

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No.: 134202405210002

**Matter of Sarkhah,
DBA Jeeter Juice,
413 Second Avenue
New York, New York, NY 10010**

Respondent.

On May 21, 2024, investigators from the Office of Cannabis Management (OCM) and other members of law enforcement conducted an inspection of the premises at 413 Second Avenue, New York, New York 10010, DBA as Jeeter Juice. As further described below, alleged violations of the Cannabis Law were found which resulted in the closing and sealing of the location pursuant to Cannabis Law 138-a and 138-b.

Respondent Sarkhah Corporation, whose principal is Moath Alezeb, submitted a request for a hearing more than seven days after the inspection had occurred and thus did not fall under the emergency hearing mandated time limits. Respondent submitted an Answer and Affirmative Defenses to the charges on July 18, 2024.

The hearing was conducted via Webex on July 19, 2024. Respondent was represented by Paul Bierman, Esq., who was of counsel to the attorney of record, Mark Scolnick, Esq. Mr. Bierman's address is 84-03 Cuthbert Road, Suite 1B, Kew Gardens, NY 11415. The Respondent did not appear and authorized Mr. Bierman to represent him. In his absence.

OCM was represented by Trent Justice Biscone, a law student who appeared pursuant to the Student Practice Order of New York State. He was supervised by Michael Waller, Esq., of OCM who also appeared on the Webex hearing.

Investigator Jillian Agnew testified on behalf of OCM. The Respondent offered no witnesses or evidence.

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 conducted on May 21, 2024 at 413 Second Avenue, New York, New York 10010.

The scope of the hearing was limited solely to the issue as to whether the padlocking provisions of Cannabis Law Article 6 § 138-b were 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: 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

A Notice of Violation was posted on the premises window and served on the person who was present in the premises, the Respondent Moath Alezeb. This document was admitted into evidence (A-1) and a photograph of this Notice was also admitted into evidence (A-3).

1. Respondent was offering cannabis products for sale without a license issued by OCM. Investigator Agnew testified that she received training at OCM in identifying and categorizing cannabis products. She explained that during the inspection of the location she observed cannabis flower, edibles, concentrates and pre-rolls which was corroborated this testimony with photographs that they took at the time. (Exhibits B1-10, C1-5, and D1-5).

2. No part of the premises sealed appeared to be used lawfully as a residence. The Investigator testified that she did not observe any evidence of a residence: there was no bed, kitchen, or bath, and that the location appeared to be solely commercial in nature. No evidence was offered by the respondent to contradict these observations.

3. The unlicensed activity which warranted an order to seal constituted more than “de minimis” business activity. A large variety, and a substantial volume, of illicit products were discovered during the inspection at this location. 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. From the photographs entered as evidence during the hearing, and the testimony of the Investigator listing the items seized by OCM, it was clear that this location had a large variety and a substantial volume of illicit cannabis being offered for sale.

4. This 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 6. Exhibit C, as testified to by the Investigator, depicted products that were labeled with the California cannabis label, and many items were brightly colored or depicted cartoon characters with special appeal to children, all in violation of New York law.

5. The Notice of Violation and Order to Seal were properly served upon the Respondent on July 16, 2024. The Investigator’s credible and undisputed testimony established that the Notice and Order as posted on the front window and was personally served upon Respondent Alezeb who was the sole person present at the time of the inspection.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON MAY 21, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: August 5, 2024

Nina Keller
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 5, 2024, to the following:

Nickolas Perry
Shiela Wagner
Trent Justice Biscone
Michael Waller
Paul Bierman