

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. 104202406130017**

**Stonedhenge Smoke-N-Grow Inc.**

Respondent.

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Respondent requested an emergency hearing on June 13, 2024, which was made within seven (7) calendar days of the date of the inspection which also occurred on June 13, 2024.

The emergency hearing was conducted on June 18, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was pro-se, and testified on behalf of himself.

The Office of Cannabis Management (hereinafter "OCM") was represented by Reuben Espinosa, 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 7271 State Fair Blvd, Suite 5, Baldwinsville, NY 13027.

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. Namely, as documented in Exhibit A and seen in Exhibit B pages 1-7, cannabis pre-rolls, vape cartridges, and edibles. It is of note, that only one Exhibit, Exhibit B, entered into evidence by OCM contained photographs of illicit products found on the premises during the inspection. In contrast, Exhibit C featured photographs of multiple T-shirts, hats, laser pointers, necklaces, and other products, offered for sale, that were not illicit. During his testimony, Respondent did not disagree that some of the products in his store were illicit. In fact, he explained that most of the products that were seized that day were in his store because he believed that they were legal hemp (Respondent's 1). Additionally, he stated that he thought all of his products were under .3% Delta 9 and able to be sold under his hemp license, which he testified that he did maintain. There was no information from OCM to indicate that Respondent did not have a hemp license. The Respondent added that in the packages he received from his hemp wholesaler, he received the documents featured in Exhibit 2 and Exhibit 3, which led him to believe that the products were not illicit. While ignorance of the law is no excuse, the Respondent in this matter took responsibility for his error. He did not argue that the products seized were not illicit, and he explained that he did not intend to violate the regulations.

2. During the course of the hearing no evidence was presented that indicated that part of the premises to be sealed was used in part as a residence or pursuant to local law or ordinance, is zoned and lawfully occupied as a “residence.” The Respondent testified during the hearing and made no mention of using the premises as a residence. Additionally, the photographs introduced into evidence in Exhibit B, Exhibit C, and Exhibit D, though limited in focus, appeared to indicate that the premises was commercial in nature. Investigator Tagliaferro testified that there was no indication that the premises contained a residence or entrance to a residence, nor was there a shower or kitchen on the premises.

3. The unlicensed activity which caused OCM to issue an order to seal at Stonedhenge Smoke-N-Grow, did not constitute more than a “de minimis” part the business activity taking place on the premises. Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to be considered when determining if unlicensed activity occurring within a business is more than de minimis. Throughout Investigator Tagliaferro’s testimony, she noted that there was a large volume and variety of illicit cannabis products for sale on the premises. However, her testimony was contradictory and confusing. She initially stated that illicit cannabis flower, concentrates, and edibles were found at the location. However, Exhibit B, the sole exhibit which featured photographic evidence of illicit product seized during the inspection, did not contain a photograph of cannabis flower. Exhibit B contained a very limited volume and variety of cannabis products and gave no indication of the volume that was discovered or seized during the inspection. Additionally, though Investigator Tagliaferro testified that all of the products seized were offered for sale, she also agreed that one of the products seized was erroneously found behind a dog CBD product, and that there was no indication that the Respondent was attempting to hide or conceal illicit products in his store. She testified initially that approximately 70% of the products at the store were illicit. Yet, she also indicated that only about 1.5 large garbage bags of illicit product was seized. She stated that all of the illicit product observed that day was, in fact, seized. When later asked if it was fair to say that there were approximately 30,000 products in the store, and the totality of the illicit product seized was approximately 500 products, she agreed. Investigator Tagliaferro stated immediately thereafter that, “Yes...there were a lot of items he had now that I’m thinking about it. He had like growing stuff as well in the back room, he had a lot of individual like very specific fertilizers... and this was geared towards growing and you know that kind of stuff as well.” Given the incredibly variable and inconsistent nature of the Investigator’s testimony regarding the volume and variety of products present at the location, and the dearth of photographic evidence showing the volume or variety of the products seized, I cannot credit her conclusion that a large volume or variety of illicit products were found or recovered from the premises.

In contrast, the Respondent’s testimony on the matter was clear. In his estimation the illicit products made up no more than 7-10% of his store and were all contained in one case. He stated that he also sold snacks, drinks, growing supplies and fertilizers for any kind of plant, t-shirts, candles, air fresheners, novelty items and laser pointers. He added that he also had 6 cases of glassware.

While one of the factors to be considered in deciding whether the amount of illicit product sold is de minimis, is whether there is evidence of signs or symbols indicating the sale of cannabis, I do

not believe that in this case the cannabis related t-shirts and novelty items offered for sale on racks, are enough to indicate that the primary purpose of this store was to sell illicit cannabis.

The OCM failed to submit sufficient evidence regarding the volume and variety of illicit products seized in contrast to the overwhelming evidence of other products sold at the location. Therefore, the OCM did not meet the de minimis threshold set by the statute, and the premises is exempted from padlock pending the outcome of the final hearing disposition.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 13, 2024, IS HEREBY VACATED AND THE PADLOCK SHALL BE REMOVED IMMEDIATELY.**

Dated: June 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 (date emailed), to the following:

Nickolas Perry  
Sheila Wagner  
Reuben Espinosa, Esq.  
Stephen Andersen