

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DREAM BUDZ CORP

Respondent.

DECISION

Inspection No. 203202407170012

Respondent requested an emergency hearing on July 23, 2023 which was made within seven (7) calendar days of the date of the inspection which occurred on July 17, 2024.

The emergency hearing was conducted on July 26, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by Lance Lazzaro, Esq.

The Office of Cannabis Management (hereinafter "OCM") was represented by Student Intern Trent Biscone under the supervision of Ruben Espinosa, Esq.

Senior Investigator James Schlipmann 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 926 Broadway, Brooklyn, 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 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 (Exh A). Investigator Schlipmann credibly testified and provided photographic evidence that at the time of the inspection, he observed a wide variety of illicit cannabis products including cannabis flower, cannabis concentrates and cannabis edibles, some of which were located in public view of a person entering the shop (Exh B 1-3, C 2, D 3, E 1-9). In addition, photographic evidence was admitted into evidence which showed loose cannabis flower on a tray, a grinder, empty packaging, a bump box filled with empty pre-roll packages and loose flower around it, all of which is indicative of processing of cannabis products at the site (Exh C 1-3). Investigator Schlipmann also testified of the presence of a point of sale system at the site as well as an ATM machine (Exh B 2-3, 6).

2. Investigator Schlipmann credibly testified that no part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance, is zoned and lawfully occupied as a "residence" and no testimony or evidence was offered to the contrary.

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. A large variety and a substantial volume of illicit cannabis products were discovered during the inspection of this location (Exh B 1-3, C 2, D 3, E 1-9). Investigator Schlipmann testified and provided photographic evidence of the presence of signs and symbols which advertise that cannabis was offered for sale at the location. Specifically, on the outside of the door was a depiction of a person engaging in the consumption of cannabis (Exh A 3), behind and to the right of the ATM machine was a mural of an alien appearing to smoke a cannabis “joint” (Exh B 6), as well as the presence of an inflatable cannabis joint on display above a showcase containing paraphernalia used in consuming cannabis (Exh D 1). Furthermore, the actual cannabis products in the display cases for a member of the public to see, is evidence that the products were offered for sale (Exh D 1). Affixed to one of the display cases was a marketing spin wheel which was divided into various sections, each of which listed a specific product which a person could win as indicated by a note affixed to it which stated “SPEND MORE THAN \$100 GET A FREE SPIN” (Exh D 1-2). Some of the products which were written on the wheel which could be won include a “Free Pre roll, Free Vape, Free 8th, and Free Edible (Exh D 2). Based upon the totality of the evidence of the variety and volume of illicit cannabis which was offered for sale, I find that the cannabis products observed at the site exceeded a “de minimis” part of the business activity.

4. The unlicensed activity constituted an imminent threat to public health, safety, and welfare because there were sales or offers to sell cannabis products which were not tested or lawfully labeled in accordance with Cannabis Law Article 6. Many of the products were labeled with the California brand which are prohibited for sale in New York State and not labeled with the New York State brand (Exh B 1, D 3, E 1-3, 6, 8-9). It is also significant that some of the cannabis products were packaged with labeling very closely resembling certain cereals, foods and candies which are commonly known and could be appealing to people under 21 years of age which is also prohibited by New York laws and regulations (Exh D 3, E 6, 8).

Respondent’s attorney argued that service of the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was defective. Investigator Schlipmann credibly testified that at the conclusion of the investigation, he conversed with Iris Sosa who identified herself as an employee of the shop, said she did not know who owned the business, and refused to sign the document however physically took possession of it when it was handed to her. Furthermore, on the “Certificate of Service” section at the bottom of the document, Investigator Schlipmann checked the box which indicated “Delivery or signature was refused. I completed service by leaving a copy of this Notice in the vicinity of the person to be served, posted same in a Conspicuous area and made clear my intent to leave and serve this Notice of Violation, Order to Cease Unlicensed Activity and Order to Seal (if applicable).” Investigator Schlipmann checking this box was appropriate as signature was refused by Ms. Sosa. As she took possession of the document, personal service was effectuated upon the person who was in charge of the shop at the time of the inspection. Furthermore, the NOV/Order to Cease Unlicensed Activity/Order to Seal was posted on the door of the shop (Exh A 4). Respondent’s attorney contends that there was no testimony by the witness that he posted it. Investigator Schlipmann testified that he took the

picture which was admitted into evidence with no objection by Respondent's attorney, therefore irrespective of the lack of testimony as to who posted it, the picture clearly depicts the document prominently displayed on the door.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 17, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: July 29, 2024

Karen Lavery
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 July 29, 2024 to the following:

Nickolas Perry
Sheila Wagner
Trent Biscone
Ruben Espinosa
Lance Lazzaro, Esq.