

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 205202407020015

MNS 0928 Corp. DBA Happy Trees

Respondent.

Respondent requested an emergency hearing on July 3, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on July 2, 2024.

The emergency hearing was conducted on July 9, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was represented by Joseph Bondy, Esq.

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

Investigative Specialist Lisa Warner 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 14620 34th Avenue Flushing, New York 11351.

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.

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. During the hearing, Investigator Warner explained that she has training and experience in identifying illicit cannabis products. Her training focused, in particular on how to detect counterfeit and out of state packaging as well as packaging that does not comport with New York State rules and regulations. Investigator Warner testified that on July 2, 2024 she, along with other law enforcement, conducted a regulatory inspection of MNS 0928 Corp. She explained the routine OCM investigators undertake during every regulatory inspection; reconnaissance of the location, an evaluation of illicit versus licit products, whether the quantity of illicit product is de minimis, whether the premises is a residence, and if there is volume and variety of product on site- a determination of whether the premises should be closed. Investigator Warner stated during her testimony that though there was not a written OCM inspections handbook that she was aware of, there were clear rules on how regulatory investigations should be conducted. Investigator Warner's testimony made it clear that a protocol that delineates rules to guarantee the certainty and regularity of application, were in place. During the regulatory inspection at the premises, Investigator Warner observed Respondent offering multiple illicit cannabis products for sale,

namely: edibles (including THC lemonade), Delta 8 and Delta 10 concentrates, Delta 8 vape cartridges and products, pre-rolls, and flower. (See Exhibit B and Exhibit C).

2. No part of the premises sealed were used in part as a residence and pursuant to local law or ordinance, were zoned and lawfully occupied as a “residence.” Investigator Warner stated that the exterior of the premises did not lead into a residence. The exhibits entered into evidence, did not appear to show any evidence of the premises being used as a residence.

3. The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part of the business activity. The 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. A large variety and volume of illicit cannabis brands and products were offered for sale at MNS 0928 Corp. according to Investigator Warner. She testified the location was selling cannabis pre-rolls (Exhibit B pg. 9; Exhibit C pg. 22-23) edibles (Exhibit B pg. 13-14; Exhibit C pg. 4-6, 13, 16, and 23-24) vape cartridges (Exhibit C pg. 17-22, and 25) and dabs (Exhibit C pg. 22). Most of these product types were available in multiple brands or varieties.

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 6. Investigator Warner testified that many of the packages and items offered for sale were not labeled in accordance with New York State Law or OCM Regulations. (See Exhibit B pg. 9, 13-15; Exhibit C pg. 13, 17-27). Additionally, Investigator Warner testified to evidence of unlicensed processing occurring on the premises. Exhibit B and C contain evidence of unlicensed pre-rolls and flower being packaged, specifically pictures of used grinders (Exhibit B pg. 11), scales, and empty pre-roll containers and empty packaging, as well as used pre-roll trays. (See Exhibit B pg. 9) The Exhibits also show enough empty containers and packaging that it is evident the Respondent was processing at scale. Though Respondent had a hemp license, this license did not give it the ability to sell Delta 8 or Delta 10 products, or products containing greater than .3% Delta 9 THC. Investigator Warner did not need to prove that the products in question were tested, as Cannabis Law Article 6 §138(a) states that it is prohibited to sell any product marketed or labeled as Cannabis without a license.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 2, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: July 15, 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 July 15, 2024, to the following:

Nickolas Perry
Sheila Wagner
Joseph Bondy, Esq.
Shaquan Hunt, Esq.