

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 109202408300007

Mosa's on Market

Respondent.

Respondent requested a hearing without an Order to Seal, on September 3, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred August 30, 2024. Despite the form of Respondent's request, an Order to Seal was in fact issued.

The hearing was conducted on three separate dates: September 9, September 16, and September 19, 2024.

The Respondent represented himself.

Dylan Jenzen and Hiram Gross testified on behalf of the Respondent. The Respondent also testified on his own behalf.

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

Investigative Specialist Daniel Gregory and Sergeant Investigator Zackary Alger of the City of Corning Police Department 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 31 East Market St. Corning, New York 14830.

The scope of the hearing was limited solely to the issue as to whether or not the padlocking provisions of Cannabis Law Article 6 §138-b have been met by a preponderance of the evidence.

An atypical issue was raised during this proceeding that must be addressed. Mr. Taylor's contention is that Mosa's on Market is leased, operated, and completely separated from a nameless entity located upstairs at the same address and owned by Mr. Jenzen. For clarity, I will address this issue at this time.

There is no dispute that there are two separate rentable spaces at 31 East Market St., which all parties agree is owned by Mr. Taylor's girlfriend, Jamie Pace. The bottom unit, Suite 1, is rented and occupied by Mr. Taylor, and the top unit, Suite 2, is rented and occupied by Mr. Jenzen. Each Suite is accessible through an independent exterior door or doors. One cannot access the Suites from inside one another. During the course of the hearing, Sergeant Investigator Alger testified that his department obtained a search warrant for the entirety of 31 East Market St., and subsequently executed that search warrant in conjunction with OCM's regulatory inspection on August 30, 2024. Sergeant Investigator Alger testified that the basis for the search warrant for the entirety of the location was that on multiple occasions, undercover officers entered Suite 1 of the location and were met by Mr. Dylan Jenzen. They stated that Mr. Jenzen offered to sell them cannabis products and led them upstairs where money was exchanged in return for those products. Both Mr. Jenzen and Mr. Taylor assert that Mr. Jenzen is not an employee of Mosa's on Market, located in Suite 1 of the location. Mr. Taylor and Mr. Jenzen provided testimony alleging that no cannabis was sold from Mosa's on Market, that Mr. Jenzen was never behind the register at Mosa's on Market, and that the only products being sold out of Mosa's on Market were glass, art, empty Jinkies' bags, and perhaps t-shirts. Mr. Taylor also testified that he has security cameras on the premises and leaves his store open, essentially operating on an honor system.

I found the testimony of Sergeant Investigator Alger regarding sales to undercover officers, at the location, to be both credible and probative. Thus, the question at hand is where Mr. Jenzen's offers to sell cannabis to Corning undercover officers began or occurred. It is well settled law that convictions for illicit drugs sales have rested on an "offer to sell" theory, as long as the offer is made by someone with both the intent and ability to proceed with the sale. (*See People v. Samuels*, 99 N.Y.2d 20, 780 N.E.2d 513 (2002)). While cannabis is no longer criminalized, this rule is valuable in assessing where a sale occurred or began. It is also noteworthy that the Cannabis Law prescribes penalties for offers to sell unlicensed cannabis. (Cannabis Law §132.) It is evident from the testimony by Sergeant Investigator Alger, that Mr. Jenzen was using Mosa's on Market, on at least some occasions, in order to solicit customers. The offers to sell occurred at Mosa's on Market, and thus the sale occurred on those premises. This alone would be sufficient to find that Mosa's was the originating source of the sales of illicit cannabis. Though Mr. Taylor and Mr. Jenzen denied that any offers to sell or sales occurred at Mosa's on Market, I do not find their testimony on those points persuasive. Mr. Taylor, stated that he got bored of being at Mosa's on Market and that he was not regularly at the store. For that reason, he added, he left the doors of the store open during business hours. There was also a consensus by Mr. Taylor, Mr. Jenzen, and Mr. Gross that Mr. Jenzen had access to Mosa's on Market so that he could walk through to use the restroom in

the basement. Mr. Taylor stated that he was able to essentially run his store remotely because he had security cameras. If those security cameras were working, and Mr. Taylor was supervising his store, he would have easily been able to observe Mr. Jenzen behind the counter on the multiple occasions in which Corning undercover officers visited his store. Even if I did not find that Mr. Taylor was aware of the sales occurring at his business, he should have known, and was responsible for knowing, what was transpiring on his premises. However, the evidence presented during this case shows not only that he knew, but also that he was profiting from those sales.

Exhibit B17-20 shows a rudimentary ledger received from Mr. Jenzen's store. In this ledger are multiple notations describing transactions. Exhibit B17 states "[illegible] to Dylan"; Exhibit B18 states "950 to mosa, 950 total end, 0 change"; Exhibit B19 states "350 to mosa, 400 to brenda, 775 total end, 25 change." Mr. Jenzen contends that these references are to the strain of cannabis named mosa. However, given the fact that the words both Dylan and Brenda are featured in similar notes, it is hard to believe that these references are to giving 350 and 950 to the strain "Mosa" as opposed to the business-mosa. Additionally, while testifying regarding the strain of Mosa in the weed community, Mr. Jenzen slipped and stated that he didn't think mosa referred to anything other than the strain, "I just know...in the weed community...they have Mimosa, they have Mosa Punch like **we have**, like I have." It is also noteworthy, that Mr. Jenzen's store is set up with display cases, and displays, despite not having a storefront, signage, or any other way to bring in business from the street. Mr. Jenzen alleged that he was a mere cannabis connoisseur, however there was little evidence presented to explain why an individual that was so hard on their luck that at one point they were living in a storage unit, would have an elaborate store like arrangement in said storage unit simply to celebrate their reverence for cannabis. Additionally, Exhibit B14 features a menu offering cannabis products for sale; this is a clear indication that Suite 2 wasn't simply being used for cannabis appreciation. For all of the reasons above, I find that Mr. Jenzen and Mr. Taylor had an agreement of some sort for Mr. Jenzen to offer to sell cannabis to customers entering Mr. Taylor's store, and Mr. Taylor profited from that agreement. As such, the items recovered from Suite 2 can be imputed to Mr. Taylor and Mosa's on Market.

There were no issues with service or notice raised in the case. Investigator Gregory stated that he encountered Mr. Jenzen during the inspection, and that Mr. Jenzen failed to provide the personal address of Mr. Taylor. He testified that the Notice of Violation and Order to Seal (Exhibit D3) were on the door when he left the premises, and that the Corning Police Department has since informed OCM that the premises have been forcibly reopened. It should be noted that there were multiple outbursts during the hearing by Mr. Taylor who stated that he only believes in following "God's Law" and "I'm going to do what I want to do."

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. Sergeant Investigator Alger testified that he had over a decade of experience as an officer, and that he has conducted hundreds or thousands of narcotic and drug investigations. Investigator Gregory explained that he has some training and experience in identifying cannabis. He added that he had reviewed handouts, videos and had on the job training in identifying different cannabis products such as concentrates, flowers and edibles. He also stated that there has been an increase in businesses keeping cannabis products behind the counter or in other locations, and as such other agencies were doing controlled buys prior to OCM's regulatory inspection. Investigator Gregory stated that he was aware of Corning Police Department's controlled buy activity at the location, and that his inspection occurred after they had entered pursuant to a search warrant. Investigator Gregory testified during this proceeding that 6.5 pounds of cannabis flower and 9.5 pounds of concentrates and edibles, collectively, were recovered from the premises. He stated that no license was held for 31 East Market St., for either cannabis or hemp. He explained that the following illicit cannabis products were found at the location: cannabis flower in bags were located on the stairs down to the basement of the store (Exhibit B8 and what also appears to be Exhibit C3). He added that the majority of the cannabis products found were located upstairs at the location, those products include: Jupiter Juice (Exhibit B10); Death Bar Smores by First Class (Exhibit B11); Zombie Medicine cannabis rosin (Exhibit B12); cannabis flower in Jinkies' Bags (Exhibit B13); cannabis flower in jars (Exhibit B14); Dank Rolls pre-rolls (Exhibit B15); Honey Buns concentrate (Exhibit B16); Glo products (Exhibit C6); bagged cannabis flower (Exhibit C7); and an assortment of cape cartridges (Exhibit C8).

2. 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.” Mr. Jenzen testified that he no longer lived at the location. Investigator Gregory added that he did not observe any beds, kitchen, shower, dresser, or closets at the location, and that it appeared commercial in nature.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. The Cannabis Law outlines four non-exclusive factors to be considered when determining whether business activity should be considered as de minimis. Of those four factors, at least two were present at Mosa’s on Market during the inspection; a relevant volume of cannabis and a variety of cannabis products. The testimony of Investigator Gregory was that that 6.5 pounds of cannabis flower and 9.5 pounds of concentrates and edibles were observed at the location. This is by no means a small or negligible volume of cannabis product. There was also a variety of cannabis products displayed in Suite 2 of 31 East Market St. including, multiple strains of loose flower in a variety of packaging, concentrate, pre-rolls, and edibles. (Exhibit B10-16) Investigator Gregory also testified to observing bagged cannabis flower in the basement of the location. (Exhibit B8).

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. None of the products featured in Exhibit B or C were tested or labeled in accordance with New York Law. The products in the following exhibits did not comport with New York regulations and laws regarding cannabis warning labels: Exhibit B8, Exhibit C3, and Exhibit B14 feature unlabeled cannabis flower, Exhibit B10 contained a product with a fake New York cannabis warning label, Exhibit B11 contained a fake and non-specific cannabis warning label, the concentrate in Exhibit B12 does not contain a cannabis warning label, the Jinkies’ bags featured in Exhibit B13, live resin cartridges in Exhibit C8, and pre-rolls featured in Exhibit B15 contain California warning labels. Additionally, there was evidence of unlicensed processing occurring on the premises. Investigator Gregory testified that Exhibit B22 contained a scale with residue, empty packaging was found in the basement, in Suite 2, and were by Mr. Taylor’s own testimony, being sold by him. Additionally, though it is not part of the imminent threat factors being considered in this matter, Investigator Gregory’s testimony regarding the processing conditions for edibles at First Class exemplifies the health risks present in the consumption of illicit cannabis.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON AUGUST 30, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: September 25, 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 25, 2024 to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Kevin Brown, Esq.
Edward Taylor