

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. 115202408220052**

**JAMAICA SUPREME CLOUD CORP.**

Respondent.

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Respondent requested an emergency hearing on August 26, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on August 22, 2024.

The emergency hearing was conducted on August 29, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by M. Daniel Bach, Esq.

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

Investigative Specialist James Lawson 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 21533 Jamaica Ave., Queens Village, 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.

Should either party file a request for an additional hearing to adjudicate the sufficiency of the Notice of Violation and the Order to Cease Unlicensed Activity, that hearing will be scheduled for a later date.

## APPLICABLE 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)(2) requires any sealing order be served 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. The sealing order must also be posted at the building or premises that was sealed, secured, or closed. Additionally, “a copy of the sealing 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...*” (emphasis added).

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. Investigator Lawson credibly testified that the Respondent was offering cannabis products for sale without a license issued by OCM (Exh F 1). According to the testimony and photographic evidence presented at the hearing, upon walking through the door, a significant portion of the left side of the shop consisted of a large plexiglass section which was only accessible by the shop employees (Exh A 10). Cannabis products were on display in that area and were in full view of a person inside the shop (Exh C 2-20, Exh D 1-7). Such products included cannabis pre-rolls, cannabis edibles, cannabis concentrate, and cannabis flower (Exh C 2-18, Exh D 1-7). Investigator Lawson also located a large box containing several boxes of cannabis pre-rolls in a back room at the location (Exh C 1). Also on display for sale were some

cannabis infused baked items which Investigator Lawson testified that he was advised by the cashier working at the time of the inspection, were baked by a customer who obtains cannabis from the shop and bakes them and is paid in kind for her services (Exh C 19-20). Investigator Lawson also testified and provided photographic evidence of three large jars of loose cannabis flower with empty bags next to them (Exh D 4, 7). Two scales were located in close proximity to the jars of loose flower which were next to the register (Exh D 4, Exh E 1-2). A ledger resembling a composition notebook was located behind the plexiglass next to the register (Exh B 4). The pages contained in the notebook were each divided into three columns which Investigator Lawson credibly testified that the cashier identified were used to capture all the sales made during the day (Exh B 2-3, 5-17). Investigator Lawson testified, based upon his training and experience, that the items documented consisted of adult use cannabis products and their corresponding prices (Exh B 2-3, 5-17). While Respondent's attorney argued that the transactions were undated and no names were on it, I reject that argument as the shop employee testified to its purpose. Furthermore, I find it significant that according to the NYS Driver's License presented as identification for the shop employee with the last name "Mubin," that same name appears on the top of nine pages of the ledger (Exh B 1-3, 5-8, 10, 13-14).

2. Investigator Lawson 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." Respondent's attorney offered no evidence to refute this contention.

3. The unlicensed activity which warrants an order to seal constitutes more than a "de minimis" part of the business activity. 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. One such factor is the presence of signs or symbols, indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises. In the present case, Investigator Lawson testified and provided photographic evidence of a picture inside the shop on the wall which depicted a man smoking cannabis from a glass fixture as well as a depiction of a large cannabis "joint," both of which were in public view of a person inside the shop (Exh A 4, 9). The testimony and photographic evidence demonstrate both a large variety and volume of cannabis products at the location. I note the price tag on one of the items and the ledger which clearly establishes that the products were not only being offered for sale but were being sold (Exh B 2-3, 5-17, Exh C 2). Furthermore, according to the testimony and evidence, the unlicensed activity was more than a de minimis part of the business activity on the premises. Investigator Lawson testified that there were coolers with minimal drinks contained therein as well as a small amount of snacks offered for sale (Exh A 9-11). The determination that the illicit sales constituted more than a de minimis part of the business activity is also confirmed by the volume of cannabis products in comparison to the other products offered for sale as well as the transactions of cannabis sales denoted in the ledger.

4. I find that the unlicensed activity at Jamaica Supreme Cloud Corp. did constitute an imminent threat to public health, safety, and welfare in that there were sales or offers to sell cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Investigator Lawson identified numerous products which contained the California logo which he testified were not legal to sell in NYS (Exh C 2-3, 8-10, 12-13, 16, 18, Exh D 5, Exh E 2). In addition, many of the packages of cannabis products offered for sale were brightly

colored, closely resembled a commonly known product, or contained depictions of characters or pictures which could be appealing to children under the age of 21 and are in violation of New York law (Exh C 3-6, 8-12, 14-18, D 7). Furthermore, according to the testimony of Investigator Lawson, the jars of loose cannabis, scales, and empty packaging strongly indicated that untested and unregulated cannabis processing was occurring at this location (Exh D 4, Exh E 1-2).

5. The Notice of Violation and Order to Seal were properly served upon the Respondent on August 15, 2024. Investigator Lawson's credible and undisputed testimony established that the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was personally served upon the employee who identified himself as the cashier at the shop and was the only employee present at the time of the inspection. The employee signed and took possession of the document and was directed to give it to the owner who he claimed to only his first name but not his last name. Furthermore, the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was also conspicuously posted on the front door of the premises, as required by Cannabis Law Article 6 §138(b)(2) (Exh F 4-6). The full name and address of the business owner was not supplied to the Investigator by the store employee at the time of the inspection, therefore no further steps were required by statute or regulations to complete service. Therefore, I find that service was properly effectuated in accordance with Cannabis Law Article 6 §138(b)(2).

6. Respondent's attorney submitted to this court, shortly before the hearing, a notarized document which was signed by a person identified as Jamaica Supreme Cloud Corp. owner Mohamed Nagi. Pursuant to this document, Mr. Nagi stated, most notably among other things, under the penalty of perjury, that on August 22, 2024, the business was not selling any cannabis products. He further stated that there were no displays of cannabis products for sale nor did they advertise any cannabis products for sale. He also indicated "that if there were cannabis products on the premises then they would have been for personal use of the employees and from my knowledge of the cannabis laws, there is no rule of law that prohibits cannabis products on the premises." I note that Mr. Nagi was not present at the time of the inspection nor was he present at the hearing at which time he would have been afforded a full opportunity to testify and provide any evidence to support his case. Given the credible testimony of Investigator Lawson in conjunction with the photographs taken at the time of the inspection clearly depicting cannabis products both on display and offered for sale, cannabis products advertised for sale, numerous pages of documented sales of cannabis products, and the strong evidence that cannabis is being processed at this location, I reject this document as self-serving and lacking credibility.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON AUGUST 22, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: August 30, 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 August 30, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Paul Tsui, Esq.  
M. Daniel Bach, Esq.