

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.** 104202406200023

**READY SET SMOKE**

Respondent.

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Respondent requested an emergency hearing on June 20, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on June 20, 2024.

The emergency hearing was conducted on June 25, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by Elijah Tyes, the owner of the business.

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

Investigative Specialist Sarah Tagliaferro 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 4301 Genesee St., Cheektowaga, 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 (Exh A). Investigator Tagliaferro testified that while conducting the inspection at Ready Set Smoke, she observed cannabis flower, cannabis edibles, and cannabis concentrate (Exh A). Investigator Tagliaferro provided testimony and photographic evidence which established that many of the packaged cannabis products found at the location were branded with the California warning label which is not legally authorized to be sold in New York State and that none of the products were labeled with the New York State brand (Exh B, b-3, b-4, b-5, b-6, b-7, b-8, b-11, Exh C, c-8, c-13, c-14, c-15, c-16, c-17, c-18, c-19, c-20, c-21, c-22, c-23, c-27, c-28, c-29). Investigator Tagliaferro also provided testimony and photographic evidence of her observation of loose cannabis flower in a bag, loose flower on a rolling tray, and multiple packages of empty bags branded with the California label which indicated that processing was occurring at the location (Exh B, b-1, b-2, Exh C, c-7, c-9, c-10, c-11, c-12). Investigator Tagliaferro also provided testimony and photographic evidence of a cash register, ATM machine, and point of sale system which she indicated is further evidence of cannabis being sold at the premises (Exh

B, b-11, b-13). She also provided photographic evidence of scales and trays offered for sale which she testified are items used in the processing of cannabis (Exh B, b-10).

2. Investigator Tagliaferro credibly testified that 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.” The Respondent testified that he was in fact residing at the location and indicated the presence of a microwave, toaster, and an air fryer. A picture was entered into evidence depicting the microwave and toaster with items on top of them and surrounded by piles of boxes and papers (Exh D, d-4). Respondent also noted the clothes on the floor of a closet containing shopping and garbage bags (Exh D, d-4). The closet was full but did not appear to be a typical closet in which clothes were stored but rather appeared to be used as a storage area. In further support of his position that he used the location as a residence, the Respondent cited the presence of a futon. While no pictures were provided of the futon, Investigator Tagliaferro credibly testified that while there was one located on the premises, it was covered with bags and boxes. Furthermore, the shop was located in a commercial plaza with a shop for lease on one side as well as a donut shop on the other side (Exh D, d-1). By the Respondent’s own admission, the location was zoned commercially. Furthermore, Respondent’s driver’s license provided a different address than the address of the shop (Exh E, e-1). As such, I find that the shop was not zoned and/or lawfully occupied as a “residence.”

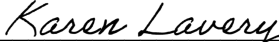
3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. The Cannabis Law Article 6 § 138-b(7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. During the hearing, testimony and photographic evidence were introduced depicting what Investigator Tagliaferro identified as various signs and symbols which would cause a person to conclude that cannabis was offered for sale. The name of the business alone “Ready Set Smoke” which was on depicted on a sign outside the location includes puffs of smoke which is indicative that cannabis is offered for sale (Exh D, d-1). In addition, a sign with a similar logo was located inside the shop window with a “plus sign” and a cannabis leaf depicted in the center as well indicating “24 hours Monday-Sunday” as well as a business card containing the same design (Exh C, c-1, c-2). Inside the shop was a large sign with several images, one of which being a pole depicting three individual street signs, specifically Genesee Street, which was the location of the shop, “High Street,” and “Mary Jane La,” the latter two references Investigator Tagliaferro testified was nomenclature used when referencing cannabis (Exh C, c-3). Several other signs referencing cannabis were located inside the shop including a larger sign which contained the words “High Street,” “Stoner Zone,” and “I Smoke Weed So I Don’t Kill People” as well of a depiction of a woman rolling and smoking what the Investigator testified to being a cannabis “joint”, as well as images of cannabis leaves (Exh B, b-13, Exh C, c-3, c-4, c-5). Investigator Tagliaferro presented photographic evidence and testimony of the variety and volume of cannabis located at the shop (Exh B, b-3, b-4, b-5, b-6, b-7, b-8, b-9, b-11, Exh C, c-8, c-13, c-14, c-15, c-16, c-17, c-18, c-19, c-20, c-21, c-22, c-23, c-27, c-28, c-29). She also credibly testified that the majority of the products in the store consisted of illicit cannabis. Investigator Tagliaferro’s testimony that cannabis products at the location were more than “de minimis” is controlling and thus meets the threshold issue.

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 not tested or labeled lawfully in accordance with Cannabis Law Article 6. The majority of the products were labeled with the California label which is not legally permissible to be sold in New York State and none of the products were labeled with the NYS OCM adult use label.

While the Respondent testified that he was not present when the photographs were taken and objected to their admittance into the record, Investigator Tagliaferro credibly testified that the Respondent was present during most of the inspection. In further support of her position, during the Respondent's cross examination of Investigator Tagliaferro, they discussed conversations and issues discussed at the inspection such as the presence of the futon. I also note that Respondent did at no time indicate that the photographs were not representative of his shop or the contents contained therein.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 20, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: June 26, 2024

  
Administrative Law Judge

Nickolas Perry  
Sheila Wagner  
Shaquan Huntt, Esq.  
Elijah Tyes

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 26, 2024 to the following:

Nickolas Perry  
Sheila Wagner  
Shaquan Hunt, Esq.  
Elijah Tyes