

STATEMENT OF BETTY F. GREITZER, ESQ.,
MANAGER OF PUBLIC AFFAIRS, PATHMARK SUPERMARKETS
BEFORE THE NEW YORK STATE ADVISORY BOARD FOR
KOSHER LAW ENFORCEMENT

NOVEMBER 17, 1988
WORLD TRADE CENTER
NEW YORK, NEW YORK

MR. CHAIRMAN, MY NAME IS BETTY GREITZER AND I AM THE MANAGER OF PUBLIC AFFAIRS FOR PATHMARK SUPERMARKETS, A DIVISION OF SUPERMARKETS GENERAL CORPORATION. AT THE PRESENT TIME, PATHMARK OPERATES 142 SUPERMARKETS IN A FIVE-STATE TRADING AREA, 49 OF WHICH ARE LOCATED IN THE STATE OF NEW YORK.

AT THE OUTSET I WOULD LIKE TO EXPRESS MY APPRECIATION FOR THE OPPORTUNITY TO ADDRESS A NUMBER OF ISSUES CONCERNING NEW YORK'S KOSHER LAW AND ITS ENFORCEMENT. IN ALL CANDOR, I CAN THINK OF NO OTHER MEASURE UNDER WHICH WE DO BUSINESS, WHETHER IN NEW YORK OR ELSEWHERE, WHICH IS AS ILL-FOUNDED WITHIN THE CONTEXT OF SUPERMARKET RETAILING AS THE LAW WE ARE HERE TO DISCUSS TODAY.

THE VAST MAJORITY OF THE KOSHER ITEMS WE SELL IN OUR STORES ARE IN HERMETICALLY SEALED PACKAGES LABELLED AS KOSHER BY THE MANUFACTURERS AND PACKERS. IN ACCORDANCE WITH SECTION 201-e OF THE AGRICULTURE AND MARKETS LAW, THE SYMBOLS USED FOR KOSHER IDENTIFICATION ARE REGISTERED WITH THE STATE BY THESE COMPANIES, AS ARE CERTAIN PARTICULARS CONCERNING THE SUPERVISING RABBIS WHO CERTIFY THESE ITEMS AS BEING KOSHER.

YET, ILLOGICALLY, THE STATE REQUIRES THE RETAILERS WHO OFFER THESE SEALED PACKAGES FOR SALE NOT ONLY TO AMPLIFY THE REPRESENTATIONS OF MANUFACTURERS AND PACKERS OF MEAT PRODUCTS BY POSTING "KOSHER" SIGNS AT POINT OF DISPLAY, BUT ALSO TO CERTIFY A NEGATIVE BY POSTING "NON-KOSHER" SIGNS TO INDICATE DISPLAYS OF NON-KOSHER ITEMS. MOREOVER, THE REQUIREMENT THAT EVEN SEALED PACKAGES BE VISIBLY SEPARATED ON THE SHELF INTO KOSHER AND NON-KOSHER DISPLAYS IMPOSES AN ARTIFICIAL AND UNWARRANTED BURDEN ON THE RETAILER, SINCE THE COMMINGLING OF THESE ITEMS RESULTS NEITHER IN CONTAMINATION NOR ADULTERATION OF PRODUCT. ONE ULTIMATE FACT REMAINS: THESE ITEMS ARE IDENTIFIED ON THE LABEL AS KOSHER FOR THE WORLD TO SEE; REQUIRING THE RETAILER TO ELABORATE THESE REPRESENTATIONS IS TOTALLY WITHOUT FOUNDATION.

IT WAS WITH THIS FACT IN MIND THAT THE STATE OF NEW JERSEY RECENTLY ENACTED AMENDATORY LEGISLATION WHICH DELETED SIGNAGE AND SEPARATION REQUIREMENTS FOR PREPACKAGED KOSHER MERCHANDISE FROM THE STATE CRIMINAL CODE. I HAVE ATTACHED A COPY OF THIS LAW, SIGNED BY GOVERNOR KEAN JUST THIS PAST MONDAY, TO MY STATEMENT. I WOULD ALSO NOTE THAT THE NEW JERSEY DIVISION OF CONSUMER AFFAIRS HAD PREVIOUSLY AMENDED ITS REGULATIONS IN THIS RESPECT OVER A YEAR AGO; AGAIN, I HAVE ATTACHED A COPY FOR YOUR CONSIDERATION. CONSEQUENTLY, I CAN NOT URGE YOU MORE STRONGLY TO RECOMMEND A COMPREHENSIVE REVISION OF NEW YORK'S LAW TO THE LEGISLATURE IN ORDER TO DELETE THIS MOST ILLOGICAL OF REQUIREMENTS.

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WHILE THE NEW YORK LAW ON ITS FACE IS A PRIME EXAMPLE OF OVERREGULATION INSOFAR AS SUPERMARKETS ARE CONCERNED, I WOULD BE REMISS IF I DID NOT POINT OUT THAT THE USE TO WHICH THESE REQUIREMENTS HAVE BEEN PUT HAS RESULTED IN A CONSTANT STREAM OF EXAMPLES OF INCONSISTENT AND INEQUITABLE ENFORCEMENT. AS I WILL DEMONSTRATE, THE KOSHER LAW ENFORCEMENT UNIT HAS FREQUENTLY REFUSED TO APPLY PENALTIES IN RECOGNITION OF THE GRAVITY OF VARIOUS OFFENSES, AND AS SUCH, UNDERMINES THE VERY PURPOSE OF THE LAW.

THE MOST TROUBLESOME ASPECT OF PENALTY ENFORCEMENT UNDER THE NEW YORK KOSHER LAW IS THE FACT THAT, CONTRARY TO THE SENTIMENT EXPRESSED BY GILBERT AND SULLIVAN, THE PUNISHMENT SIMPLY DOESN'T FIT THE CRIME. I'D LIKE TO DRAW YOUR ATTENTION TO "FOOD AND AGRICULTURAL NEWS", WHICH, AS YOU KNOW, IS RELEASED BY THE DEPARTMENT OF AGRICULTURE AND MARKETS TWICE A MONTH AND WHICH LISTS THE PENALTIES IMPOSED FOR VARIOUS INFRACTIONS DURING THE REPORTING PERIOD. IN THE ISSUE DATED OCTOBER 8, 1987, IT IS LISTED THAT A CERTAIN NURSING HOME ON STATEN ISLAND SETTLED A KOSHER LAW VIOLATION FOR \$200. AND WHAT WAS THE VIOLATION? TO QUOTE THE RELEASE: "PREPARING MEAT AND DAIRY PRODUCTS TOGETHER". CONSIDER THE SETTING: A NURSING HOME WHERE THE RESIDENTS ARE A CAPTIVE AUDIENCE, TOTALLY DEPENDENT UPON THE PROMISE THAT THEY ARE BEING SERVED KOSHER FOOD. THEY HAVE NO INDEPENDENT MEANS OF CONFIRMING OR DISPROVING THAT REPRESENTATION, AND IN ALL LIKELIHOOD ARE UNABLE TO AVOID THE SITUATION BY TAKING THEIR MEALS ELSEWHERE. I CAN NOT THINK OF A GRAVER FORM OF HARM DESIGNED TO BE PREVENTED BY THE KOSHER LAW. YET IF YOU FLIP THE PAGE OF THAT PRESS RELEASE YOU WILL NOTE THAT A PATHMARK SUPERMARKET WAS ALSO FINED \$200. AND WHY? BECAUSE A CLERK WHILE PACKING OUT SEALED CONTAINERS OF CLAM CHOWDER AND SHRIMP COCKTAIL NEGLECTED TO RELOCATE THE "KOSHER" SIGNS IN THE REFRIGERATOR CASE.

SIMILARLY, THE NOVEMBER 4, 1988 ISSUE OF "FOOD AND AGRICULTURAL NEWS" REVEALS THAT A COMPETITOR OF OURS WAS FINED \$100 FOR USING THE SAME SLICER FOR BOTH KOSHER AND NON-KOSHER FOODS. NOT ONLY DOES THIS VIOLATION INVOLVE A DIRECT MISREPRESENTATION THAT THE ITEM SOLD WAS KOSHER; THE NET EFFECT OF ANY CONSUMER'S TAKING THE ITEM HOME AND SERVING IT FOR DINNER RESULTS IN THE CONTAMINATION OF DISHES AND SILVERWARE, IF NOT THE ENTIRE KITCHEN. YET IN THE SAME REPORT, ONCE AGAIN, A PATHMARK SUPERMARKET WAS FINED THE SAME \$100 FOR DISPLAYING SEALED PACKAGES OF PORTUGUESE SAUSAGE, WHICH THE ENTIRE WORLD KNOWS IS NOT KOSHER, IN THE KOSHER SECTION OF THE MEAT CASE.

I WOULD HASTEN TO ADD THAT THE CASES I HAVE CITED ARE NOT ISOLATED INCIDENTS; THE "SAME SLICER" EXAMPLE APPEARS IN ALMOST EVERY DEPARTMENT RELEASE, AND THE NURSING HOME SITUATION WAS REPEATED, THIS TIME WITH A MEDICAL CENTER, AS RECENTLY AS JUNE OF THIS YEAR. WHILE THE DEPARTMENT SEEMINGLY HAS DIFFICULTIES DETERMINING PENALTIES BASED ON VARIOUS LEVELS OF CULPABILITY, I WOULD ALSO SUBMIT THAT IT FREQUENTLY TREATS IDENTICAL VIOLATIONS INCONSISTENTLY. THIS PAST SUMMER I WAS THE UNLUCKY RECIPIENT OF THREE LETTERS, RECEIVED ON THE SAME DAY FROM THE KOSHER LAW ENFORCEMENT UNIT, CITING THE EXISTENCE OF THREE SEPARATE KOSHER LAW VIOLATIONS AT THREE DIFFERENT PATHMARKS. ALL INVOLVED THE DISPLAY OF A NON-KOSHER ITEM IN THE KOSHER SECTION AND IN FACT, TWO OF THE VIOLATIONS EVEN INVOLVED THE

SAME PRODUCT, NAMELY JENO'S FROZEN PIZZA ROLLS. YET, TO MY RECOLLECTION, THE FINES SOUGHT WERE \$50, \$100 AND \$200, RESPECTIVELY. WHERE IS THE LOGIC IN THAT? MORE IMPORTANTLY, WHERE IS THE FUNDAMENTAL FAIRNESS AND DUE PROCESS OF LAW THAT THE REGULATED COMMUNITY HAS THE RIGHT TO EXPECT?

GENTLEMEN, I COULD GO ON AT LENGTH IN THIS VEIN. HOWEVER, WHAT IS BEING SOUGHT HERE ARE RECOMMENDATIONS, AND THESE ARE MINE:

1. THE DEPARTMENT MUST UNDERSTAND THAT SIGNAGE AND SEPARATION REQUIREMENTS ARE OUTMODED AND ARCHAIC AND SHOULD BE REPEALED. AT THE RISK OF BEING REPETITIOUS, WE ARE DEALING WITH HERMETICALLY SEALED PACKAGES LABELLED BY MANUFACTURERS AND PACKERS. AS SUCH, THE KOSHER IDENTIFICATION ON THE PRODUCT LABEL (OR ITS ABSENCE) IS SUFFICIENT TO ADVISE THE CONSUMER OF THE STATUS OF THE PRODUCT. AFTER ALL, KASHRUTH, WHILE RELIGIOUS IN ORIGIN, ESSENTIALLY INVOLVES DIETARY RESTRICTIONS. ALL INDIVIDUALS WHO CHOOSE TO RESTRICT THEIR DIETS, WHETHER FOR HEALTH OR RELIGIOUS REASONS, HAVE A RESPONSIBILITY TO THEMSELVES TO READ THE LABELS OF THE PRODUCTS THEY WISH TO PURCHASE BEFORE THEY TAKE THE ITEMS HOME. YET THE STATE, BY ITS REQUIREMENTS, SEEKS TO HAVE THE RETAILER'S REPRESENTATIONS SUBSTITUTE FOR THOSE OF THE MANUFACTURER OR PACKER. THIS NOT ONLY IGNORES THE REALITIES OF FOOD RETAILING, WHERE OUR COMPLIANCE WITH KOSHER LAW IS UTTERLY DEPENDENT UPON A 17-YEAR OLD GROCERY CLERK (IF WE CAN FIND HIM TO HIRE); IT ENCOURAGES LAZINESS AND COMPLACENCY AMONG CONSUMERS, WHO SHOULD BE ENCOURAGED TO CONSULT THE BEST SOURCE OF INFORMATION, NAMELY THE PRODUCT LABELS.

2. THE STATE LAW MUST UNDERGO A COMPREHENSIVE REVISION. WHILE THE ORIGINAL STATUTE IS VIRTUALLY INCOMPREHENSIBLE TO LAWYERS AND LAYMEN ALIKE, THE LAST FIVE YEARS HAVE SEEN VARIOUS AMENDMENTS WHICH HAVE TURNED THE LAW INTO A PATCHWORK QUILT. AND IT IS ESSENTIAL THAT SUCH A REVISION MUST ENCOMPASS THE DELETION OF ALL SIGNAGE AND SEPARATION REQUIREMENTS FOR PREPACKAGED MERCHANDISE, AS PREVIOUSLY DESCRIBED. IN THIS RESPECT, THE RECENT REVISIONS TO THE NEW JERSEY STATUTES AND REGULATIONS SHOULD BE EMBRACED BY THE DEPARTMENT.

3. UNTIL SUCH A REVISION IS ACCOMPLISHED, THE DEPARTMENT MUST REORDER ITS INSPECTION AND ENFORCEMENT PRIORITIES TO RECOGNIZE THAT THE ERRONEOUS DISPLAY OF SUCH MERCHANDISE DOES NOT POSE THE GRAVEST HARM TO THE CONSUMER. HOWEVER, MISREPRESENTATIONS REGARDING THE PREPARATION OF FOOD, PARTICULARLY WHERE THE CONSUMER IS UNABLE OR INCAPABLE OF VERIFYING COMPLIANCE WITH KASHRUTH, DO CONSTITUTE SUCH A THREAT. I CAN NOT URGE THE DEPARTMENT MORE STRONGLY TO RECOGNIZE THAT IMPOSING THE SAME PENALTIES IN BOTH INSTANCES SERVES NEITHER THE LAW NOR THE PUBLIC IT WAS DESIGNED TO PROTECT. AND UNLESS THIS IS ACCOMPLISHED, JUSTICE WILL NOT BE SERVED, EITHER FOR THE CONSUMER OF KOSHER FOOD OR FOR THE REGULATED COMMUNITY.

AGAIN, THANK YOU FOR THE OPPORTUNITY TO HAVE APPEARED BEFORE YOU TODAY.