

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No.: 301202409250036

Let's Get it Smoke Inc.

Respondent.

Respondent requested an emergency hearing on October 2, 2024, and the inspection occurred on September 25, 2024.

The emergency hearing was conducted on October 11, 2024.

The Respondent was represented by Eli Crozier, Esq. and Jeff Greco, Esq.

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

Investigative Specialist Dawn Kiely, 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 1227 Grundy Ave. Holbrook, New York 11741.

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.

No issues regarding service were raised by the Respondent during the hearing. Senior Investigator Kiely testified that she gave the Notice of Violation, Order to Cease Unlicensed

Activity, and Order to Seal to the lone employee on the premises. (Exhibit A). Though he was not wearing a uniform, the employee spoke to her about his work hours, how he knows the owner, and even reached the owner on the phone. Additionally, he signed a copy of the paperwork that he received. (Exhibit A)

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. There did not appear to be any disagreement amongst the parties that the Respondent was offering cannabis products for sale without a license issued by OCM. Senior Investigator Dawn Kiely explained during the course of this hearing that during the inspection of Let's Get it Smoke Inc. on September 25, 2024, she observed cannabis products offered for sale at the premises. Senior Investigator Kiely testified that she has training and experience in identifying cannabis, and she is the highest-ranking supervisor in enforcement in the New York City office of OCM. She has been employed by OCM for two years, and received on the job and web-based training when she joined. Senior Investigator Kiely explained that she was trained regarding the MRTA, Cannabis Law, cannabis, health and safety, as well as the laws and regulations, and how to do

paperwork. She stated that when identifying products she looks at the coloring, name on the package, and brand among other features. Senior Investigator Kiely stated during her testimony that a large amount of cannabis was recovered from the right-hand cabinet in the back of the location. Specifically, she observed among other products: cannabis flower, vapes, pre-rolls, THCA infused joints, edibles, and live resin infused cartridges.

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 Kiely testified that the employee did not indicate that the space was being used as a residence. She also stated that she did not observe a shower in the bathroom or any beds or other furniture on the premises.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. Senior Investigator Kiely testified that she determined the store should be sealed because of the wide volume and variety of product observed. 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 Let’s Get it Smoke Inc.; a relevant variety of cannabis products was present and a wide volume of cannabis products was present. Senior Investigator Kiely testified that there were very few non-cannabis products offered for sale at Let’s Get it Smoke Inc. Exhibit B2 and B3 show the totality of non-cannabis products sold, which essentially amounted to some single serving over the counter medications, rolling papers and wraps, snacks and some glassware. Senior Investigator Kiely explained that she called the landlord while at the store, who stated that the rent of the store was approximately \$1,800 to \$2,000 a month. Senior Investigator Kiely added that it would not have been possible for the snacks and glassware up front to cover the rent. Additionally, there was a significant volume of cannabis present on the premises as seen in the two bags of cannabis products vouchered and seized by the New York State Department of Tax and Finance in Exhibit D4. According to Senior Investigator Kiely, the following products were observed being offered for sale at the location: a large bag of cannabis flower, Puff LA cannabis concentrate, Stiiizy pre-rolls, Kaws Konez diamond and kief infused pre-rolls, Punch Bar Edibles, Wavy Flakes cannabis flower, as well as two inventory lists containing what appeared to be the names of product and the quantity in stock. (Exhibit C1-18). The volume and variety of products observed at the premises and the extensive inventory lists, in conjunction with the fact that the store could not sustain itself on the legal products alone, is ample evidence that the unlicensed activity taking place at Let’s Get it Smoke Inc. was far more than de minimis.

4. The unlicensed activity at Let’s Get it Smoke 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. The products featured in Exhibits C7, C11, C15, as well as others, appeared to originate in California. The large bags of flower featured in Exhibit C1 and D2 also appear to be unlabeled, and thus were not labeled in accordance with New York Law. Additionally, Senior Investigator Kiely noted that multiple products, such as the Wavy Flakes and Puff LA products had labels depicting colorful artwork or cartoon characters that would be attractive to children.

The Respondent asserted that Senior Investigator Kiely's testimony should bear less weight as she was not the expert she purported to be. I believe it is important to note that Senior Investigator Kiely was not certified as an expert witness during this proceeding. She was presented as a fact witness. Additionally, though she did not witness any sales, she observed a point-of-sale system along with large inventory lists of cannabis product. The Respondent did not need to have the products on display in order to offer them for sale, and indeed sell them, to the public. Respondent also implied that though testing is not required, the investigator should not have merely relied on the label to conclude that the products were indeed cannabis. Respondent misunderstands the law. Cannabis Law Article 6 §138-b (1) states that OCM shall have the power to seal premises that are engaging in unlicensed activity. That provision specifically refers back to Cannabis Law Article 6 §125 which states that no unlicensed person shall sell at retail products marketed or labeled as cannabis. It also refers to Cannabis Law Article 6 §132 which prescribes penalties for those offering to sell cannabis and cannabis products or products marketed or labeled as such. Thus, offering to sell products marketed or labeled as cannabis without a license is considered unlicensed activity which violates the Cannabis Law.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON SEPTEMBER 25, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: October 23, 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 23, 2024, to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Abir Ahmed, Esq.
Eli Crozier, Esq.
Jeff Greco, Esq.