

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

MO'S FOOD MART Inc.

Respondent.

DECISION
Inspection No.: 10320240604003

Respondent requested an emergency hearing on June 5, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on June 4, 2024.

The emergency hearing was conducted on August 28, 2024, as the hearing was adjourned based on a desire by the parties to discuss settlement.

The Respondent was represented by Matthew Swedick, Esq.

Deochand Bajjoo testified on behalf of the Respondent.

The Office of Cannabis Management (hereinafter "OCM") was represented by Ruben Espinosa, Esq.

Investigative Specialist 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 1575 Becker St. Schenectady, New York 12304.

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.

The Respondent's attorney did not raise the issue of improper service during this hearing. Petitioner stated that the clerk at the premises during the inspection, Ahmed Hassan, stated that he would give the paperwork to the owner. Mr. Hassan stated that he did not know the address or phone number of the owner. The Notice of Violation and Order to Seal were also affixed to the window of the premises. (Exhibit D3).

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(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. During the course of this hearing, Investigator Danielle Newell testified that she has training and experience in identifying cannabis and cannabis products. She explained that based on her field training, in attempting to identify cannabis products, she looks for cannabis warning labels, products that self-identify as cannabis, and other indicators. In deciding whether a premises is offering cannabis for sale, she looks to whether they are marketing cannabis products and whether they have signage inside or outside such as a cannabis leaves or neon signs advertising cannabis. She explained that during her inspection of Mo's Food Mart Inc., she observed numerous displays of cannabis in the form of rolling trays which covered the ceiling of the

premises. (Exhibit B-3) She also took pictures of a variety of cannabis products, specifically vape cartridges, live resin concentrate, cannabis flower, and edibles. (Exhibit B and Exhibit C). Respondent's witness, Deochand Baijoo acknowledged the presence of cannabis on the premises on June 4, 2024.

2. Investigator Newell testified that no part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance no part was zoned and lawfully occupied as a "residence." She stated that she did not observe a kitchen, dresser with clothing, shower or other hallmarks of a residence, on the premises.

3. The unlicensed activity which warrants an order to seal constitutes more than a "de minimis" part the business activity. In determining that the activity on the premises was more than de minimis, I find that the store's overall posture was one of a cannabis store. Cannabis Law Article 6 §138-b (7) states that in assessing whether the business activity is de minimis, one shall consider, "the presence of signs and symbols indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises." The exterior of this business has a sign that says Mos Food Market Deli and Grocery: Fresh Food, Vegetable, Snacks, Frozen Food, Phone Cards and More, and yet the ceiling of the premises is covered in rolling trays featuring cartoons and cannabis related imagery. (Exhibit B1- B3). There is a large inflatable Raw brand joint attached to the ceiling. All of these signs indicate, upon entering the premises that the sale of cannabis is not a mere afterthought or aside to the owner's otherwise thriving grocery business. The cannabis business is what is being marketed at these premises. While I do not find that there was a significant volume of cannabis at hand, there was a sizable variety, particularly in light of the small volume. (Cannabis Law Article 6 §138-b(7)). Mo's Food Mart Inc., carried: a Mad Lab Vape Cartridge with strawberry imagery, Stiiizy Cannabis Concentrate in Indica White Runts, Cannabis Flower with Peter Griffin sitting on the toilet, and an assortment of edibles including, two varieties of Puff LA, Munchies, a Butterfinger knock off, To the Moon, Rocket Resin in Mango, Twix. There were also other products including Donuts by Fryd Extracts, Ghost Knockout Indica Fire OG Vape Oil at 98% THC, Flower Central Exotics, and approximately 14 pre-rolls. Mr. Baijoo testified that 90-95% of the business was non-cannabis related items such as food and toiletries, however given the internal advertising geared almost solely towards cannabis, in addition to the external advertising, which only promoted soda, energy drinks, Raw and Backwoods products, that account seems fairly incredible. This is particularly unbelievable, in light of the fact that though the business was entitled "deli and grocery," it did not seem to offer many typical deli or grocery items.

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. Additionally, there were strong indications that unlicensed processing of cannabis products was transpiring on the premises. Exhibits B7, B8, B9, B11, and C1 contain photographs of products which are labeled with the California cannabis warning label. C5 contains a picture of unlabeled pre-rolls, which were filled from an unknown source of cannabis. Exhibit C7 contains a photograph featuring at least 7 groups of empty cannabis packaging, which in conjunction with C3, C4, and C5 indicate that unlicensed processing of cannabis products was occurring on the premises.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 4, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: September 4, 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 September 4, 2024, to the following:

Nickolas Perry

Sheila Wagner

Ruben Espinosa, Esq.

Matthew Swedick, Esq.