

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

<u>In the Matter of:</u>)	
)	
John & Jane Food Market, Inc.)	
t/a Kennedy 5 & 10)	
)	
Application for a Retailer's Class B)	
License – renewal)	Application no. 10429-04/031P
at premises)	2004-15
440 Kennedy Street, N.W.)	
Washington, D.C.)	
)	

Renee L. Bowser, Single Member District Commissioner 4D02, Advisory Neighborhood Commission 4D, and Michelle Smith, Protestants

John Shin, President, on behalf of Applicant

BEFORE: Charles A. Burger, Chairperson
Vera Abbott, Member
Peter Feather, Member
Judy A. Moy, Member
Audrey E. Thompson, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The application, having been protested, came before the Board on December 3, 2003, in accordance with the D.C. Official Code Title 25, Section 601 (2001 Edition). Renee L. Bowser, Single Member District Commissioner 4D02, Advisory Neighborhood Commission 4D, and Michelle Smith, filed timely protests against the applicant.

The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated February 4, 2004, the protestants have agreed to withdraw the protest, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

Accordingly, it is this 4th day of November 2003, **ORDERED** that:

John & Jane Food Market, Inc.
t/a Kennedy 5 & 10
Case no. 10429-04/031P
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1. The protests of Renee L. Bowser, Single Member District Commissioner 4D02, Advisory Neighborhood Commission 4D, and Michelle Smith are **WITHDRAWN**;

2. The application of John & Jane Food Market, Inc. t/a Kennedy 5 & 10 for a retailer's class B license (renewal), located at 440 Kennedy Street, N.W., Washington, D.C., is **GRANTED**;

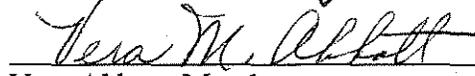
3. The above-referenced agreement is **INCORPORATED** as part of this Order;
and

4. Copies of this Order shall be sent to the Protestants and the Applicant.

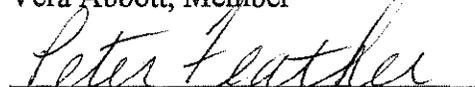
District of Columbia
Alcoholic Beverage Control Board



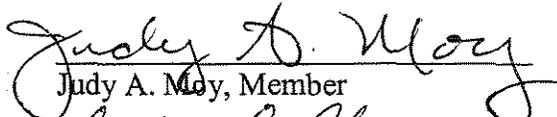
Charles A. Burger, Chairperson



Vera Abbott, Member



Peter Feather, Member



Judy A. Moy, Member



Audrey E. Thompson, Member

 ORIGINAL

**VOLUNTARY AGREEMENT
BETWEEN**

**JOHN & JANE FOOD MARKET, INC. T/A KENNEDY 5 & 10
AND**

**RENEE BOWSER, ADVISORY NEIGHBORHOOD COMMISSIONER 4D02
MICHELLE SMITH, BLOCK CAPTAIN AND 4D02 RESIDENT**

APPROVED BY THE DISTRICT OF COLUMBIA
DEL 03 2003
S. Cooke 11:38

WHEREAS, John & Jane Food Market, Inc. t/a Kennedy 5 & 10 ("Applicant") has applied for renewal of an Alcoholic Beverage Regulation Administration ("ABRA") Class "B" license for the establishment and premises located at 440 Kennedy Street, NW, Washington DC 20011, Application No. 10429;

WHEREAS, Renee Bowser, ANC Commissioner for ANC 4D02, Michelle Smith, a resident and Block Captain of the 400 Block of Kennedy Street, NW, and many other residents in the area surrounding the Licensee' establishment and premises have filed protests to the renewal of the license (together "Protestants"); and

WHEREAS, the Applicant and Protestants ANC Commissioner Renee Bowser and Block Captain Michelle Smith have entered into this Agreement and request the Alcoholic Beverage Regulation Administration to approve the Applicant's application for renewal of the Class "B" license conditioned upon compliance with the terms of this written Agreement.

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. **Compliance with Law.** Applicant shall comply with all laws and regulations governing the operation of the establishment, including laws and regulations governing the Class B license to which this agreement applies, as applied for and approved by the District of Columbia in the name of Applicant. Applicant also agrees to provide legal notice of any proposed transfer or substantial change in operations to Advisory Neighborhood Commission 4D02.

2. **Cleanliness of Premises and Business Environment.** Applicant shall take all reasonable measures to assure that the immediate environs of the establishment are kept free of litter and debris. "Immediate environs" is defined in District of Columbia Municipal Regulations, D.C.M.R. §720.2 as including: "all property on which the premises are located; all property used by the Applicant to conduct business, whether part of the premises or not, including parking lots and the portion of alleys, sidewalks, or other public property immediately adjacent to the property used by the licensee to conduct its business. Applicant shall clean the sidewalk in front of its premises up to and including the curb, and remove trash from the alley behind the premises, by 10:00 am. and once again within one hour before closing on days the establishment is open. Applicant shall maintain trash, garbage, and recycling materials storage facilities in which all containers have lids which are kept securely closed at all times, which containers shall be sufficient to contain all trash, garbage, and recycle materials generated by the establishment, and to assure that trash, garbage, and recycle materials are removed regularly.

3. **Loitering.** The parties recognize that loitering in and around the establishment has been a problem in the past, and that the peace, order, and quiet of the neighborhood will continue to be negatively affected if it is not reasonably controlled in the future. Applicant shall take all reasonable measures to discourage loitering within, in front, and in the rear of the establishment. If the activities identified herein (or other action taken by Applicant) fail to reasonably prevent loitering on the premises, Applicant may be required to hire a licensed security guard to prevent such conduct.

4. **Alcohol Abuse Prevention.** Applicant shall not, directly or indirectly, knowingly sell or deliver alcoholic beverages to any intoxicated person, or to any person of intemperate habits, or to any person who appears to be intoxicated, and will cooperate with the Metropolitan Police Department and health and social service agencies of the District of Columbia government to identify such persons. A person of intemperate habits shall be defined as any person found guilty or liable for any alcohol related offenses or crimes three times or more in any year and who has been so identified to Applicant by the Metropolitan Police Department by giving a photo and name to Applicant. Applicant shall not sell or deliver alcoholic beverages to anyone accompanying a person who has been denied service if there is an apparent attempt to deliver the alcoholic beverage to the person who has been denied service. 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 are subject to being asked to produce valid proof of age. These specific sale restrictions shall be posted on signs in the establishment.

5. **Renovation and Signage at Premises.** Applicant shall not install signs on the front window so as to obstruct visibility into the establishment. Applicant shall repaint the storefront to a non-high gloss color. Applicant shall not advertise alcoholic beverages on the exterior walls of the establishment. Applicant shall generally maintain the property in commercially reasonable condition and promptly remove or paint over any graffiti written on the exterior walls of the establishment.

6. **Limitation on Non-Alcohol Retail Items.** Applicant shall not provide "go-cups" (as defined in D.C.M.R. §709.7 as drinking utensils provided at no charge or a nominal charge to customers for the purpose of consuming alcoholic beverages) to customers. Applicant may not sell disposable cups to customers unless they are in pre-packaged form containing no less than 12 cups. Applicant shall only sell or provide ice to customers in pre-packaged forms containing no less than 5 pounds. Applicant shall not sell single cigarettes, cigarette-rolling papers, plastic bags smaller than sandwich size or in non-pre-packaged form, or other form of drug paraphernalia.
7. **Participation in ANC Meetings.** Applicant agrees to maintain open dialogue with the community and cooperatively address and control any problems associated with its operations. As part of this effort, Applicant, upon reasonable notice, agrees to send a representative to two (2) meetings of ANC 4D per calendar year to discuss and resolve any problems between Applicant's establishment and the surrounding community.
8. **Binding Effect.** This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of Applicant.
9. **Notices.** In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days following notice before action against Applicant on the basis of such violation may be undertaken. A material violation of this Agreement or its ABRA license by Applicant which has not been corrected after such thirty (30) days' notice shall constitute cause for seeking a Show Cause Order from the ABRA Board. Any notices required to be made under this Agreement shall be in writing and mailed postage prepaid by certified mail, return receipt requested, or hand

delivered to the other parties to this Agreement. Notice is considered made on the date of mailing or hand delivery. Notice is to be given as follows: a) to Applicant at 440 Kennedy Street, NW, Washington DC 20011; b) to Protestant ANC 4D02 Commissioner Renee Bowser at 143 Kennedy Street, NW, Suite #1, Washington DC 20011.

IN WITNESS WHEREOF, the Parties identified below have executed this Agreement consisting of five (5) pages, including this page, as of the dates set forth under their names:

FOR APPLICANT: JOHN & JANE FOOD MARKET, INC.,
T/A KENNEDY 5 & 10

By 

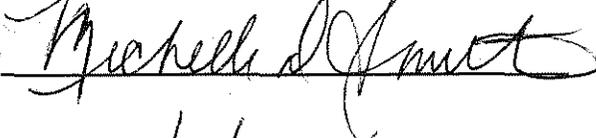
Date 12/1/03

FOR PROTESTANT: ANC 4D02 COMMISSIONER

By 

Date December 1, 2003

FOR PROTESTANT ANC 4D02 BLOCK CAPTAIN

By 

Date 12/2/03