

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 103202410010068

Exotic Discount Store Inc.

Respondent.

Respondent requested an emergency hearing on October 8, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on October 1, 2024.

The emergency hearing was conducted on October 15, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was represented by Matthew Swedick, Esq.

The Respondent, Mohamed Alharbi, testified on his own behalf.

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

Senior Investigative Specialist Joshua Coons 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 106 Ontario Street, 1st Floor, Albany, NY 12206.

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. The evidence presented during the course of this hearing demonstrated that the Respondent was offering cannabis products for sale without a license issued by OCM. Indeed the Respondent, Mr. Alharbi, testified that there was cannabis being sold on the premises. During the hearing, Senior Investigator Joshua Coons testified regarding his training and experience in identifying cannabis products. He stated that since being employed by OCM he has received classroom and field-based training regarding identifying cannabis products. Senior Investigator Coons explained that during an inspection he looks at how products are being marketed and labeled, specifically at any warning labels and whether the products are labeled as containing cannabis or marijuana. He also looks at the category of product, and any devices or products that are being used for possible processing. Additionally, he testified that he looks for signage on the premises such as cannabis leaves, insignia or signs that would lead the public to believe that cannabis is being sold at that location. Senior Investigator Coons testified that he was the supervising investigator present during the inspection of Exotic Discount Store on October 1, 2024. The primary investigator assigned was Investigative Specialist Danielle Newell. Per his testimony, Exotic Discount Store had been previously inspected and cited for selling illicit

cannabis. Senior Investigator Coons stated that during his inspection of the premises he observed multiple cannabis products. Photographs of many of these products were put into evidence, including, but not limited to: a large bag of cannabis flower, numerous plastic tubes containing pre-rolls, vape cartridge(s), Kush King Jack Herer Live Resin and Diamond Infused THC Concentrate, hybrid extract monster cookies strips, TorchXZoor Double Diamond Live Resin and Diamond vape concentrate, Zoor Cake Live Resin Sauce-Indica, Devour Cannabis Infused Sour Belts in Strawberry, Kushie Dpsbls+ Live Resin Diamonds- Orange Jack, MILF- Hybrid Premium Vaporizer-Liquid Diamond Live Resin, additional concentrate products, Melted Diamonds All In One Rechargeable Vapes in Mochi and Zkittlez, The Original California Honey Premium Cannabis Oil, Candy Runtz Pressure Los Angeles- Liquid Diamonds Hybrid Vape, Bag Boyz Runtz cannabis flower, Smashed Liquid Diamond X Live Resin Banana OG Indica Eighth Vape, Smashed Chocolate Milky Way Cookies and Cream edibles, and Cookies Cannabis Flower in multiple varieties. (Exhibits B14 and C1-40).

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.” Senior Investigator Coons testified that the building containing the relevant premises had an apartment on the second floor that had a separate entrance and exit from the side of the building. He explained that the premises of Exotic Discounts did not have a kitchen, or shower, nor were any clothes observed. Additionally, the certificate of occupancy featured in Exhibit B10 states that the first floor of the premises is zoned for use as a smoke shop only.

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 Exotic Discount Store Inc., during the inspection; a relevant variety of cannabis products was present, and a large volume of cannabis products were present. Additionally, there were signs, symbols, and advertising inside that would lead the public to believe that the sale of cannabis was taking place at the location, including a sign saying “Stoner Ave.” and a publicly accessible binder menu of cannabis products that were being offered for sale. (Exhibits B10 and B15-B19). During the course of the hearing, numerous exhibits were placed into evidence which depicted, cannabis flower both loose and prepackaged, vapes, concentrates, pre-rolls and edibles. Many brands of product were observed including, but not limited to: Chronic Slaps, Kush King, Torch, Zoor, Devour, University-MILF, Kushie, Blinkers, The Original California Honey, Pressure- Los Angeles, Smashed, Runtz, and Cookies. (Exhibit C1-C40). Senior Investigator Coons testified that there was a large volume of cannabis product for sale on the premises, his testimony in addition to the many products observed in Exhibit C1-C40 and loose cannabis flower observed in Exhibit B14, necessitate the conclusion that the volume of illicit product on site was evidence of more than a de minimis amount of illicit activity. The Respondent testified that the cannabis being sold was only 6-10% of the business, however given the diversity and amount of product being offered for sale, in addition to the menus observed at the location, I do not find his testimony credible.

4. The unlicensed activity at Exotic Discount Store Inc., 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. Multiple

products observed during the hearing were not labeled in accordance with New York Law. Exhibit C2 and Exhibit C3 feature unlabeled bags of cannabis. Exhibits C6, C7 feature products containing what appear to be counterfeit New York cannabis warning labels. Exhibits C9, C11, C13, C14, C16, C18, C21, C22, C24, C25, C27, C29, C30, C31, C33, and C40 feature products containing what appear to be California cannabis warning labels or messages. Additionally, Senior Investigator Coons testified that there was evidence of unlicensed processing of cannabis at the location, in that he observed a small processing area on a shelf in the location which contained a price list, scales, and empty packaging. Senior Investigator Coons also observed stickers used to label illicit cannabis products at the location. (Exhibit B9). Exhibit B12 additionally depicts a scale with what appears to be cannabis residue next to rolling papers and hookah tobacco.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON OCTOBER 1, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: October 21, 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 October 21, 2024, to the following:

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.

Luwick Francois, Esq.

Matthew Swedick, Esq.