

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. - 202202407170025

A & H Mini Mart Corp.

Respondent.

Respondent requested an emergency hearing on July 23, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on July 17, 2024

The emergency hearing was conducted on July 26, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was represented by Michael Walker, Esq.

The Office of Cannabis Management (hereinafter "OCM") was represented Raymond Caithathara under the supervision and observation of Michael Waller, Esq.

Investigative Specialist Bryant Paredes 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 279 Church St. New York, New York.

The scope of the emergency hearing was limited solely to the issue as to whether or not the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance of the evidence.

APPLICABLE 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 Paredes testified during the hearing that he has training and experience in identifying cannabis and hemp products and distinguishing them. He explained that he looks at the packaging to see if it depicts cannabis leaves or lists the THC strain, percentages or has any cannabis warning labels. When conducting an inspection Investigator Paredes said he also looks at the interior and exterior of the premises to determine if they have price lists, signage, menus for cannabis products, or a point of sales system. During the hearing Investigator Paredes testified that he observed the following illicit cannabis products on the premises during the inspection: edibles, pre rolls, vapes, THC concentrate, loose and packaged cannabis flower. (See Exhibit A, B and C).

2. Investigator Paredes testified that no part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance, no part was zoned and lawfully occupied as a "residence." He added that there was no kitchen, no shower and no dresser on the premises and that the property appeared commercial in nature.

3. The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part the business activity. The 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. A large variety and volume of illicit products were discovered at A and H Mini Mart Corp. A variety of brands were observed on display at the premises, including: Camino, Stiizy, To The Moon, TBD, Sugar High, Raw Garden, Sunset Sherbert, Sauce, Zaza, Runtz, Backwoods, Swappa Bowls, Fryd, Punch, Cresco, CBX, Puff LA, Moon Rock, and Sluggers. (Exhibit B and C) A variety of product types were observed including, but not limited to: sours edibles, regular edibles, sour gummy edibles, concentrate, THC beverages, live resin- crushed diamonds, indica live resin, pre-rolls, cannabis flower- bagged, disposable bowls, and cannabis flower- indica, hybrid, and sativa. (Exhibit B and C) Investigator Paredes stated that there was also a very large volume of product, which can be seen in C1, C13, and C14 as well as Exhibits B and C as a whole. Additionally, A and H Mini Mart’s interior contained signs and symbols advertising and indicating the sale of cannabis, specifically murals showing a woman preparing and smoking a joint. (Exhibit C14)

4. The 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. Additionally, unlicensed processing of cannabis products was transpiring on the premises. Exhibits C13 and B13 depict unlabeled loose flower. Investigator Paredes testified that many of the products had California warning labels, including: B2, B5, B6, B7, B14, B19, C4, C7, and C11. It was evident that unlicensed processing was transpiring at the location in that there was a large amount of loose flower seen in Exhibit C13, and there were packs of empty packaging seen in Exhibit C14. Given that there was unlicensed processing occurring at the premises, in addition to numerous cannabis products that were not labeled or tested in accordance with New York state law, the activity occurring at A and H Mini Mart Corp., constituted an imminent threat to public health, safety and welfare.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 17, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: August 1, 2024

Laurie Cartwright
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 August 1, 2024, to the following:

Nickolas Perry
Sheila Wagner
Raymond Caithathara
Michael Waller, Esq.
Michael Walker, Esq.