

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. 211202406060009**

Get One Convenience & More Corp.

Respondent.

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Respondent requested an emergency hearing on June 12, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on June 6, 2024.

The emergency hearing was conducted on June 17, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by Marc Scolnick, Esq.

No witnesses testified on behalf of the Respondent.

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

Investigative Specialist William McKay 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 815 Manhattan Ave, 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 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. Investigator McKay credibly testified that while conducting the inspection at 815 Manhattan Ave, Brooklyn, he observed a variety of cannabis edibles, cannabis flower, and cannabis concentrate (Exh B, b-3, b-4, Exh C, c-1, c-2, c-3, c-4, Exh D, d-2, d-3, d-4, d-5). Investigator McKay provided testimony and photographic evidence of these products, many of which were labeled with the California label which he testified does not authorize products to be sold in New York State and that none of the products were branded with the New York State adult use label. According to the undisputed testimony of Investigator McKay, the Respondent was not in possession of a license issued by OCM to sell cannabis products. Investigator McKay also presented evidence of what he testified appeared to be loose cannabis flower however while no testimony was offered that the Respondent was in possession of a Hemp License issued by OCM, Investigator McKay testified that cannabis flower can visually resemble hemp flower (Exh D. d-1). Many of the products depicted in the photographic evidence were labeled with price tags (Exh B-4, Exh D, d-2, d-4, d-5) which in conjunction with the cash register (Exh B, b-

5), and a sign inside the store, visible the public upon entering, indicating “Today only Sales on THC!” (Exh B, b-2), are evidence that cannabis products at that location were offered for sale.

2. According to the testimony of Investigator McKay, 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.”

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 at 9 NYCRR 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, Exh B was entered into evidence which depicted several signs on both the interior and exterior of the location which indicated that cannabis was being sold at the premises. Specifically, on the exterior of the shop over the storefront was a large sign that said “SMOKE” and after that was the word “DISPENSARY” with depictions of cannabis leaves above it (Exh B, b-1). Such sign was visible to anyone passing by the exterior of the shop. On the interior of the shop were two carved out depictions of cannabis leaves which also indicated that cannabis was being sold or offered for sale at the location (Exh B, b-3). Furthermore, the sign located on the interior, as previously stated, indicated that “Today Only Sales on THC!” (Exh B, b-2) openly and obviously advertised that cannabis products were being sold at the location. There was a significant variety and volume of cannabis products in the shop including cannabis edibles, cannabis flower, and cannabis concentrate. As such, based on the signage, the symbols, the advertising of cannabis products for sale, and the volume and variety of cannabis products located on the premises, I find that the unlicensed activity is more than a de minimis part of the business activity on the premises.

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 that were not tested or labeled lawfully in accordance with Cannabis Law Article C. Some of the products were labeled with the California warning label which does not authorize products to be sold in New York and none of the products were branded with the New York State adult use label (Exh B, b-3, b-4, Exh C, c-1, c-2, c-3, c-4, Exh D, d-2, d-3, d-4, d-5).

Respondent’s attorney argues that the order to seal should be removed and this matter dismissed based upon defective service on the part of OCM. His argument is first based on the fact that Investigator McKay failed to personally serve the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal on the person who identified herself as an employee of the store. Investigator McKay testified that during the course of the inspection, this person was in the shop and at various times, not present in the shop. He testified that upon completion of the inspection, he looked throughout the shop for her however neither she nor any other employees were in the shop. As a result of his inability to locate her, Investigator McKay testified that he left a copy of the documents on the counter. He further testified that as he was leaving, the person who had identified herself as an employee approached him in his vehicle asking regarding the papers which he testified he had previously told her he would leave with her. She was not given the documents. Respondent’s attorney identified what he contends is further evidence of defective service in that the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was

posted on the inside of the glass storefront and was not posted on the outside of the metal pulldown door which only was affixed with the Warning Sticker. Investigator McKay testified that the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was placed inside the storefront visible from the outside rather than on the metal pulldown door due to the inability of the material of the paper to withstand the elements as well as the possibility that it would be removed. Lastly, Respondent's attorney testified that the inspection of the shop occurred on June 6, 2024 however the Affirmation of Service by Mailing which was entered into evidence as Exhibit F was not mailed until June 14, 2024 and does not specify how such mail was sent. In support of this position, he cites Cannabis Law Article 6 §138-b (2) which provides that "Any order to seal shall be served by delivery of the order to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises that have been sealed, secured and closed. A copy of the order shall also be mailed to any address for the owner of the business at any address provided by the person to whom such order was delivered pursuant to this subdivision. The order shall remain in effect pending a hearing and final determination of the board, or until such order is vacated by the office pursuant to subdivision six of this section. An order to seal shall explicitly state the procedure to request a hearing within seven days." Addressing the first argument, I find that Investigator McKay credibly testified that he did a diligent search of the premises at the conclusion of his inspection and the person who identified herself as an employee and who he testified was the only employee at the location during the inspection, was not present. As such, he left the documents on the counter of the shop. His testimony that she inquired regarding the documents upon approaching him in his car as he was preparing to leave the site raises the question as to whether she was able to access the documents on the counter if the premises was then sealed with a padlock. There was no testimony as to that issue. Respondent's attorney's argument is rejected however because Respondent did receive a copy of the documents as evidenced by the successful and timely request for an emergency hearing regarding the order to seal. His argument regarding defective service would carry more weight had he not been afforded an opportunity for an emergency hearing. While the better practice would have been to provide her with a copy of the documents while she was at his car, Investigator McKay's failure to do so did not in any way prejudice the Respondent. As to the failure of the Investigator to affix a copy of the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal to the metal pulldown door which covered the storefront, Cannabis Law Article 6 §138-b (2) requires that the order to seal "shall be posted at the building or premises that have been sealed, secured and closed." Investigator McKay testified that the order to seal was posted on the storefront. No testimony has been offered to refute that he did so, therefore he satisfied the requirement of Cannabis Law Article 6 §138-b (2) which requires that it be posted at the building which has been sealed. The absence of the posting on the pulldown metal door is not controlling. Lastly, while the service by mailing was effectuated on June 14, 2024 which is eight days after the inspection and three days before the hearing, the regulations are silent as to both a timeframe in which a copy of the order to seal must be mailed and a method of mailing. While a better practice would be service by mail at a time more contemporaneous to the inspection, once again the Respondent has not been prejudiced by this delay and as such, the argument of defective service is rejected.

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

Dated: June 18, 2024

*Karen Lavery*  
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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 June 18, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Ruben Espinosa, Esq.  
Marc Scolnick, Esq.