

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 111202407230006

**615 N MAIN CONVENIENCE, INC. D/B/A
615 SMOKE & VAPE**

Respondent.

Respondent requested a hearing to vacate an order to seal.

The hearing was conducted via WebEx on September 4, 2024, at 1 p.m. and on September 12, 2024 at 1 p.m.¹ The inspection was conducted on July 23, 2024 and an Order to Seal was issued the same day. OPP Ex. A.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Raymond Caithathara² under the supervision of Kevin Brown, Esq.

OCM Investigator Specialist 1 Scott Lustan testified on behalf of OCM.

The Respondent was represented by Marc Smith, Esq., Colucci & Gallaher P.C., Main Place Tower 800, 350 Main Street, Buffalo, New York 14202 (msmith@colucci-gallaher.com).

The Respondent did not call any witnesses or offer any exhibits.

The owner of the Respondent, Mohamed Al-Haj³, did not attend the hearing.

¹ The hearing was originally scheduled on August 28, 2024 but was re-scheduled to September 4, 2024.

² Mr. Cathathara is not yet admitted as an attorney.

³ Mr. Al-Haj’s address is 344 S. Shore Blvd, Lackawanna, New York 14218 (OCM Ex. D1) and his telephone number is 716 563-2838. Respondent’s counsel did not have an email address for Mr. Al-Haj.

ISSUE

The allegations set forth in the Notice of Violation (OPP Ex. A) assert 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 on July 23, 2024 at 615 Smoke & Vape (OPP Ex. B1), 615 North Main Street, Jamestown, New York. The legal name of the owner—as shown in the store’s Certificate of Authority (OCM Ex. B2)—is 615 N Main Convenience, Inc.⁴

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

APPLICABLE LAW

Cannabis Law §138-a provides, in relevant part, 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 § 138-b (1) provides for 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 §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

⁴ The Notice of Violation (OCM Ex. A) identifies the owner as “615 N Main Convenience Inc.”

(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 §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 §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 §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. The premises at 615 North Main Street, Jamestown, New York is owned by Respondent, 615 N. Main Convenience, Inc. and does business as 615 Smoke & Vape. See OCM Exs. A, B1. Mohammed Al-Haj is the owner of the Respondent.
2. The premises is not being used as a residence. At the time of the inspection, Investigator Lustan did not observe any beds, kitchen, dressers, or other signs indicating that someone lived in the premises. This is a commercial property.
3. Investigator Lustan testified that Respondent was not licensed to sell either adult-use cannabis or hemp. This testimony was not challenged.
4. Investigator Lustan received both on-the-job training and written training materials related to the identification of cannabis product
5. The unlicensed activity which warrants an order to seal constitutes more than a “*de minimis*” part of the business activity at the premises. Cannabis Law § 138-b (7) and OCM Regulations 133.25(f)(3) identify the factors that may be considered in determining if unlicensed activity occurring within a respondent’s premises is more than *de minimis*. The factors for determining whether the unlicensed activity is *de minimis* are set forth above.

During the inspection of the Respondent’s premises, Investigator Lustan found a large volume and large variety of cannabis products⁵. These products included cannabis vape pens (OCM Ex. B4), cannabis flower (B5, B9), THC-A cartridges (B6, C8, C12), gummies (B7), pre-rolls (B10, C4, C9 C10), concentrate (C4) and extract with 40%-60% THC-A (C5).

A cash register (OCM Ex. B16), a credit card reader (B15), and a manifest of products (B12) were observed by Investigator Lustan during the inspection. The manifest shows both adult-use cannabis products and hemp products that were available in the store.

Based on the totality of this testimony and the exhibits, I find that OCM met its burden of establishing that the sales of cannabis or offers to sell cannabis products were more than a *de minimis* part of the business activity on the premises.

6. A number of the products identified by Investigator Lustan as cannabis were not properly labelled. Several of the products in the premises had California—and not New York—labels. OCM Exs. B4, B5, B8. As Investigator Lustan testified, it is not legal to sell the California-labelled products in New York. In addition, the Respondent’s store was located in proximity to a place of worship and a school (OCM Exs, B13, B14). Based upon the presence of cannabis

⁵ Investigator Lustan testified that the THC percentage in a product is calculated according to the following formula: (CBD % + THC-A%) X .877. Anything above .03% is classified as adult-use cannabis.

products in the premises which were not properly labelled and the proximity of the store to a place of worship and a school, I find that OCM established an imminent threat to public health, safety, and welfare.

7. The Respondent's owner, Mohamed Al-Haj, a person of suitable age and discretion (OCM Ex. D1), was provided with a copy of the Notice of Violation and Sealing Order (OCM Ex. A). Investigator Lustan conspicuously posted a copy of the Notice of Violation and Sealing Order on the front door of the premises. OCM Ex. D3. At the time of the inspection on July 23, 2024, Mr. Al-Haj identified himself as an employee of the premises. He had possession of the keys to the store.

WHEREFORE, PURSUANT TO CANNABIS LAW §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 23, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: September 14, 2024

Paul Perlman

Paul Perlman
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 September 16, 2024, to the following:

Raymond Caithathara (Raymond.Caithathara@ocm.ny.gov)
Kevin Brown Esq. (Kevin.Brown@ocm.ny.gov)
Marc Smith, Esq. (msmith@colucci-gallaher.com)
OCM Hearings Bureau (administration.hearings@ocm.ny.gov)
Nickolas Perry
Sheila Wagner