

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**  
**Inspection No. 003202406270002**

**670 Main LLC/ Main Street Mini Mart**

Respondent.

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Respondent requested an emergency hearing on July 2, 2024, was made within seven (7) calendar days of the date of the inspection which occurred on June 27, 2024.

The emergency hearing was conducted on July 8, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was represented by Jacqueline Kafedjian, Esq.

The Respondent, Jamal Saleh testified on behalf of himself.

The Office of Cannabis Management (hereinafter "OCM") was represented by Zach Hirschfeld under the observation and supervision of Reuben Espinosa, Esq.

The Assistant Director for Enforcement in the Buffalo Office of OCM, Mark La Monte 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 670 S. Main Street Central Square, NY 13036.

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. Assistant Director LaMonte testified that prior to his employment at OCM, he had worked for the Department of Homeland Security for 30 years. He explained that in that role at DHS he conducted regulatory inspections. In his current role, he is in charge of the Enforcement Division out of the Buffalo office of OCM and has training in identifying adult use cannabis and illicit hemp products. He explained that when identifying illicit products he looks for unregulated packaging, as well as all hemp products that are great than .3% Delta 9 THC or that contain Delta 8 THC, Delta 10 THC, HHC, or THCA. Assistant Director LaMonte testified that during his regulatory inspection of 670 Main LLC he found illicit cannabis and illicit hemp products offered for sale. He stated that the first two shelves featured in page 1 of Exhibit B were filled

with illicit cannabis and illicit hemp, and that the store was selling cannabis edibles, resin, flower, concentrate, and vapes. He also added that during the regulatory inspection untaxed cigarettes and cannabis were found in hidden compartments (see Exhibit C, pages 1, 3, and 5-7.)

2. No part of the premises sealed were used in part as a residence and pursuant to local law or ordinance, were zoned and lawfully occupied as a “residence.” Assistant Director LaMonte testified that the premises was not being used as a residence. He added that he asked the store clerk if there was anyone living on the premises and he was told, no.

3. The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part of 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. A large variety and volume of illicit products were offered for sale at 670 Main LLC. Exhibit B and Exhibit C depict a large number of items such as flower, edibles, resin and vapes being sold by different brands in various strains and flavors. The edibles featured in Exhibit B, included an assortment of knock off cereal brands that would have readily appealed to children.

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. Assistant Director LaMonte testified that many of the packages and items offered for sale were not labeled in accordance with New York State Law or OCM Regulations. Many of the products contained California warning labels, and some items such as bags or containers of loose flower, did not contain any warning labels (See Exhibit B pages 4-8, Exhibit C pages 1-9). The Respondent, Mr. Saleh, testified during the hearing that he owns two businesses, 670 Main LLC and a grocery store and deli. He explained that he had not spent a lot of time at 670 Main LLC since opening, and he essentially didn’t know what was going on there until he got a call regarding the inspection. Mr. Saleh stated that prior to the inspection, he didn’t know there were cannabis products in the store and that he had since removed everything that was illicit. While it is understandable that Mr. Saleh may be overwhelmed with responsibility and spread thin at this time, it is not an excuse. There was a large quantity of illicit items found during this inspection, including multiple products in vents and trapped compartments. Mr. Saleh did not deny this. The nature of the compartments and hiding spots makes it evident that Mr. Saleh and or his employees, whose actions he is responsible for, had knowingly and intentionally participated in the sale of illicit cannabis. This was not a mere accident or error.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 27, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: July 12, 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 July 12, 2024, to the following:

Nickolas Perry

Sheila Wagner

Zachary Hirschfeld

Ruben Espinosa, Esq.

Jacqueline Kafedjian, Esq.