

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

Castle Gift Shop Corp.

Respondent.

DECISION

Inspection No. 102202406260019

Respondent requested an emergency hearing June 27, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on June 26, 2024.

The emergency hearing was conducted on July 2, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by Nadia Kahnauth, Esq.

Yousef Hadi testified on behalf of the Respondent.

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

Investigative Specialist Bladimir Nunez 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 183 7th Avenue, Brooklyn.

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 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 (Exh A). Investigator Nunez testified that while conducting the inspection at Castle Gift Shop Corp., he observed THC edibles, THC drinks, hemp pre-rolls, and Delta 8 edibles (Exh A). Respondent was in possession of a Cannabinoid Hemp Retail License issued by NYS OCM but testified that he was not in possession of a license to sell cannabis (Exh B 3). Investigator Nunez provided testimony and photographic evidence which established that some of the packaged cannabis products found at the location were branded with the California warning label which is not legally authorized to be sold in New York State (Exh C 8, 14, 15). Investigator Nunez also provided testimony and photographic evidence of his observation of numerous products which contained THC and Delta 9 products at a level which was not legally permissible to sell irrespective of possession of a Hemp License as well as Delta 8 products (Exh C 5-22). It is significant that the invoices produced by the Respondent himself identify numerous products which substantiate both the Delta 8 products as well as the products with an impermissible THC level in many of the CBD products purchased by Respondent and subsequently offered for sale (Exhs 2-17). Investigator Nunez also provided testimony and photographic evidence of a cash

register and point of sale system which he indicated is further evidence of cannabis being sold at the location (Exh C 23-25).

2. Investigator Nunez testified that 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. 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. During the hearing, testimony and photographic evidence was presented of both the outside and inside of the location, which indicated that cannabis was being sold at the premises. The sticker on the outside which of the door depicted a cannabis leaf as well as a posters on the interior containing cannabis leaves and another entitled “HOW IS THC MADE” (Exhs C 2-4). Investigator Nunez credibly testified that there was a large variety and volume of cannabis containing products which exceeded the THC level permissible to sell without a license to sell cannabis issued by OCM (Exh C 5-12).

Respondent’s attorney contends that service on the location was improper as service was effectuated on a person under 18 years old as well as the lack of evidence of mailing the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal. Respondent testified that he had no employees however subsequently testified that his nephew was working at the shop at the time of the inspection and received remuneration of some kind for his time working. Investigator Nunez testified that the individual upon which the documents were served was the only person working at the time of the inspection. As such, I find that personal service was effectuated at the time of the inspection. Furthermore, photographic evidence and testimony were provided which established that the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was posted on the outside of storefront (Exh C 3). While no evidence was presented as to the mailing of the document, Respondent’s attorney’s timely request for, and granting of the emergency hearing, establishes that service was effectuated and significantly no evidence was presented that Respondent was in any way prejudiced as a result of any service issue.

Respondent’s attorney also argues that if Respondent was in violation of the Cannabis Law as to the products offered for sale, it was based upon a misunderstanding and not an intentional action. I find it significant that Respondent testified that he relied upon the vendors’ advice that the products purchased were legally permissible in accordance with his NYS issued Hemp License. Even accepting as true that Respondent was not aware that many of the products offered for sale contained THC which was over the permissible limit, I note that it was the Respondent’s responsibility to ensure that all the products purchased and offered for sale were in accordance with the NYS laws and regulations as they pertain to his Hemp License, and his attempt to shift that responsibility to the vendors supplying the products, is rejected as self-serving.

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 not tested or labeled

lawfully in accordance with Cannabis Law Article 6. Many of the products were labeled with the California label which is not legally permissible to be sold in New York State and a large volume of the products offered for sale at the location which were held out as CBD products contained more than the permissible amount of THC as well as Delta 8 products.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 26, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: July 3, 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 3, 2024 to the following:

Nickolas Perry
Sheila Wagner
Trent Biscone
Ruben Espinosa, Esq.
Nadia Kahnauth, Esq.