

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 203202407160008

ONE LOVE SMOKE SHOP LLC

Respondent.

Respondent requested a hearing to vacate an order to seal.

The hearing was conducted via WebEx on September 30, 2024, at 10 a.m. The inspection was conducted on July 16, 2024 and an Order to Seal was issued the same day. OPP Ex. A.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Luwick Francois, Esq.

OCM Sr. Investigator James Schlipmann testified on behalf of OCM.

The Respondent was represented by Kevin Grant, Esq., 143-75 230th Place, Laurelton, NY 11403 (kevingrantlaw@gmail.com).

The Respondent did not call any witnesses or offer any exhibits.

The owner of the Respondent, Donovan Thomas¹, did not attend the hearing.

¹ Mr. Thomas’s address is 148 31 Hookcreek BL, Rosedale, NY 11422 (OCM Ex. D3) and his email address is 1lovewayz@gmail.com.

ISSUE

The allegations set forth in the Notice of Violation (OPP Ex. A) assert 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 on July 16, 2024 at One Love Smoke Shop, 1177 Flatbush Avenue, Brooklyn, New York (OCM Ex. B1).

The scope of the hearing was limited solely to the issue of whether or not the padlocking provisions of Cannabis Law § 138-b of have been met by a preponderance off the evidence.

APPLICABLE LAW

Cannabis Law §138-a provides, in relevant part, 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 § 138-b (1) provides for 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 §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 §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 §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 §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. The premises at 1177 Flatbush Avenue, Brooklyn, NY is rented by Donovan Thomas and does business as One Love Smoke Shop. *See* OCM Exs. A, B1. Donovan Thomas is the owner of the Respondent.
2. The premises is not being used as a residence. At the time of the inspection, Investigator Schlipmann did not observe any beds, showers, dressers, or other signs indicating that someone lived in the premises. This is a commercial property. This testimony was not challenged.
3. Investigator Schlipmann testified that Respondent was not licensed to sell adult-use cannabis. This testimony was not challenged.
4. Investigator Schlipmann received training related to the identification of cannabis product
5. The unlicensed activity which warrants an order to seal constitutes more than a “*de minimis*” part of the business activity at the premises. Cannabis Law § 138-b (7) and OCM Regulations 133.25(f)(3) identify the factors that may be considered in determining if unlicensed activity occurring within a respondent’s premises is more than *de minimis*. The factors for determining whether the unlicensed activity is *de minimis* are set forth above.

During the inspection of the Respondent’s premises, Investigator Schlipmann found a large volume and large variety of cannabis products. These products included various forms and flavors of cannabis flower.² Among the items found (all in the back room) were packaged flower (B12), pre-packaged flower (B13), another bag of flower (B 14), a drawer with approximately 12 packages of packaged flower (B15), banks of drawers³ with tubes of flower (C1, C2) in flavors such as Gelato and Lemon Cherry⁴, and a black bag of cannabis flower (C3).

A sign was posted in the public area of the store stating: “We Don’t Sell Weed!!! Its [sic] Donated along with your Purchase of packaging, service and delivery. Thank you.” (OCM Ex. C6). I find that this sign is a transparent attempt to circumvent the proscription against unlicensed sale of adult-use cannabis. It is not credible that the cannabis products are given away free but there is a charge for packaging, service, and delivery of the free product. The posting of this sign shows an awareness by the store owner that the unlicensed sale of cannabis is illegal.

The sale of cannabis in the One Love Smoke Shop is also signaled by the combination of all-cash sales (B2, B6), the presence of an ATM on-site, the sale of smoking accessories such as Raw paper, products with marijuana leaves on the packaging (B5) and a sign to the back room with a depiction of a cannabis bud (B9). While none of these items would by itself conclusively establish that the store sells cannabis, the combination of them is strong evidence that the store does sell cannabis.

² No concentrates or edibles were found during the inspection.

³ There were two banks of six to eight drawers each, according to Investigator Schlipmann.

⁴ The drawers of tubes of Gelato and Lemon Cherry flower each were labeled with a price of \$10, evidence that the flower was for sale. OCM Exs. C1, C2.

Based on the totality of this testimony and the exhibits, I find that OCM met its burden of establishing that the sales of cannabis or offers to sell cannabis products were more than a *de minimis* part of the business activity on the premises.

6. OCM has established that the Respondent's store poses an imminent threat to public health, safety, and welfare. A number of the products identified by Investigator Schlipmann as cannabis were not properly labelled. Several of the products in the premises had California—and not New York—labels (E.g., OCM Ex. B14). As Investigator Schlipmann testified, it is not legal to sell the California-labelled products in New York. Other products were not tested or labelled lawfully (OCM Exs. B12, B14, C1, C2). Some pre-packaged flower was packaged in packages with bright colors and cartoon characters in order to appeal to minors (OCM Exs. B15, B16). Investigator Schlipmann credibly testified that this type of packaging is not legal in New York State.

Respondent's store is located in proximity to five schools (OCM Ex. B8).

There was unlicensed processing of cannabis at the premises. Investigator Schlipmann testified that Respondent was not licensed to process cannabis at the premises. The presence of a scale, a lighter, and empty tubes are evidence of processing (OCM Ex. B10), as are unmarked tubes of flower (OCM Exs. B11, C1, C2) and bags of unpackaged flower (OCM Ex. B12, B14, C3).

7. The Respondent's owner, Donovan Thomas, a person of suitable age and discretion (OCM Ex. D3), was provided with a copy of the Notice of Violation and Sealing Order (OCM Ex. A). Mr. Thomas refused to sign the Notice of Violation (OCM Ex. A). Investigator Schlipmann conspicuously posted a copy of the Notice of Violation and Sealing Order on the front door of the premises. OCM Ex. D1, D2. At the time of the inspection on July 16, 2024, Mr. Thomas identified himself as the owner of the One Love Smoke Shop.

8. Respondent asserted that the One Love Smoke Shop did not sell cannabis but that it gave away cannabis to those practicing the Rastafarian religion. While Respondent's counsel made this argument in closing, there was no testimony and no admitted exhibits that supported this.

WHEREFORE, PURSUANT TO CANNABIS LAW §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 16, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: September 30, 2024

Paul Perlman

Paul Perlman
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 1, 2024, to the following:

Luwick Francoise (Luwick.Francoise@ocm.ny.gov)

Kevin Grant, Esq. (kevingrantlaw@gmail.com)

OCM Hearings Bureau (administration.hearings@ocm.ny.gov)

Nickolas Perry

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