

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. 103202407160031

C7 Awsm LLC

Respondent.

Respondent requested an emergency hearing on July 19, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on July 16, 2024.

The emergency hearing was conducted on July 24, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by Jacqueline Kafedjian, Esq.

Adeeb Alsaedi and Isiah Rodriguez testified on behalf of the Respondent.

The Office of Cannabis Management (hereinafter "OCM") was represented by Student Intern Trent Biscone under the supervision of Michael Waller, Esq.

Investigator Danielle Newell 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 326 (a/k/a 329) Sixth Avenue, New York, NY.

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.

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 Newell credibly testified and provided photographic evidence which established that at the time of the inspection, she observed a large quantity and variety of cannabis edibles, cannabis flower, cannabis pre-rolls, and cannabis concentrate (Exh B 1-17, 27, 30-40, Exh C 1-51, 53-61). It is significant that the Respondent admitted that the location was a dispensary and that Investigator Newell testified that no other products were offered for sale except cannabis products. There were a total of three price lists posted on the wall which indicated the prices of various quantities of cannabis flower offered for sale as well as flyers located throughout the store which listed “Concentrates, Pre-rolls, Flowers, Edibles, Vapes, \$20.00 EIGHTHS, \$10.00 PREROLLS” (Exh B 7, 20, 29, 40). The majority of the products contained prices which indicated that they were offered for sale and Investigator Newell testified and provided photographic evidence of a point-of-sale system (Exh B 18, 21). As such, I find that the evidence establishes that cannabis products were offered for sale at the location.

2. According to the credible testimony of Investigator Newell, no part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance, is zoned and lawfully occupied as a “residence.”

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. Cannabis Law Article 6 § 138-b (7) and OCM Regulations 9 NYCRR Part 133.25 (f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. Both a large variety, as well as a substantial volume of illicit cannabis products, were discovered during the inspection of this location. Many of the products were labeled with the California cannabis label which Investigator Newell testified is not legal in New York State and none of the products contained the New York Label (Exh B 31, 35-40, Exh C 5-10, 13, 21, 27-31, 33, 37-40, 43-48, 50-51). I find that the volume of cannabis products in the store constitutes more than a de minimis part of the business activity.

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. As testified to by Investigator Newell, many of the illicit cannabis products were labeled with the California logo and none were labeled with the New York State logo, both of which are in violation of New York State law.

5. Respondent’s attorney contends that service upon the Respondent was deficient and not in accordance with Cannabis Law Article 6 § 138-b. First, Respondent’s attorney contends that the NOV/Order to Cease Unlicensed Activity/Order to Seal listed the business name and address incorrectly, specifically identifying it as G + G Atlantic/Ascension located at 326 Sixth Ave, NY, NY. Respondent offered into evidence the NYS Department of State Division of Corporations Entity Information webpage which indicated the entity name as C7 AWSM LLC, a statement from the IRS addressed to C7 AWSM LLC located at 329 Avenue of the Americas, and a ConEdison Bill reflecting charges for the business C7 AWSM LLC located at 329 6th Ave (Exhs 2-4). Investigator Newell credibly testified that she was given a list of locations to inspect and one such business was “Ascension” with a corresponding address of 326 Sixth Ave, NY, NY. She testified that she put the address into Apple maps on her phone and arrived at the Respondent’s location. Notably, the location did not have any indication of the numeric address posted on the front of the location or a mailbox indicating the number. Furthermore, a sandwich board style sign with the name “Ascension” below the depiction of a cannabis leaf was located in front of the shop with flyers inside that matched the name and logo on the sign (Exh B 20, 29, Exh D). In addition, when shown a picture of the inside of the store taken from the front door, the Respondent identified the location as his store (Exh C 1). Therefore, irrespective of the ambiguity regarding whether it was 326 or 329 Sixth Ave as well as the entity name, I find that Investigator Newell completed the NOV/Order to Cease Unlicensed Activity/Order to Seal with the information which was consistent with what she was provided regarding the subject shop. In furtherance of her position that service was defective, Respondent’s attorney contends that a copy of the NOV/Order to Cease Unlicensed Activity/Order to Seal was not physically served upon the person in charge of the location but rather was put next to the register after Isiah Rodriguez, who identified himself as a salesclerk and was present at the time of the inspection,

had left the shop. Both Isiah Rodriguez and Investigator Newell testified that at the conclusion of the inspection, Investigator Newell asked for the name and phone number of the owner however Mr. Rodriguez refused to provide it. Furthermore, both of their testimonies were consistent that Mr. Rodriguez refused to sign the documents presented to him. According to Mr. Rodriguez, he asked if he was required to remain at the premises and when the Investigator told him that he was not, he left the shop. As he refused to sign the documents or take possession of the documents, Investigator Newell placed them by the register (Exh A 5). I find that personal service was properly attempted however Mr. Rodriguez's refusal to accept the documents was the reason that he was not personally handed the documents. At a minimum, he could have refused to sign but taken the documents to provide them to the owner. In addition, a copy of the NOV/Order to Cease Unlicensed Activity/Order to Seal was also posted on the outside of the storefront (Exh A 2-3). Respondent's attorney argues that the document was not visible through the pull down metal door, however Respondent provided a picture of the posted document taken through the opening on the door (Exh 1). As Respondent successfully requested an emergency hearing within the appropriate timeframe and was granted a hearing within three days of that request, I find that service was not defective.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 16, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: July 26, 2024

Karen Lavery
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 26, 2024 to the following:

Nickolas Perry
Sheila Wagner
Jacqueline Kafedjian, Esq.
Trent Biscone
Michael Waller, Esq.