

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 202202408130033

CLOUD EMPIRE SHOP 2 CORPORATION

Respondent.

Respondent requested a hearing which was held on October 3, 2024.

The Respondent was represented by Jacqueline Kafedjian, Esq.

Radfan Nagi testified on behalf of the Respondent.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Luwick Francois, 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 1708 Sunrise Hwy, Unit 4, Copiague, New York, 11726.

The scope of the 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.

Should either party file a request for an additional hearing to adjudicate the sufficiency of the Notice of Violation and the Order to Cease Unlicensed Activity, that hearing will be scheduled for a later date.

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)(2) requires any sealing order be served to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection. The sealing order must also be posted at the building or premises that was sealed, secured, or closed. Additionally, “a copy of the sealing order shall also be mailed to any address for the owner of the business *at any address provided by the person to whom such order was delivered...*” (emphasis added).

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 according to the credible testimony of Investigator Paredes. At the time of the inspection, he observed cannabis flower, cannabis concentrate, cannabis edibles, and cannabis pre-rolls (Pet Exh B 12-18, Pet Exh C 1-10, 14). The location had three back rooms, one of which had shelves which were concealing other shelves behind them on which were located two bags of loose cannabis flower (Pet Exh B 21, Pet Exh C 1). While Respondent contends that the flower consisted of a mixture of CBD and Delta 8 flower and was his personal supply for his own consumption, Investigator Paredes testified that each bag is labeled with a strain of cannabis flower with which he is familiar based upon his training and experience. The Respondent testified that the two bags were located in this hidden area because they were his and he did not

want anyone to know about them. This contention lacks credibility based upon the double locked cabinet in another one of the rooms which had both a combination and a key lock where he could have easily stored the loose flower rather than hiding it behind the bookcases (Pet Exh C 5, 9). The locked cabinet contained two shelves on which numerous large jars of cannabis pre-rolls were located (Pet Exh C 5, 9). Adjacent to that cabinet were two plastic cabinets, both of which appeared to contain five or six drawers per cabinet (Pet Exh C3). According to the testimony of Investigator Paredes, each drawer contained packages of cannabis products, specifically cannabis flower, concentrate, and edibles as well as cannabis products on top of the cabinets (Pet Exh B 12-18, Pet Exh C 2-4, 6, 7-8). One of the rooms contained two large bins which contained packages of cannabis flower (Pet Exh C10). Investigator Paredes also observed a table with a rolling tray and a scale with what he described as cannabis flower residue on the tray as well as a large number of empty bags which indicated that processing of cannabis was occurring at the shop (Pet Exh B 11, 19, 21). In addition, photographic evidence was admitted into evidence showing a cash register and a card reader, both indicative of sales of unlicensed cannabis at the site (Pet Exh B 4-5).

2. According to the credible testimony of Investigator Paredes, 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.” Respondent offered no testimony to refute this testimony.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part of the business activity. 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 were introduced into evidence which indicated that cannabis was being offered for sale at the location. Murals of cartoon figures appearing to be consuming cannabis or having consumed cannabis were located on walls inside the shop (Pet Exh B 1, 9) as well as cannabis leaf images located on the walls and ceiling (Pet Exh B 1, 7, 8) and an inflatable “joint” hanging from the ceiling (Pet Exh B 8). Two other indicators to be considered when making a determination as to whether the unlicensed activity constituted more than a de minimis portion of the business activity at the location are variety and volume of cannabis products. Based upon both the testimony of Investigator Paredes as well as the photographs entered into evidence at the hearing which depicted the cannabis products seized, it was clearly demonstrated by a preponderance of the evidence that this location had a large variety and a substantial volume of illicit cannabis products being offered for sale (Pet Exh B 12-18, Pet Exh C 1-10, 14).

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 labeled lawfully in accordance with Cannabis Law Article 6. The Investigator testified and provided photographs which established that many of the cannabis products contained labels indicating that they were products from California or other states outside New York, which he testified were not legally permissible to sell in New York State (Pet Exh B 13-15, Pet Exh C 3-4, 6, 10). Most of the illicit cannabis products were affixed with price tags indicating that they were offered for sale (Pet Exh B 12-13, 15,17-18, Pet Exh C 2-4, 7, 10). Investigator Paredes also testified that many of the cannabis products were brightly colored, contained holographic labels, and contained cartoonish looking figures, all of which can be considered to be appealing to

children and in violation of New York State Law (Pet Exh B 11-12, 14-16, 18, 20, Pet Exh C 2-10). In addition, the table containing the rolling tray with what Investigator Paredes identified as cannabis flower residue in conjunction with the large number of empty bags indicated that processing of illicit cannabis was occurring at the location.

5. The Notice of Violation and Order/Order to Cease Unlicensed Activity/Order to Seal were properly served upon the Respondent on August 13, 2024. Investigator Paredes testified that at the time of the inspection, the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was personally served upon the person who identified himself as an employee of the shop and was later identified by the shop owner as the manager. Investigator Paredes credibly testified that he personally handed the documents to the manager with the directive to give them to the owner and the manager accepted them. I also note that the shop manager was a potential witness who appeared at the hearing however Respondent's attorney elected not to call him as a witness. As the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was personally served on the store manager and also conspicuously posted on the front door of the premises (Pet Exh D 1-2), no further action is required by the statute unless the shop owner's address is provided to the inspector at the time of the inspection which in this case there is no evidence to establish. Therefore, I find that service was properly effectuated in accordance with Cannabis Law Article 6 §138(b)(2).

6. Respondent testified that he was in possession of a Cannabinoid Hemp Retail License issued by OCM. He testified that the cannabis products found in the back rooms in his shop were not cannabis but rather Delta 8 products which he removed from the shelves and moved to the back area after learning approximately one to one and a half years ago that they were no longer legally permissible to sell under the guidelines of his Hemp License. He further testified that he had purchased these products in reliance on the vendor who advised him at the time that they were legal to sell in accordance with his Hemp License. The Respondent testified that he was trying to obtain a refund from the vendor for over a year however the vendor continued to make excuses and told him to hold onto them. Respondent's testimony is rejected for several reasons. Investigator Paredes testified that based upon the packaging, these products were cannabis products and not Delta 8 products. Furthermore, the majority of the products were affixed with price tags and the drawers that they were stored in were labeled with the contents of each drawer (Pet Exh C 3-4). The two bins containing the packaged bags of cannabis flower were located on the floor, contained price tags, and all the products were easily accessible. If Respondent was storing the products in the back and was aware that they were in violation of his Hemp License, it would be reasonable to expect that these products would be bagged together and stored in a location which no one could access as he had a large double locked cabinet in one of the back rooms. As such, I reject his testimony and find that he was offering the cannabis products for sale. Furthermore, Respondent testified that the reason he was in possession of the cannabis products which he referred to as Delta 8 products was due to his reliance on the advice of his vendor. If Respondent was in possession of a valid Hemp License at the time of the inspection, it was solely his responsibility to ensure that the products he purchased and offered for sale were in compliance with his Hemp License. His attempt to reject this responsibility is rejected as self-serving and lacking credibility.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON AUGUST 13, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: October 7, 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 October 7, 2024, to the following:

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.

Luwick Francois, Esq.

Jacqueline Kafedjian, Esq.