

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 211202408140033

DOBBS FERRY CONVENIENCE ON THE GO, INC.

Respondent.

Respondent requested a hearing to vacate an order to seal.

The hearing was conducted via WebEx on October 24, 2024, at 1 p.m. The inspection was conducted on August 14, 2024, and an Order to Seal was issued the same day. OCM Ex. A.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Abir Ahmed, Esq.

OCM Sr. Investigator William McKay testified on behalf of OCM.

The Respondent was represented by Attaallah Altamimi, Altamimi Law PLLC, 500 Mamaroneck Avenue, Suite 320, Harrison, New York 10528. Email: Attaallah@altamimi-law.com.

The Respondent did not call any witnesses. Respondent’s Ex. 1 (A-D), consisting of four photographs, was admitted.¹

The owner of the Respondent, Wasim Alsaïdi², did not attend the hearing.

¹ OCM Exs. A1-A2, B1-B4, and C1-C19 were admitted.

² 293 Morsemere Avenue, Yonkers, New York 10703.

ISSUE

The allegations set forth in the Notice of Violation (OCM Ex. A) assert 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 on August 14, 2024 at Dobbs Ferry Convenience on the Go, 21 Cedar Street, Dobbs Ferry, New York 10522.

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

APPLICABLE LAW

Cannabis Law §138-a provides, in relevant part, 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 § 138-b (1) provides for 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 §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 §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 §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 §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. The premises at 21 Cedar Street, Dobbs Ferry, New York is owned or rented by Dobbs Ferry Convenience on the Go, Inc. and does business as Dobbs Ferry Convenience on the Go. Wasim Alsaidi is the owner of the Respondent.
2. The premises is not being used as a residence. At the time of the inspection (August 14, 2024), Investigator McKay did not observe any beds, showers, home furniture, or other signs indicating that someone lived in the premises. This is a commercial property. This testimony was not challenged.
3. Investigator McKay testified that Respondent was not licensed to sell adult-use cannabis. This testimony was not challenged.
4. Investigator McKay received training related to the identification of cannabis products.
5. The unlicensed activity which warrants an order to seal constitutes more than a “*de minimis*” part of the business activity at the premises. Cannabis Law § 138-b (7) and OCM Regulations 133.25(f)(3) identify the factors that may be considered in determining if unlicensed activity occurring within a respondent’s premises is more than *de minimis*. The factors for determining whether the unlicensed activity is *de minimis* are set forth above.

During the inspection of the Respondent’s premises, Investigator McKay found³ a large volume and large variety of cannabis products. These products included cannabis gummies (OCM Exs. C1, C6, C7, C8, C9, C10-11, C12-13, C 14), concentrate vapes (C2-C3, C4), cannabis flower (C5), flower pre-rolls (C17-C18), and loose cannabis flower (C19). Sativa (C4), Indica (C1, C13, C14) and Hybrid (e.g., C2, C7, C12, C13) strains were found during the inspection. A variety of flavors were found in the premises, such as Apple (e.g., C1), Pineapple (C4), Watermelon (C7), Peach (C7, C14), California Honey (C8) Grape (C9), Green Apple (C11), Blackberry Kush (C13), Rainbow (C14), Raspberry Cherry (C14), and Sour Diesel (C18). Investigator McKay testified that this volume and variety of cannabis products exceeded the variety and amounts of products that a person would have just for personal use.

A cash register and credit card reader were found during the inspection. OCM Ex B4.

Based on the totality of this testimony and the exhibits, I find that OCM met its burden of establishing that the sales of cannabis or offers to sell cannabis products were more than a *de minimis* part of the business activity on the premises.

6. A large number of the products identified by Investigator McKay as cannabis were not properly labelled. Several of the products in the premises had California—and not New York—labels. OCM Exs. (C2, C3, C4, C6, C8, C9, C10, C17). As Investigator McKay testified, it is not legal to sell the California-labelled products in New York. Based upon the presence of cannabis

³ The inspectors found these products in covered shelving behind the front counter where products were cashed out by store employees. See RES Ex. 1, OCM Ex. C15.

products in the premises which were not properly labelled, I find that OCM established an imminent threat to public health, safety, and welfare.

7. Store employee Rosemny Santana, a person of suitable age and discretion (A2), was provided with a copy of the Notice of Violation by Investigator McKay. She declined to identify the owner of the store and she refused to sign a Certificate on the Notice of Violation certifying that she received the Notice of Violation (OCM Ex. A1). Investigator McKay asked Ms. Santana to give the Notice to the Owner or the manager.

8. Investigator McKay testified that he did not test any of the products located during the inspection and he did not open sealed packages to confirm whether the sealed packages contained cannabis products. While it would be a better practice to test products, neither the statutes nor the regulations require testing. There is abundant evidence that the products found during the inspection were, in fact, adult-use cannabis products. Many of the sealed packages were explicitly labelled to identify the products in them as cannabis. Packages: 1) were labelled “Cannabis Infused” (C1, C8, C12, C13), 2) were labelled to show the percentage of THC (e.g., C2, C17), 3) displayed the California cannabis label (e.g., C2, C3, C4, C6, C8, C9, C10, C17), 4) were labelled with a government warning stating “This product contains cannabis” (e.g., C5, C10), and/or 5) included a label stating “Cannaibis Gummies” (e.g., C11).

9. It was also established that the products found during the inspection were, at the least, offered for sale. The cannabis products were located in a closed set of drawers or shelves below the counter where customers paid for and/checked out their purchases. These products were of a volume and variety greatly in excess of what an individual would use for personal use. The store had an ATM and promoted its ATM on the front door of the store. OPM Ex. B1. The “Store Open-Store Closed” sign on the front door of the store bore the word “Raw”, a brand of papers used for, among other things, cannabis. While stores may have an ATM and display symbols such as “Raw” even when cannabis is not sold, these items, as testified to by Investigator McKay, are often found in stores that sell cannabis.⁴

WHEREFORE, PURSUANT TO CANNABIS LAW §138-b (9), THE ORDER TO SEAL, ISSUED ON AUGUST 14, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

⁴ As Investigator McKay testified, it is not illegal for a store to have an ATM or to sell Raw papers but those items signal the possibility that a store may sell cannabis.

Dated: October 29, 2024

Paul Perlman

Paul Perlman
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 October 29, 2024, to the following:

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