

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

-against-

KATZ'S DELICATESSEN OF HOUSTON
ST., INC.,

Defendant.

CONSENT DECREE

No. 24 Civ. 9720

WHEREAS, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181 *et seq.* (“ADA”), provides, among other things, that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation,” 42 U.S.C. § 12182(a);

WHEREAS, the United States Attorney’s Office for the Southern District of New York (the “United States”), pursuant to its authority under 42 U.S.C. § 12188(b)(1)(A)(i), commenced a compliance review of certain restaurants in New York City to determine whether those restaurants were operating in compliance with Title III of the ADA (the “Compliance Review”);

WHEREAS, as part of the Compliance Review, the United States requested information from the owners and operators of Katz’s Delicatessen (the “Restaurant”) located at 205 East Houston Street, New York, New York;

WHEREAS, the United States conducted site inspections of the Restaurant on January 24, 2012, April 23, 2018, September 20, 2022, and April 16, 2024;

WHEREAS, the owner and operator of the Restaurant is Katz’s Delicatessen of Houston St., Inc. (“Defendant”);

WHEREAS, the complaint alleges that Defendant violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulations, 28 C.F.R. Pt. 36, by, among other things, failing to remove architectural barriers to access where it is readily achievable to do so; failing to use readily achievable alternatives to barrier removal where barrier removal is not readily achievable; failing to make alterations in such a manner that, to the maximum extent feasible, made the Restaurant readily accessible to and usable by individuals with disabilities; and failing to make reasonable modifications to policies, practices, and procedures to make the goods and services offered at the Restaurant accessible to individuals with disabilities;

WHEREAS, the 1991 ADA Standards for Accessible Design, 28 C.F.R. Pt. 36, Appendix D (“1991 Standards”), or the 2010 Standards for Accessible Design, 28 C.F.R. § 36.104, which consist of the 2004 ADA Accessibility Guidelines and the requirements contained in 28 C.F.R. Pt. 36, subpart D (the “2010 Standards”), were used to determine barriers to access that existed in the Restaurant;

WHEREAS, Defendant has consented to the entry of the Consent Decree without trial or adjudication of any issues of fact or law; and

WHEREAS the United States and Defendant agree that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving this matter;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345.

2. Venue lies in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because the Restaurant is located within this District and the acts of discrimination alleged in the complaint occurred in this District.

II. APPLICATION AND PARTIES BOUND

3. This Consent Decree shall be binding on Defendant, its agents, and its employees. This Consent Decree shall also be binding on all of Defendant's successors, as well as any person or entity carrying on the same or similar use of the Restaurant. Defendant must promptly notify, in writing, all successors, as well as any other persons or entities carrying on the same or similar use of the Restaurant, of the existence of this Consent Decree and its contents.

4. The Restaurant is a place of public accommodations within the meaning of 42 U.S.C. § 12181(7), because the operation of the Restaurant affects commerce and the Restaurant is a "restaurant, bar, or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B); 28 C.F.R. § 36.104.

5. Defendant is governed by Title III of the ADA because it owns and/or operates the Restaurant, which is a place of public accommodation. *See* 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.

III. FACILITIES COVERED BY THIS CONSENT DECREE

6. This Consent Decree shall apply to all public use and common areas within the Restaurant. This includes, but is not limited to: public entrances, waiting areas, dining areas, toilet rooms, and corridors.

7. This Consent Decree shall not absolve Defendant or any other person or entity from liability for any violation or potential violation of the ADA concerning any areas within the Restaurant not expressly included within the coverage of this Consent Decree. Nothing in this

Consent Decree shall preclude the United States from commencing or continuing any investigation with respect to any facility or establishment not expressly included within the coverage of this Consent Decree, and nothing in this Consent Decree shall preclude the United States from commencing a civil action against any person or entity with respect to any areas of the Restaurant not expressly included in this Consent Decree's coverage.

IV. GENERAL INJUNCTIVE RELIEF

8. Defendant, as well as its officers, agents, servants, employees, successors, and assigns, shall not discriminate against individuals with disabilities, and are permanently enjoined from violating Title III of the ADA with respect to the Restaurant.

V. BARRIERS TO ACCESS

9. During the course of its investigation of the Restaurant, the United States identified barriers to access within the Restaurant, which are described more fully below. Defendant shall remedy the barriers to access identified in this Consent Decree in the manner set forth below within four (4) months after the date of entry of this Consent Decree, unless otherwise noted.

A. Entrances

10. The main entrance to the Restaurant is at 205 East Houston Street. The clear opening width of a single leaf of the double leaf entrance door is less than 32 inches (at 29 ½ inches), and the door maneuvering clearance is not level (at 3.2% - 8.0%). *See* 1991 Standards §§ 4.1.3(7)(a), 4.1.3(8), 4.4.13.5, 4.13.64.13.4.

Consent Decree Requirement: Within four (4) weeks of the date of entry of this Consent Decree, Defendant shall establish a formal written policy whereby a member of Defendant's staff shall be present and available at all times during

which the Restaurant is open to the public to assist individuals with disabilities in using the main public entrance, and all such staff members shall be trained to assist individuals with disabilities in using that entrance.

B. Route to Dining Area

11. The route from the entrance to the dining room is less than 36 inches wide (at 34 and ½ inches) between the railing and the fixed wall. *See* 1991 Standards §§ 4.1.3(1), 4.3.3.

Consent Decree Requirement: Defendant shall ensure the clear width of walking surfaces shall be 36 inches minimum. *See* 2010 Standards §§ 206.2.4, 402.2, 227.5, 904.3.1, 403.5.

C. Cashier Counter

12. The route to the cashier counter is less than 36 inches (at 23 inches) between the railing and the wall, *see* 1991 Standards §§ 4.1.3(1), 4.3.3, and the cashier counter exceeds 36 inches above the finish floor (at 40 and ½ inches), *see* 1991 Standards § 7.2(1).

Consent Decree Requirement: Within four (4) weeks of the date of entry of this Consent Decree, Defendant shall establish a formal written policy whereby Defendant's staff shall take payment from persons with disabilities in the dining area or at the take-out counter, and shall inform and train all restaurant staff of this policy.

D. Dining Area

13. Less than the required number of accessible dining surfaces are provided. *See* 1991 Standards §§ 5.1, 4.1.3(18), 4.32.

Consent Decree Requirement: Defendant shall ensure that at least five percent of the fixed seating or standing spaces in the Restaurant are provided at accessible

dining surfaces that are dispersed throughout dining area, such that fifteen (15) seating locations are accessible. *See* Title III Regulations § 36.302(a); 2010 Standards §§ 226.1, 226.2. Defendant shall ensure that: (i) the accessible dining surfaces have a clear floor space, 30 inches minimum by 48 inches minimum positioned for a forward approach; (ii) the accessible dining surfaces have toe clearance extending 17 inches minimum under the surface; (iii) the accessible dining surfaces have knee clearance at least 11 inches deep at 9 inches high and at least 8 inches deep at 27 inches high; and (iv) the tops of the accessible dining surfaces are 28 inches minimum and 34 inches maximum above the finish floor. *See* 2010 Standards §§ 226.1, 902.2, 902.3, 305, 306.

E. Women's Restroom

14. Tactile signage identifying the women's multi-user toilet room located within the Restaurant is not provided. *See* 2010 Standards §§ 216.2, 703.1, 703.2, 703.5.

Consent Decree Requirement: Within 30 days, Defendant shall install a sign in raised characters and Braille located alongside the door on the latch side at 48 inches minimum above the finish floor, measured from the baseline of the lowest tactile character, and 60 inches maximum above the finish floor, measured from the baseline of the highest tactile character, that identifies the women's multi-user toilet room. *See* 2010 Standards §§ 216.2, 703.1, 703.2, 703.3, 703.4, 703.5.

Defendant shall also install a directional sign indicating the location of the nearest accessible restroom within the facility that includes the International Symbol of Accessibility. *See id.* §§ 216.8, 703.2.1, 703.5.

15. The door threshold is 1 inch high on the push side of the door and $\frac{1}{2}$ inch high without a bevel on the pull side of the door. *See* 2010 Standards §§ 206.5.2, 404.2.5, 303.3.

Consent Decree Requirement: Defendant shall ensure that the threshold, if provided at the doorway to the women's toilet room, shall be reduced to $\frac{1}{2}$ inch high maximum, and any change in level between $\frac{1}{4}$ inch high minimum and $\frac{1}{2}$ inch high maximum shall be beveled with a slope not steeper than 1:2. *See* 2010 Standards §§ 206.5.2, 404.2.5, 303.3.

16. The force to open the door to the women's restroom is 15 pounds. *See* 2010 Standards §§ 206.5.2, 404.2.9.

Consent Decree Requirement: Defendant shall ensure the force for pushing or pulling open the door to the women's restroom is reduced to 5 pounds maximum. *See* 2010 Standards §§ 206.5.2, 404.2.9.

17. The leading edge of the hand dryers is 45 inches above the finish floor, and they protrude more than 6 inches into the circulation path. *See* 2010 Standards §§ 204.1, 307.2.

Consent Decree Requirement: Defendant shall ensure the hand dryers and any other objects with leading edges more than 27 inches and not more than 80 inches above the finish floor shall protrude 4 inches maximum horizontally into the circulation path or remove the hand dryer in its entirety. *See* 2010 Standards §§ 204.1, 307.2.

i. Designated Accessible Toilet Compartment

18. In the designated accessible toilet compartment, the flush control is located on the wall side of the water closet. *See* 2010 Standards §§ 213.2, 213.3.2, 604.6.

Consent Decree Requirement: Defendant shall ensure flush controls are located on the open side of the water closet. *See* 2010 Standards §§ 213.2, 213.3.2, 604.6.

19. In the designated accessible toilet compartment, the side grab bar extends 50 inches from the rear wall. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5.1, 609.

Consent Decree Requirement: Defendant shall ensure the side wall grab bar is a minimum of 42 inches long, located 12 inches maximum from the rear wall, and extending 54 inches minimum from the rear wall. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5.1, 609.

20. In the designated accessible toilet compartment, the space between the top of the grab bar and the diaper changing station and toilet seat cover dispenser is less than 12 inches. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5, 609.3.

Consent Decree Requirement: Defendant shall ensure the space between the grab bar and projecting objects above shall be 12 inches minimum. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5, 609.3.

21. In the designated accessible toilet compartment, the grab bars are 37 inches above the finish floor measured to the top of the bar. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5, 609.4.

Consent Decree Requirement: Defendant shall ensure grab bars are installed in a horizontal position, 33 inches minimum and 36 inches maximum above the finish

floor measured to the top of the gripping surface. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5, 609.4.

22. In the designated accessible toilet compartment, the centerline of the toilet paper dispenser is located 14 and ½ inches in front of the water closet. *See* 2010 Standards §§ 213.2, 213.3.2, 604.7.

Consent Decree Requirement: Defendant shall ensure the toilet paper dispenser is 7 inches minimum, and 9 inches maximum, in front of the water closet measured to the centerline of the dispenser. Defendant shall ensure the outlet of the dispenser is 15 inches minimum and 48 inches maximum above the finish floor and is not located behind grab bars. *See* 2010 Standards §§ 213.2, 213.3.2, 604.7.

23. In the designated accessible toilet compartment, no clear floor space is provided at the diaper changing station and the toilet seat cover dispenser. *See* 2010 Standards §§ 205.1, 309.2, 305.3.

Consent Decree Requirement: Defendant shall ensure a clear floor space, 30 inches minimum by 48 inches minimum, is provided at the diaper changing station and the toilet seat cover dispenser, or remove the diaper changing station and/or the toilet seat cover dispenser in their entirety. *See* 2010 Standards §§ 205.1, 309.2, 305.3.

ii. Lavatory Area

24. The lavatory drain and water supply pipes are not insulated. *See* 2010 Standards §§ 213.2, 213.3.4, 606.5.

Consent Decree Requirement: Defendant shall ensure that the water supply and drain pipes under lavatories shall be insulated or otherwise configured to protect against contact. *See* 2010 Standards §§ 213.2, 213.3.4, 606.5.

25. The mirror mounted above the lavatory is 45 and ½ inches above the finish floor to the bottom edge of the reflecting surface. *See* 2010 Standards §§ 213.2, 213.3.5, 603.3.

Consent Decree Requirement: Defendant shall ensure that either: (i) at least one mirror above the lavatories is installed with the bottom edge of the reflecting surface 40 inches maximum above the finish floor; or (ii) a mirror installed with the bottom edge of the reflecting surface 35 inches maximum above the finish floor is provided. *See* 2010 Standards §§ 213.2, 213.3.5, 603.3.

26. The control for the paper towel dispenser is more than 51 inches above the finish floor. *See* 2010 Standards §§ 205.1, 309.3, 308.3.1.

Consent Decree Requirement: Defendant shall ensure that the control for the paper towel dispenser is 48 inches maximum and 15 inches minimum above the finish floor. *See* 2010 Standards §§ 205.1, 309.3, 308.3.1.

F. Men's Restroom

27. Tactile signage identifying the men's multi-user toilet room located within the Restaurant is not provided. *See* 2010 Standards §§ 216.2, 703.1, 703.2, 703.5.

Consent Decree Requirement: Within 30 days, Defendant shall install a sign in raised characters and Braille located alongside the door on the latch side at 48 inches minimum above the finish floor, measured from the baseline of the lowest tactile character, and 60 inches maximum above the finish floor, measured from the baseline of the highest tactile character, that identifies the men's multi-user

toilet room. *See* 2010 Standards §§ 216.2, 703.1, 703.2, 703.3, 703.4, 703.5.

Defendant shall also install a directional sign indicating the location of the nearest accessible restroom within the facility that includes the International Symbol of Accessibility. *See id.* §§ 216.8, 703.2.1, 703.5.

28. The maneuvering clearance perpendicular to the door to the men's toilet room is 39 inches measured between the face of the door and the lavatory. *See* 2010 Standards §§ 206.5.2, 404.2.4.1.

Consent Decree Requirement: Defendant shall ensure the maneuvering clearance perpendicular to the door to the men's toilet room shall be 60 inches minimum for a forward approach to the pull side of the door. *See* 2010 Standards §§ 206.5.2, 404.2.4.1.

29. The force to open the door to the men's restroom is 12 pounds. *See* 2010 Standards §§ 206.5.2, 404.2.9.

Consent Decree Requirement: Defendant shall ensure the force for pushing or pulling open the door to the men's restroom is reduced to 5 pounds maximum. *See* 2010 Standards §§ 206.5.2, 404.2.9.

30. The leading edge of the hand dryer is 45 inches above the finish floor, and it protrudes 6 inches into the circulation path. *See* 2010 Standards §§ 204.1, 307.2.

Consent Decree Requirement: Defendant shall ensure the hand dryer and any other objects with leading edges more than 27 inches and not more than 80 inches above the finish floor shall protrude 4 inches maximum horizontally into the circulation path or remove the hand dryer in its entirety. *See* 2010 Standards §§ 204.1, 307.2.

i. Designated Accessible Toilet Compartment

31. In the designated accessible toilet compartment, the side grab bar extends 52 and ½ inches from the rear wall. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5.1, 609.

Consent Decree Requirement: Defendant shall ensure the side wall grab bar is a minimum of 42 inches long, located 12 inches maximum from the rear wall, and extending 54 inches minimum from the rear wall. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5.1, 609.

32. In the designated accessible toilet compartment, no rear grab bar is provided. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5.2, 609.

Consent Decree Requirement: Defendant shall ensure a rear wall grab bar, 36 inches long minimum and extending from the centerline of the water closet 12 inches minimum on one side and 24 inches minimum on the other side, is provided. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5.2, 609.

33. In the designated accessible toilet compartment, the top of the side grab bar is 40 inches above the finish floor. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5, 609.4.

Consent Decree Requirement: Defendant shall ensure grab bars are installed in a horizontal position, 33 inches minimum and 36 inches maximum above the finish floor measured to the top of the gripping surface. *See* 2010 Standards §§ 213.2, 213.3.1, 604.8.1.5, 604.5, 609.4.

34. In the designated accessible toilet compartment, the centerline of the toilet paper dispenser is located 14 inches in front of the water closet. *See* 2010 Standards §§ 213.2, 213.3.2, 604.7.

Consent Decree Requirement: Defendant shall ensure the toilet paper dispenser is 7 inches minimum, and 9 inches maximum, in front of the water closet measured to the centerline of the dispenser. Defendant shall ensure the outlet of the dispenser is 15 inches minimum and 48 inches maximum above the finish floor and is not located behind grab bars. *See* 2010 Standards §§ 213.2, 213.3.2, 604.7.

35. In the designated accessible toilet compartment, no clear floor space is provided at the toilet seat cover dispenser. *See* 2010 Standards §§ 205.1, 309.2, 305.3.

Consent Decree Requirement: Defendant shall ensure a clear floor space, 30 inches minimum by 48 inches minimum, is provided at the toilet seat cover dispenser. *See* 2010 Standards §§ 205.1, 309.2, 305.3.

ii. Lavatory Area

36. The lavatory drain and water supply pipes are not insulated. *See* 2010 Standards §§ 213.2, 213.3.4, 606.5.

Consent Decree Requirement: Defendant shall ensure that the water supply and drain pipes under lavatories shall be insulated or otherwise configured to protect against contact. *See* 2010 Standards §§ 213.2, 213.3.4, 606.5.

37. The mirror mounted above the lavatory is 45 and ½ inches above the finish floor to the bottom edge of the reflecting surface. *See* 2010 Standards §§ 213.2, 213.3.5, 603.3.

Consent Decree Requirement: Defendant shall ensure that either: (i) at least one mirror above the lavatories is installed with the bottom edge of the reflecting

surface 40 inches maximum above the finish floor; or (ii) a mirror not located above the lavatory is installed with the bottom edge of the reflecting surface 35 inches maximum above the finish floor is provided. See 2010 Standards §§ 213.2, 213.3.5, 603.3.

38. The control for the paper towel dispenser is 58 inches above the finish floor. *See* 2010 Standards §§ 205.1, 309.3, 308.3.1.

Consent Decree Requirement: Defendant shall ensure that the control for the paper towel dispenser is 48 inches maximum and 15 inches minimum above the finish floor. *See* 2010 Standards §§ 205.1, 309.3, 308.3.1.

VI. CERTIFICATION

39. Within six (6) months after the date of this Consent Decree, Defendant shall submit to the United States, a certification, under penalty of perjury, stating that it has complied with all obligations of this Consent Decree that are required to be satisfied or completed at that time.

VII. RIGHT TO REVIEW COMPLIANCE

40. Upon reasonable advance notice to Defendant, Defendant shall permit the United States and any person acting on its behalf unrestricted access to the Restaurant to review compliance with the ADA and this Consent Decree. If the United States believes that Defendant has violated this Consent Decree or are otherwise not in full compliance with the ADA, the United States will notify Defendant in writing and seek to resolve the matter amicably before applying to the Court for relief.

VIII. CIVIL PENALTY

41. Pursuant to 42 U.S.C. § 12188(b)(2)(C)(i), and 28 C.F.R. § 85.5, Defendant shall within thirty (30) days of entry of this Consent Decree pay to the United States a civil penalty in the amount of \$20,000.00.

IX. VIOLATION OF THIS CONSENT DECREE

42. A violation of this Consent Decree shall be deemed a subsequent violation of Title III of the ADA. 42 U.S.C. § 12181 *et seq.*

X. MODIFICATION

43. There shall be no modification of this Consent Decree without the written consent of the United States and Defendant, and the approval of the Court.

XI. ENTIRE AGREEMENT

44. This Consent Decree represents the entire agreement between the United States and Defendant. No prior agreements, oral representations, or statements shall be considered part of this Consent Decree.

XII. RETENTION OF JURISDICTION

45. This Court shall retain jurisdiction of this action for a period of three years from the date of the certification required by paragraph 39 of this Consent Decree to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises under this Consent Decree, and to entertain any application and issue any orders (including, without limitation, orders directing the modification of policies, practices, and procedures, and orders requiring the removal of barriers to access) as may be necessary or appropriate for the effectuation of its terms. The parties shall discuss and attempt to negotiate a resolution of any dispute relating to

the interpretation or enforcement of this Consent Decree before bringing the matter to the Court's attention for resolution.

XIII. EXECUTION OF CONSENT DECREE

46. This Consent Decree may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

XIV. COSTS AND ATTORNEY FEES

47. All parties shall bear their own costs and attorneys' fees in this action.

* * *

THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:

Dated: New York, New York
December 17, 2024

EDWARD Y. KIM
Acting United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: 

DAVID E. FARBER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
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E-mail: david.farber@usdoj.gov

Dated: New York, New York
December 17, 2024

KATZ'S DELICATESSEN OF HOUSTON
ST., INC.

By: 

Jake Dell
President

Dated: Englewood Cliffs, New Jersey
December 17, 2024

SCHEPISI & MCLAUGHLIN, P.A.
Attorney for Defendant

By: 

ANDREW NAIDECK, ESQ.
473 Sylvan Avenue
Englewood Cliffs, NJ 07632
Tel.: (201) 569-9898
Email: anaideck@schepisi.com

JUDGMENT IS HEREBY ENTERED in accordance with the foregoing Consent Decree.

Dated: New York, New York
December 27 2024

A handwritten signature in blue ink, reading "Katherine Polk Failla". The signature is written in a cursive, flowing style.

HON. Katherine Polk Failla, U.S.D.J.