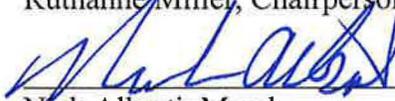
The parties have agreed to these modifications.

4. This Settlement Agreement replaces and supersedes previous Settlement Agreements between the parties; and
5. Copies of this Order shall be sent to the Applicant and ANC 5D.

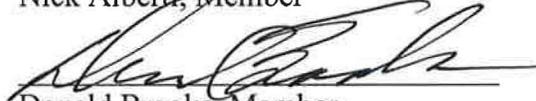
District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson

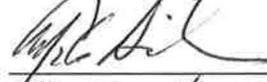


Nick Alberti, Member



Donald Brooks, Member

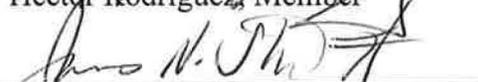
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

## **Community Settlement Agreement**

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### **ADVISORY NEIGHBORHOOD COMMISSION 5D AND KYS, Inc.**

This Settlement Agreement (“Agreement”) amended this 27<sup>th</sup> day of July, 2015, by and between KYS, Inc. trading as Kovak’s Liquors (“Applicant”), and Advisory Neighborhood Commission 5D (“Protestant”) supersedes the previous settlement agreement dated May 6, 2009 by and between Applicant and Protestant;

#### **Preamble**

Through this Agreement, both parties aim to create an environment whereby the applicant may operate as a viable contributing business to the ANC 5D community, while concurrently curtailing any adverse effect a business such as the Applicants could have on the surrounding neighborhood. This agreement applies to Class A liquor licenses that permit retail sales of beer, wine, and spirits for off premises consumption and Class B liquor licenses that permit retail sales of beer and wine for off premises consumption.

The Applicant agrees to collaborate with the ANC 5D, neighborhood associations, and residents to ensure the business operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained herein are reasonable and must be wholly integrated into the day-to-day operations of the business establishment.

#### **Witnessed**

**Whereas**, Applicant’s premises is within the boundaries of ANC 5D; and

**Whereas**, Applicant has filed for renewal of its Retailer’s Class A Liquor License for premises located at 1237 Mount Olivet Road, NE, Washington, DC; and

**Whereas**, Protestant has protested the renewal of the Applicant’s license; and

**Whereas**, the parties have agreed to enter into this Agreement and request that the Alcohol Beverage Control Board approve the Applicant’s Retailer’s Class A Renewal Liquor License at the subject premises conditioned upon the Applicant’s compliance with the terms of this written Agreement; and

**Whereas**, the Parties wish to state their mutual intent and commitment to promote the success, peace, order, and quiet of the community; both parties recognize the importance of commercial districts (and limited commercial operations within the residential districts) and their adjacent neighborhoods such that they are safe and clean.

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

**1) Recitals Incorporated.**

The recitals set forth above are incorporated herein by reference.

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**2) Compliance with Law**

- A) In addition to the requirements of this agreement, Applicant will operate in compliance with all applicable laws and regulations.

**3) Hours of Operation for Sales of Alcohol**

- A) Applicant shall comply with ABRA-approved and regulated hours in the sales of alcoholic beverages.

**4) Alcohol Abuse Prevention**

- A) Applicant shall not, directly or indirectly, to the best of its knowledge, sell or deliver alcohol to any intoxicated person, to any person of intemperate habits, and/or to any person who appears to be intoxicated.
- B) Applicant shall not sell or deliver alcoholic beverages to any person or persons under the age of 21, and will prominently display the fact that such sales are prohibited and that patrons must produce valid proof of age. These specific sales restrictions shall be posted on signs in the establishment.
- C) Applicant shall post a notice kept in good repair, and visible from any point of entry, which states:
  - 1) The minimum age requirement for purchase of alcohol;
  - 2) The obligation of the patron to present a valid identification document in order to purchase alcohol; and
  - 3) The obligation of patrons over the legal age to purchase alcohol to not provide purchased alcohol to those under the legal age to purchase alcohol.

**5) Security**

- A) Applicant shall coordinate with property owner to erect a fence on the property line in the rear of the store.
  - 1) Protestant agrees to inform affected residents and landlords in writing of the ANC's intent and purpose for requesting the fence installation to mitigate any potential complaints and disturbance from the community.
- B) Applicant shall coordinate with property owner to erect a chain across the parking lot to prevent parking during non-operating hours.
- C) Applicant shall coordinate with property owner to install additional lighting to illuminate the front, rear, and perimeter of the store which shall remain on during hours of darkness regardless of store being opened or closed.

## **6) Limitations on Sales of Non-Alcohol Retail Items**

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- A) Applicant shall not sell, give, offer, expose for sale, or deliver “go-cups”, solicit back-up drinks, or permit tie-in purchases. “Go-cups” are defined as “a drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment,” per DCMR § 25-741, 25-742, and 25-742. Applicant may sell disposable cups to customers, provided such cups are pre-packaged and contain no less than 12 cups.
- B) Applicant shall only sell or provide ice to customers in pre-packaged forms containing no less than 5 pounds.
- C) Applicant agrees not to sell, give, offer, expose for sale, or deliver products associated with criminal activity. These items are defined as “pipes, needles, mini-scales, non-prepackaged steel wool, small bags,” or any other item or product which may be regarded as drug paraphernalia under 21 U.S.C. § 863(d).

## **7) Loitering and Other Criminal Activity**

- A) Applicant shall make reasonable efforts to discourage loitering and criminal activity on or within the immediate environs of the premises, with a mutual understanding between the Applicant and Protestant that the activities outlined below require a collaborative effort between Applicant and ANC 5D:
  - 1) Work with DC MPD to discourage congregants in front of, inside, and outside of establishment;
  - 2) Discourage drinking alcohol in front of, inside, and outside of establishment;
  - 3) Call the DC MPD if criminal activity is observed;
  - 4) Coordinate with any tow truck company that allows them to tow parking violators at vehicle owner’s expense;
  - 5) Maintain a written record of dates and times (i.e. a log) when the DC MPD has been called for assistance. Applicant’s log shall be provided to the ANC 5D upon request.
  - 6) Applicant shall coordinate with property owner to maintain adequate and functional security lighting on building to discourage criminal activity on or within the immediate environs of the premises during and after business hours.

## **8) Cleanliness and Conditions of Premises and Immediate Environs:**

- A) Applicant shall continue to maintain the establishment and premises in a commercially reasonable condition, including those conditions set forth below:
  - 1) Applicant agrees that a commercially reasonable condition includes that which is consistent with a vision towards continued enhancement and improvement of the neighborhood and the commercial operations within the ANC 5D community:

(a) Paint exterior of property and parking lot rails as needed.

(b) Install planters with flowers at entrance.

2) Applicant agrees to relay any property and structural concerns to its property owner:

(a) Applicant agrees to coordinate with property owner to maintain the parking lot in accordance with DCRA property code and regulations.

B) Applicant will maintain the immediate environs of the establishment. As indicated in DCMR § 25-726, "The licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter."

C) Applicant shall continue to clean any sidewalks to the front and side of the establishment up to and including the curb, and any alleyway behind or to the side of the establishment on a regular basis.

D) Applicant shall continue to maintain trash, garbage, and recycling material storage facilities in which all containers have lids that are kept securely closed at all times, which containers shall be sufficient to contain all trash, garbage, and recycled materials generated by the establishment, and to assure that the trash, garbage, and recycled materials are removed regularly.

E) Applicant shall exercise due diligence to prevent and/or rid vermin infestation in and around said establishment, including following, minimally, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.

F) Applicant shall remove snow and/or ice from sidewalks fronting (including sidewalks on the other side of buildings that occupy corner lots) within time limits set by the District of Columbia for such snow and/or ice removal.

G) Applicant shall continue to remove graffiti written on the exterior walls of the property or on any items belonging to the establishment (e.g. dumpster) within thirty days of the first appearance of said graffiti.

**9) Renovation and Signage at Premises**

A) Applicant shall not install signage on the front windows so as to obstruct visibility into the establishment. Applicant agrees to remove excess signage, if current signage covers more than 25% of window front view of store.

B) Applicant agrees that any and all signage displayed or posted on the exterior walls of the establishment will be kept in good repair and professional in appearance.

C) Applicant agrees to post larger parking lot signage to inform individuals of the following:

1) No Loitering;

2) No Solicitation; and

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3) No Trespassing – Parking lot is for use of customers while in the store; limited to 30 minutes or will be towed at vehicle owner’s expense.

**10) Cooperation with Community and ANC 5D**

- A) Applicant is encouraged to attend ANC 5D and/or 5D02 public meetings and Police Service Area meetings at least once per quarter, if held, to the best of their ability.
- B) Protestant agrees to notify Applicant of such meetings, if held, to the best of their ability via telephone calls, newsletters, and/or e-mail distribution lists.

**11) Enforcement and Notices**

- A) In the event of a violation of the provisions of this Agreement, Applicant shall be notified by ANC 5D in writing alleging such violation and given an opportunity to cure such violation or respond to said alleged notice of violation within thirty days, unless there are extenuating circumstances.
- B) Applicant and Protestant agree to enter into this Agreement. Should any of the conditions of this Agreement be breached, it is understood by all parties that ANC 5D, or others shall immediately petition the ABC Board for a “show cause” hearing pursuant to DCMR § 1604.
- C) Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other parties to this Agreement. Notice is deemed to be received upon mailing.
- D) This Settlement Agreement shall be binding upon and enforceable against the successors, and assignors of the Counterparts

**12) Counterparts**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first amended and noted above.

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**APPLICANT:**

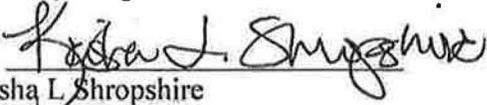
By:   
Yung S Kim  
KYS, Inc. trading as Kovak's Liquors  
1237 Mount Olivet Road, NE  
Washington, DC

Date: 09/01/2015

**WITNESS:**

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\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

**PROTESTANT:**

Advisory Neighborhood Commission 5D  
By:   
Keisha L Shropshire  
Commissioner, Single Member District  
5D02

Date: 09/02/2015