

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**

**Inspection No.: 11820240522002**

**97 Convenience Corp.  
d/b/a Hi Society  
97 2<sup>nd</sup> Ave.  
New York, NY 10003**

Respondent.

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Two inspections occurred at the premises located at 97 2<sup>nd</sup> Avenue, New York, NY, 1003. Inspection No. 118202405220002 took place on May 22, 2024 resulting in a Notice of Violation and Order to Seal. Inspection No. 118202405230004 took place on May 23, 2024 resulting in a Notice of Violation and Order to Seal.

Respondent requested a hearing under Inspection No. 115202405230004 (sic) regarding the inspection that occurred on May 23, 2024. The request was made more than seven (7) days after both inspections had occurred and thus did not fall under the emergency hearing mandated time limits.

Respondent submitted an Answer and Affirmative Defenses to the charges for caption Inspection No. 1182024052300004 (sic).

No written request was made by Respondent for a hearing under Inspection No. 118202405220002.

A hearing was conducted on July 8, 2024 regarding Inspection No. 118202405220002 that took place on May 22, 2024.

Marc Scolnick, Esq., represented Respondent and Respondent's appearance was waived for purposes of this hearing.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Raymond Caithathara under the supervision of Michael Waller, Esq.

Investigator Zachary Roubelakis testified on behalf of OCM.

Respondent chose not to consolidate the hearing to include both inspection numbers so a separate hearing request needed to be made by Respondent for the second inspection number. The parties did consent, however, to proceed with the hearing on July 8, 2024 and consented to Respondent’s Answer of July 5, 2024 being made part of the record for this hearing under Inspection No. 118202405220002.

### **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 97 2<sup>nd</sup> Ave, New York, New York 10003.

The scope of the emergency hearing was limited solely to the issue as to whether the padlocking provisions of Cannabis Law Article 6 § 138-b were met, by a preponderance of 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: 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 Zachary Roubelakis conducted an inspection of 97 Convenience Corp. d/b/a Hi Society. He testified that he received training at OCM in identifying and categorizing cannabis products. During the inspection of the location, he observed cannabis flower, concentrate and edibles. He also observed a cash register, a point-of-sale system, packaging, scales, processing equipment and a labeling machine. He also observed products containing a “CA” logo which is prohibited for sale in New York State. Investigator Roubelakis corroborated this testimony with photographs that he took at the time of the inspection. (Exhibits C1-12, and D1-6).

2. No part of the premises sealed appeared to be used lawfully as a residence. Investigator Roubelakis testified that he did not observe any evidence of a residence, including no bed, no shower, no dresser with clothing and a kitchen that was not being used. The location appeared to be solely commercial in nature. No evidence was offered by the Respondent to contradict these observations.

3. The unlicensed activity which warranted an order to seal constituted more than “de minimis” business activity. A large variety, and a substantial volume, of illicit products were discovered during the inspection at this location. Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. From the photographs entered as evidence during the hearing, and the testimony of the Investigator listing the items seized by OCM, it was clear that this location had a large variety and a substantial volume of illicit cannabis being offered for sale. (Exhibits C1-12 and D 1-6).

4. This unlicensed activity constituted an imminent threat to public health, safety, and welfare in that: there were offers to sell cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Exhibits C and D, as 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.

5. The Notice of Violation and Order to Seal were properly served upon the Respondent on May 22, 2024. (Exhibit A). An employee was present at the inception of the inspection but left the premises before the inspection was completed. Investigator Roubelakis conducted a second inspection of the premises on May 23, 2024 resulting in a second Notice of Violation and Order to Seal (Exhibit B). The Investigator’s credible and undisputed testimony established that each Notice and Order were properly served upon the Respondent and were conspicuously posted on the front door of the premises. This service was further corroborated by Respondent’s attorney when he submitted an OCM Administrative Hearing Request indicating that his client, store

owner 97 Convenience Corp, was requesting an emergency hearing to contest the Notice and Order in addition to the documents being mailed to Respondent by regular mail on July 1, 2024.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 11, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: July 11, 2024

*Elisabeth M. Colucci*

Elisabeth M. Colucci  
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, July 11, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Raymond Caithathara  
Michael Waller, Esq.  
Marc Scolnick, Esq.