

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

In the Matter of:)
)
MEG & AN, LLC)
t/a Gray's Market)
)
Applicant for a Renewal of a)
Retailer's Class B License)
)
at premises)
3306 Georgia Avenue, NW)
Washington, D.C. 20010)
)

Case No.: 24-PRO-00022
License No.: ABRA-120092
Order No.: 2024-305

MEG & AN, LLC, t/a Gray's Market, Applicant

James S. Williford, Counsel, on behalf of the Applicant

Marc A. Hyman, Abutting Property Owner, Protestant

William A. DeVan, Counsel, on behalf of the Protestant

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Silas Grant, Jr., Member

**ORDER ON SETTLEMENT AGREEMENTS AND
WITHDRAWAL OF MARC A. HYMAN'S PROTEST**

The Application filed by MEG & AN, LLC, t/a Gray's Market (Applicant), for Renewal of its Retailer's Class B License, having been protested by Marc A. Hyman, Abutting Property Owner.

The official records of the Board reflect that the Applicant and Marc A. Hyman have entered into a Settlement Agreement (Agreement), dated April 23, 2024, that governs the operations 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 Marc A. Hyman are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by Marc A. Hyman of this Application.

Accordingly, it is this 1st day of May 2024, **ORDERED** that:

1. The Application filed by MEG & AN, LLC, t/a Gray's Market, for renewal of its Retailer's Class B License, located at 3306 Georgia Avenue, NW, Washington, D.C., is **GRANTED**;
2. The Protest of Marc A. Hyman in this matter is hereby **WITHDRAWN**;
1. 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 modification:

Section 6 (Good Faith Effort to Resolve Any Later Conflicts) – This Section shall be modified to read as follows: “In the event that either Party later comes to believe that the measures provided in this Agreement should be removed, replaced or amended in some respect in order to preserve the appropriateness of the Licensee's business and License in its locality, the parties are encouraged to confer in good faith to so amend this agreement or to otherwise try their best to resolve the concern amicably.”

The parties have agreed to this modification.

2. Copies of this Order shall be sent to the Parties.

District of Columbia
Alcoholic Beverage and Cannabis

eSigned via SeamlessDocx.com
Donovan Anderson
Key: ac43cb68c6d5f68e4b730063d1cccc8

Board
Donovan Anderson, Chairperson

eSigned via SeamlessDocx.com
James Short
Key: 547ae373f820de6ac8d1b332d42948ec

James Short, Member



Silas Grant, Jr., Member

Pursuant to D.C. Official Code § 25-433(d)(1) (applicable to alcohol matters) or 22-C DCMR § 9720 (applicable to medical cannabis matters), 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 and Cannabis Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section II 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 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 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).

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (the "Agreement") is made this ___ day of April, 2024, by and between Marc A. Hyman and MD Homes 3302 Georgia Ave LLC, a District of Columbia limited liability company (as to the latter "MDH", and together, for convenience, the "Protestant"), and Meg&An, Inc., a District of Columbia corporation trading as Gray's Market ("Licensee") (singularly, a "Party", and together, the "Parties").

WITNESSETH:

WHEREAS, MDH owns renewal property commonly known as 3302 and 3304 Georgia Avenue, NW, Washington, DC 20010 (the "MDH Property") upon which a new four-story, mixed use building—office/retail on first floor and residential above is nearing completion;

WHEREAS, Licensee leases real property commonly known as 3306 Georgia Avenue, NW, Washington, DC 20010 (the "Gray's Market Property") upon which it operates a grocery;

WHEREAS, Licensee holds License No. 120092 issued by the D.C. Alcoholic Beverage and Cannabis Administration for off-premises consumption of the retail sale of beer and wine (the "License");

WHEREAS, the MDH Property and the Gray's Market Property (the "Properties") are immediately adjacent to one another and a narrow Public Alley (the "Alley") starts at the rear of the northern edge of the 3304 Georgia Avenue property line and runs behind the western boundary of the Gray's Market Property and of other properties to the north along the 3300 block of Georgia Avenue, NW (the "3300 Block") to Morton Street, as shown in the Plat Attached as Exhibit A;

WHEREAS, the Alley provides the Properties with access to Morton Street but not to Lamont Street;

WHEREAS, Licensee had previously constructed a gate across Gray's Alleyway along its border with 3308 Georgia Avenue, NW for the primary purpose of keeping out vagrants and to prevent them from loitering, using drugs, and other illicit behavior but that gate has now been removed due to concerns, among others, that arise in connection with sharing control of access to such a gate with what will soon be numerous occupants of the MDH Property;

WHEREAS, Licensee has applied to renew its License—Case No. ABRA-120092;

WHEREAS, Protestant has filed a protest to renewal of the License—Case No. 24-PRO-120092 (the "Protest");

WHEREAS, the Parties participated in mediation at which substantial progress was made towards an amicable resolution of the matters of concern raised in connection with the Protest; and

WHEREAS, the Parties have resolved all matters in dispute in the Protest and now desire to enter into a Voluntary Agreement pursuant to DC Code §25-446 eliminating the need for a protest hearing.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Recitals Incorporated. The above recitals are incorporated herein by reference.

2. Public Sidewalk. Licensee shall take reasonable measures to keep the sidewalk (up to and including the curb, and any tree boxes) in front of 3302 through 3310 Georgia Avenue (the "Immediate Environs") free of litter—including cans, bottles and paper ("Litter"). Given the public nature of the sidewalk, the bus stop in front of 3308 Georgia Avenue, and the existing measures undertaken by the City to police the Immediate Environs through its daily cleaning or washing of the street and sidewalk, the following efforts shall be deemed to be reasonable: (a) Licensee daily policing the Immediate Environs to pick up and appropriately discard all litter at the beginning of each work day, and each work day late afternoon or evening before sunset; (b) posting a sign at its store front prohibiting littering and loitering; and (c) Licensee will inform its employees and (as may be required from time to time) patrons to be respectful of neighboring property owners, businesses and residents. Litter does not include construction debris (not connected with the Establishment), hazardous materials (including animal remains or excrement), or tree leaves. Licensee is not required to police the Immediate Environs for litter after dark due to physical security concerns. The Parties shall cooperate with one another in persuading the DPW or other appropriate City authority to place, service and maintain a trash receptacle within the covered bus stop located within the Immediate Environs, including jointly contacting the Properties' Advisory Neighborhood Commission 1-E (the "ANC") for its assistance. Licensee is not required to remove litter from the roof of the bench enclosure at the bus stop that has been thrown by non-parties or blown thereupon by the wind.

3. Alley and MDH yard/deck.

A. Each Party shall take all reasonable steps to keep their respective properties behind their respective buildings clean and free from Litter, debris and pests.

B. Licensee shall not in any manner obstruct MDH's (or its agents, tenants, licensees, and contractors) public right of way for itinerant free passage upon and through that portion of the Alley behind Gray's Market. The Alley currently provides both parties such passage to and from Morton Street for trash removal and other legitimate purposes as may from time to time require such passage. Licensee may place tightly closing trash receptacles (as generally used by similar establishments in DC that are designed and intended to be pest-proof) at the rear of the Gray's Market Property building immediately adjacent to its rear exterior wall, provided that such receptacles do not impede access and free passage along the Alley. MDH will also not obstruct Licensee's use of the Alley as a passageway to and from Morton Street for all of its similarly legitimate purposes. For purposes of clarity, "trash receptacles" (i) shall include any receptacles dedicated to recycling, and (ii) shall not exceed 34 inches in either length or width (unless approved by the other party in writing).

C. Each Party shall take all reasonable steps to keep the area immediately around its trash receptacle(s) on the Properties clean, and free of all litter and debris regardless of its source, and take all reasonable steps required to deal with any pests drawn to the area of its receptacle(s).

D. As part of the approved plans for renovation of the MDH Property, MDH has constructed a deck with a finished floor elevation that will be approximately 22" above the level of the Alley. Licensee shall not object to MDH's (or its agents, tenants, licensees, and contractors) use of a ramp that would facilitate their trash receptacles being rolled from the MDH Property through the Alley behind the Gray's Market Property towards Morton Street for trash removal, or for any other legitimate purpose provided such ramp (i) does not impede the full functionality of the rear door (as presently configured) of the Gray's Market Property, and (ii) does not impede the rights of the Licensee under subsection B above. The parties acknowledge that (i) Licensee is not the owner of Gray's Market Property, and disclaims any authority to bind its Landlord by this Agreement, or otherwise; and (ii) it is solely MDH's responsibility to pursue and obtain all approvals and consents as may be required from the City and others to permit the contemplated use of such a ramp into or onto the public Alley.

4. Security Lights / Cameras. Licensee shall service, maintain and replace as necessary its current security lights and cameras, including the motion sensitive camera at the rear door of the Establishment. The security camera will have the capability of maintaining the recorded images over at least 5 days. Such recordings shall be made available to ABCA, MPD, and the ANC upon request to the fullest extent as permitted by law. The exterior light at the rear is to be placed (as currently exists) under the eaves at the rear of the building and facing downward so as to minimize light pollution as may affect the sensitivities of an ordinary person occupying any part of the MDH Property.

5. Loitering and Criminal Activity. Each Party shall report to the MPD loitering and other perceived possible criminal activity in the immediate vicinity of the Properties that is believed to affect the peace, order and quiet of the locality in which the Properties are situated and keep a log of all such reports made. Nothing contained in this Agreement is intended to place any obligation upon either party to place themselves in physical danger by confronting any noisome person who may be in the neighborhood regardless of whether he or she is loitering or who may be involved in a crime.

6. Good Faith Effort to Resolve Any Later Conflicts. In the event that either Party later comes to believe that the measures provided in this Agreement should be removed, replaced or amended in some respect in order to preserve the appropriateness of the Licensee's business and License in its locality, prior and as a condition precedent to filing a complaint or protest with ABCA, the ANC or any other authority, they shall confer in good faith to so amend this agreement or to otherwise try their best to resolve the concern amicably.

7. Notice and Opportunity to Cure. In the event that any of the Parties is believed to be in breach of this Agreement, he or it shall be entitled to reasonable notice and opportunity to cure as a condition precedent to seeking enforcement. Unless the breach is of an emergency nature or repetition of a prior breach of the same nature, reasonable notice and opportunity to cure within

thirty (30) days of the date of such notice shall be provided. If the receiving Party fails to cure within the 30-day period (or as to a breach which reasonably requires more than 30 days to cure, fails to commence cure of such breach and diligently pursues such cure to completion) then such failure shall constitute a cause for the non-defaulting Party to file a complaint or protest with the ABCA or other appropriate authority. Failure to give notice shall not constitute a waiver of or acquiescence to any breach or violation, but notice shall be a prerequisite to the filing of a complaint or protest with the ABCA, ANC or other appropriate authority. Notices required under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other Party to the following addresses:

If to Protestant to:

c/o Marc A. Hyman
MD Homes 3302 Georgia Ave LLC
17719 Chipping Court
Olney, MD 20832
(240) 381-5844
Marc.mdhomes@gmail.com

With a copy (not constituting notice) to:

William A. DeVan, Esquire
ConstructionLex, PLLC
2121 Eisenhower Ave., Suite 200
Alexandria, VA 22314
(202) 531-4704
william@constructionlex.com

If to Licensee:

c/o Eshete Telahun
Gray's Market
3306 Georgia Avenue, NW
Washington, DC 20010
Cell No. 202-726-1504
E-mail eshetu33@icloud.com

With a copy (not constituting notice) to:

James S. Williford, Jr., Esquire
James S. Williford, Jr., P.C.
451 Hungerford Drive, Suite 616
Rockville, MD 20850

8. Further Acts. The Parties agree to execute such other documents necessary to effectuate this Agreement, to cooperate with one another to further their joint interests in use of the Alley and improvement of the neighborhood, and not to take any action that would unjustifiably interfere with their respective use and enjoyment of their respective Properties.

9. General Provisions. The Parties agree to the following general provisions:

A. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs and permitted assigns.

B. This Agreement may be executed in any number of counterparts, each original or copy of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. This Agreement may be executed by facsimile signatures, which shall be binding on the Parties hereto.

C. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

D. The Parties acknowledge and represent that each has been represented by the counsel of its choosing in the negotiation and execution of this Agreement, and that each Party has read the entire Agreement, and is fully aware of its legal effect. No provision of this Agreement shall be construed in favor of, or against, any particular Party by reason of any presumption with respect to the drafting of this Agreement; all Parties, being represented by counsel, having fully participated in the negotiation of this instrument.

E. The Parties each agree that his/its decision to enter into this Agreement is knowing and voluntary and based only on the terms of this Agreement, and not on any other promises, representations or warranties of any kind whatsoever.

F. The signatories below represent that they have full authority to bind the entity on whose behalf their signature appears.

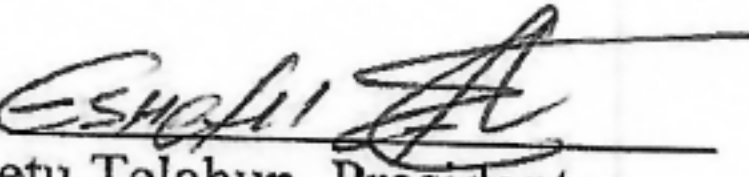
G. This Agreement shall be governed by and construed and enforced in accordance with the laws of the District of Columbia. The Parties waive their respective rights to a trial by jury as to any claim arising out of, under or related to this Agreement.

10. Withdrawal of Protest. Upon execution of this Agreement and its approval by ABCA, the Parties shall notify the ABCA that Protestant is withdrawing its protest and will cooperate with Licensee in its renewal of the License. Accordingly, mutual execution of this Agreement will be immediately followed at or prior to the scheduled Status conference, by a request that ABCA enter an Order approving this Cooperative Agreement.

IN WITNESS WHEREOF, each of the parties have signed this Agreement as of the date first appearing above.

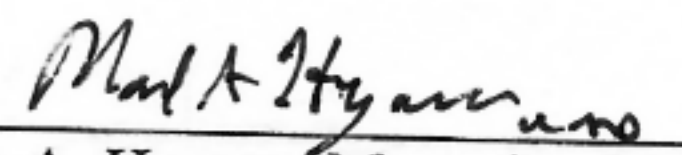
LICENSEE:

Meg & An, Inc., Trading/As Gray's Market

By: 
Eshetu Telahun, President

PROTESTANT:

MD Homes 3302 Georgia Ave LLC

By: 
Marc A. Hyman, Managing Member