

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 203202407300018

More Than Munchies D.B.A The Bus Stop

Respondent.

Respondent requested an emergency hearing on August 6, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on July 30, 2024.

The emergency hearing was conducted on August 22, 2024, because Respondent had technical difficulties both in connecting to the WebEx in a timely manner and in sending in his proposed exhibits, on the original hearing date scheduled for August 12, 2024.

The Respondent represented himself.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Zachary Hirschfeld, Esq. under the observation and supervision of Michael Waller, Esq.

Assistant Director Wihelmina Boxhoorn 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 3 Snoop St. Monroe, New York 10950.

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.

Evidence was presented to show that service was properly effectuated. The Notice of Violation (hereinafter “NOV”), Order to Seal, and Order to Cease unlicensed activity were posted on the building. Assistant Director Boxhoorn testified that because the windows on the front of the building had a mirrored film, Senior Investigator Schlipman took a picture of the posted NOV from the inside of the premises. (Exhibit A). Additionally, Assistant Director Boxhoorn stated that the employee onsite, Travis Stuart, whose ID picture is seen in Exhibit B-22, accepted service of the copy of the NOV, Order to Seal, and Order to Cease unlicensed activity, but that he refused to sign.

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. Assistant Director Boxhoorn testified that she has training and experience in identifying cannabis and cannabis products. She stated that she had a twenty-year career with Washington State patrol where she was trained in identifying cannabis. In addition, she stated she has received training on identifying cannabis in her role a OCM, both in office and in the field. She explained that when identifying cannabis products she looks at labels and packaging, size, shape, and form which the

product takes. She also added that she has participated in or supervised a couple of hundred regulatory inspections with OCM. Additionally, Assistant Director Boxhoorn was present at the More than Munchies location during this inspection as a direct supervisor for the lead investigator, Senior Investigator Jim Schlipmann. She explained that she trained Senior Investigator Jim Schlipmann on the process of completing regulatory inspections. Assistant Director Boxhoorn testified that in addition to being present at the premises during the regulatory inspection, she also reviewed the photographs of the evidence collected by Senior Investigator Schlipmann. Exhibit B depicts many of the cannabis products observed as offered for sale at the premises that day, including numerous large mason jars of cannabis flower, cannabis vape, live resin, edibles, pre-rolls, concentrate, and dog walkers.

2. No part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance no part was zoned and lawfully occupied as a “residence.” Assistant Director Boxhoorn testified that the premises was not being used as a residence and that she did not observe a mattress or shower inside of the location, during her inspection. The Respondent asked Assistant Director if he lived at the location but did not provide any evidence or details to support that assertion. The premises as seen in Exhibit A and B appear commercial in nature, and there is no evidence to support that Respondent was living inside.

3. The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part 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. One of the relevant factors is whether a large volume and variety of illicit cannabis products was found on the premises during the inspection on July 30, 2024. Per the testimony of Assistant Director Boxhoorn and the Exhibits entered into evidence, there were numerous brands of cannabis observed, including: Packwoods, Dankwoods, Fryd, To The Moon, ADK, Rocket, Kiva, Grab-N-Go, and Fish Scale. (Exhibit B-12). There were also many strains of cannabis flower, including: Glitter Bomb, Bubble Gum, Preoz, Rainbow Beltz, Apple Tartz I, Gusherz, Cheetah Piss, Lemon Candy, Candy Cane, Blue Sushi, Lions Mane, Blue Nerdz, Razzle, I, Gelato, Jungle Applez S, GMO H, Kush Out and White Marsh Mellow. (Exhibit B-17). There was an extremely large bag of cannabis flower labeled Obama Runtz featured in Exhibit B-20 that seemed to be approximately half the length of a couch cushion or the size of a large pillow. Additionally, Exhibit B-10, contained a photo of approximately 18 large mason jars of cannabis, at least 14 of which appear mostly filled with cannabis flower. Though there were evidently snacks offered for sale on the premises, there was no doubt that a very large volume and variety of cannabis products, most significantly cannabis flower.

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. Exhibit B-10 and Exhibit B-17 depict cannabis flower that is completely unlabeled, and therefore not labeled in accordance with Cannabis Law Article 6. Assistant Director Boxhoorn testified that multiple products featured in Exhibit B, such as Stiizy Dog Walkers, and products featured in the top row of the display case in Exhibit B-14, depicted the California warning label, and were not labeled in accordance with New York State law. Additionally, the activity at the premises constituted an imminent threat to

public health in that the evidence showed there was unlicensed processing occurring on the premises. Assistant Director Boxhoorn testified that there was ongoing cannabis processing, pointing specifically to Exhibit B 16. This exhibit showed a scale and jars of cannabis flower, in addition to smaller jars and a sharpie.

The Respondent stated during his testimony that the internal doors at the location all had fingerprint doorknob locks. He made this statement in support of his implication that OCM investigators entered areas of the store which were not open to the public, and thus the product in those areas was not being offered for sale. However, Respondent, never presented any visual evidence that any areas of the store had employee only signs or had fingerprint door knob locks. He also did not present any visual evidence or testimony regarding how the investigators would have or did gain access to locked areas of the premises. In contrast, Assistant Director Boxhoorn testified that the signage on the premises and the presence of QR codes on the product as well as a point of sale system all indicate that cannabis was being offered for sale at the location. Additionally, Assistant Director Boxhoorn, pointed out that the business cards on at the location speak to sales. Namely the cards featured in Exhibit B-4 state, “purchases=legal; sales=illegal” and “flower, edible, cartridges, concentrates, apparel.” Though it is clear that the Respondent attempted to circumvent the law with a play on words or semantics, it is equally as clear the Respondent was offering to sell the cannabis on the premises as he offered it for purchase.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 30, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: August 21, 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 August 21, 2024, to the following:

Nickolas Perry
Sheila Wagner
Zachary Hirschfeld
Michael Waller, Esq.
Robert Coyle