

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

**Omar Hidais
360 Garden Delight
360 W.42nd Street
New York, NY**

DECISION

Inspection No. 115202405230003

Respondent.

Respondent requested an emergency hearing on May 28, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on May 23, 2024.

The emergency hearing was conducted on May 31, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was represented by Nadia Kahnauth.

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

Investigator Specialist James Lawson 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 360 W. 42nd Street 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 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. (Exhibit A). Investigator Lawson testified that as an OCM investigator, he has training and experience in identifying cannabis, cannabis products, and the distinction between cannabis and hemp. He also explained that he has hands on training identifying edibles, concentrate, and "flower." He also testified that he has conducted over 100 regulatory inspections while employed by OCM. He stated that while conducting the inspection at 360 Garden Delight, he observed THC flower pre-rolls, three cannisters of loose flower which resembled the flower in packages labeled with California warning stickers, and Delta 9 THC edibles (Exhibit B). While Respondent argued that at least some of the products observed during the inspection were allegedly permissible THC A products, Investigator Lawson testified that they were prohibited. Respondent did not put forth evidence to contradict that testimony, nor did Respondent put forth evidence that if the THC A products were deemed permissible, only a de minimis quantity of products in the business would be illicit.

2. According to the testimony of Investigator Lawson, no part of the premises to be sealed was used in part as a residence or pursuant to local law or ordinance, was 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 Exhibit B was admitted into evidence. Exhibit B depicted multiple signs on the interior and exterior of the premises, which are visible to passersby from the exterior of the store, which indicated that cannabis was being sold at the premises (Exhibit B-page 6). 360 Garden Delight had a sign depicting a cannabis leaf. Additionally, Investigator Lawson testified that the molecule sign inside the store, was a cannabis molecule sign. There was a large variety and volume of cannabis products ranging from a variety of brands of flower, pre-rolls, and edibles.

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. Exhibit C (pages 4, 5, 7, 13-15), depicted various products that were not labeled lawfully in accordance with Cannabis Law Article 6 or that were labeled improperly with the California warning label.

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

Dated: June 6, 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 June 6, 2024, to the following:

Nickolas Perry
Sheila Wagner
Trent Biscone
Reuben Espinosa
Nadia Kahnauth