

STATE OF NEW YORK
OFFICE OF CANNABIS MANAGEMENT
OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 205 2024 0523 0005

557 Convenience Corporation
557 8th Avenue
New York, NY 10018

Respondent.

The hearing was conducted on July 9, 2024.

The Respondent was represented by Lance Lazzaro, Esq.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Ruben Espinosa, Esq.

Investigator Lisa Warner testified on behalf of OCM.

ISSUE

The allegations set forth in the Notice of Violation indicate that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. This allegation was based upon observations made during a regulatory inspection which was conducted at 557 8th Avenue, New York, NY 10018.

The scope of the hearing was limited solely to the issue as to whether the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance off the evidence.

CONCLUSIONS OF LAW

Cannabis Law Article 6 §138(a) provides that “The board or the Office of Cannabis Management shall, in accordance with the authority otherwise conferred in this chapter, have the authority to: 1. order any person who is unlawfully cultivating, processing, distributing or selling cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such in this state without obtaining the appropriate registration, license, or permit therefor, or engaging in an indirect retail sale to cease such prohibited conduct. 2. seize any cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, found in the possession of a person engaged in the conduct described in subdivision one of this section.”

Cannabis Law Article 6 § 138-b(1) provides that orders to seal: In addition to any other authority conferred in this chapter, pursuant to the provisions of this section, the board or the office shall have the authority to issue an order to seal the building or premises of any business engaged in unlicensed activity, when such activity is conducted, maintained, or permitted in such building or premises, occupied as a place of business as described in subdivision eight of section ten of this chapter, in violation of subdivision one or one-a of section one hundred twenty-five or subdivision one or eight or section one hundred thirty-two of this article.

Cannabis Law Article 6 §138-b (6) provides that an order to seal may be issued by the office or the board pursuant to subdivision three of this section only if:

- (a) no part of the premises to be sealed is used in part as a residence and pursuant to local law or ordinance is zoned and lawfully occupied as a residence; and
- (b) the unlicensed activity as described in this section is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to this subdivision, the office shall issue a notice of violation and order to cease the unlicensed conduct, which shall constitute notice that such activity must cease immediately. (See Regulations at 9 NYCRR 133.25(f) (2-3)).

Cannabis Law Article 6 §138-b (7) provides that in assessing whether unlicensed activity within a building is more than de minimis, the office or board, as relevant, shall consider factors such as any one or more of the following:

- (a) the presence of signs or symbols, indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises.
- (b) information shared in any advertisements or other marketing content in connection with the unlicensed business activity and any direct or indirect sales of cannabis or other conduct in violation of this chapter.
- (c) the volume of illicit cannabis products on site; and
- (d) the variety of illicit cannabis products on site. (See Regulations at 9 NYCRR 133.25

(f)(3) (i-iv)).

Cannabis Law Article 6 §138-b (3) provides that the office may issue an order to seal with an immediate effective date if such order is based upon a finding by the office of an imminent threat to the public health, safety, and welfare. (See Regulations at 9 NYCRR 133.25(f)(1)).

Cannabis Law Article 6 §138-b (4) sets forth the factors that determine an imminent threat to public health, safety, and welfare shall be limited to:

- (a) documented sales to minors.
- (b) unlicensed processing of cannabis products at the building or premises.
- (c) orders issued following an inspection wherein the person engaged in the unlicensed activity engaged in violent, tumultuous, or other behaviors indicating expressed intent to not comply with the office's order to cease the unlicensed activity.
- (d) documented presence of unlawful firearms at the building or premises.
- (e) proximity of the building or premises to schools, houses of worship, or public youth facilities.
- (f) presence of products deemed unsafe based on reports of illness or hospitalization; or
- (g) sales of, or offers to sell, cannabis products not tested or labeled lawfully in accordance with this chapter. (See Regulations at 9 NYCRR 133.25(f)(1) (i-vii).

FINDINGS OF FACT

1. Respondent was offering cannabis products for sale without a license issued by OCM. Investigator Lisa Warner testified that she is employed as a Senior Investigator for OCM and has conducted approximately two hundred (200) inspections. Prior to that position she was employed by the NYS Department of Motor Vehicles as an investigator for seventeen (17) years. She has also been trained in identifying and categorizing cannabis products. Investigator Warner conducted an inspection on 05.23.24 of 557 Convenience Corporation. She was accompanied by NYS Tax Department Investigator Alfonso Rodriguez, among others whose names she did not recall during her testimony. Prior to entering the establishment, the investigator took a photo of the front of the establishment. See Exhibit B/ 1. During the inspection the investigator observed packages of edibles and gummies with State of California labels, a jar of cannabis with a California logo, pre-rolls (joints), cannabis plants, cannabis flower, a cannabis price list and menu. Investigator Warner took photos of the above referenced items. See Exhibit B/1-7. Investigator Warner encountered a female – Gayathri Devi - in the establishment who identified herself as the employee/cashier. Investigator Warner served a Notice of Violation, Order to Cease

Unlicensed Activity, and Order to Seal on Ms. Devi who accepted service by executing the document. See Exhibit A-1. During the inspection Investigator Warner did not observe a kitchen on the premises, nor did she observe any clothes, or a shower, only items indicative of a commercial establishment. Investigator Warner did acknowledge during her testimony that she neglected to check two boxes on the NOV due to oversight: Under Statement of Charges, the box stating “that more than a de minimis part of the business activity is based on my observation or knowledge of” (subsequent line for example(s) left blank; and the box indicating that no part of the premises to be sealed is used as a residence or is occupied as a residence (in pertinent part).

2. No part of the premises to be sealed is used as a residence and pursuant to local law or ordinance, is zoned and lawfully occupied as a “residence.” Investigator Warner testified that the premises appeared to be a store only (not living quarters). The Respondent offered no evidence to rebut the testimony.
3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. A large variety of illegal cannabis products were observed and seized by the testifying investigator, as evidenced by Exhibits B/1-7, C/1-6. The investigator testified that there was no evidence of a living quarters on the premises and that a vast majority (70-80%) of the products observed were cannabis related.
4. This unlicensed activity constituted an imminent threat to public health, safety, and welfare in that: there were sales of, or offers to sell cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Exhibits B & C, testified to by the investigator, depicted products that were labeled with the California cannabis label, and many items were brightly colored or depicted cartoon characters with special appeal to children, all in violation of New York law Article 6 138-b (4).
5. The Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal were properly served upon the Respondent on 05.23.24. Investigator Warner’s credible and undisputed testimony established that the Notice and Order were personally served upon the sole store employee – Gayathri Devi - present at the time of the inspection and that they were also conspicuously posted on the front door of the premises. Additionally, this service was further corroborated by Respondent’s attorney, when he submitted a sworn affirmation indicating that his client, 557 Convenience Corporation, was requesting a hearing to contest the Notice and Order. This hearing request referenced the inspection number listed on the Notice and Order served and posted by Investigator Warner on 05.23.24. Relative to Respondent’s counsel’s assertion that service was improper as the investigator neglected to check the previously referenced boxes, I find that the investigator’s credible testimony regarding the premise apparently being only a commercial establishment and her testimony regarding the de minimis issue negates the lack of the boxes being checked. Relative to Respondent’s counsel assertion that affirmation of service was

not in compliance with 138b section 10 requiring service within 5 days by certified mail, I find that (12 days) it is not fatal as service was successfully accomplished notwithstanding.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON 05.23.24 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: 07.24.24

Carl B. Stoll

Administrative Law Judge

PLEASE BE ADVISED: Either Party may appeal this decision within 30 calendar days of receipt, according to the specific manner described in Regulations at 9 NYCRR 133.25(k). This decision was sent via email on 07.24.24 to the following:

Lance Lazzaro, Esq.
Ruben Espinosa, Esq.
Nickolas Perry
Sheila Wagner