

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 102202406120009

Snacks and Things Smoke Shop LLC
1812 Westchester Avenue
Bronx, NY 10472

Respondent.

The hearing was conducted on July 2, 2024.

The Respondent was represented by James Kirshner, Esq.

Rene Suquilanda testified on behalf of the Respondent.

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

Investigative Specialist Bladimir Nunez 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 1812 Westchester Avenue, Bronx, NY 10472.

The scope of the hearing was limited solely to the issue as to whether the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance off 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. Investigator Bladimir Nunez testified that he has been employed as a Specialist Investigator for OCM for four months where he has conducted approximately forty (40) inspections. Prior to that position he was employed by the NYC Department of Corrections as an investigator and had been a private investigator prior to that. He has conducted thousands of investigations. He has also been trained in the identification of cannabis products. Investigator Nunez, along with members of the NYPD, NYS Taxation & Finance Department and NYS DEP conducted an inspection on 06.12.24 at approximately 2:19pm of Snacks and Things Smoke Shop LLC located at 1812 Westchester Avenue, Bronx, New York 10472. Prior to entering the establishment, the investigator took a photo of the front of the establishment. See Exhibit B/ 1. During the inspection the investigator observed a scale, packages of edibles with State of California labels, pre-rolls (joints), cannabis plants with California labels and counterfeit medical labels, cannabis flower with State of California labels, concentrates also with State of California labels. Some of the packaging displayed cartoons appearing to entice minors. Investigator Nunez

took photos of the above referenced items. See Exhibit B/2-15. At the inception of the inspection there was only one person on the premises – Paul Santana – who identified himself as an employee/cashier. Mr. Santana stated that he did not know the owner. Mr. Santana subsequently executed the Certificate of Service on the Notice of Violation which Investigator Nunez witnessed. See Exhibit A. Investigator Nunez subsequently prepared an inventory of the various items seized (THC edibles, THC – A concentrate (26), THC-P concentrate, THC-p edible, Delta 8 concentrate, Delta 8 edible (35). Mr. Santana acknowledged receipt of a copy of the inventory sheet by his signature. See Exhibit D. During the inspection Investigator Nunez did not observe a current license to sell cannabis anywhere on the premises.

2. No part of the premises to be sealed is used as a residence and pursuant to local law or ordinance, is zoned and lawfully occupied as a “residence.” Investigator Nunez testified that the premises appeared to be a store only (not living quarters). The Respondent offered no evidence to rebut the testimony.
3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. A large variety of illegal cannabis products were observed and seized by the testifying investigator, not limited to but including THC flowers, THC edibles, THC concentrate, cannabis plants with California logos, HHC concentrate with California logos and counterfeit medical labels. The investigator testified that there was no evidence of a living quarters on the premises and most of the products observed were cannabis related and not grocery items.
4. This unlicensed activity constituted and 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. Exhibits B & C, 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 Article 6 138-b (4).
5. The Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal were properly served upon the Respondent on 06.12.24. Investigator Nunez’s credible and undisputed testimony established that the Notice and Oder were personally served upon the sole store employee – Paul Santana - present at the time of the inspection and that they were also conspicuously posted on the front door of the premises. Additionally, this service was further corroborated by Respondent’s attorney, when he submitted a sworn affirmation indicating that his client, Rene Suqvilanda, was requesting a hearing to contest the Notice and Order. This hearing request referenced the inspection number listed on the Notice and Order served and posted by Investigator Nunez on 06.12.24. Relative to Respondent’s counsel’s assertion that service was improper as it was served on the wrong person, 48 RCNY section 6-98(b)(1)(h) provides that service of the summons will be considered sufficient when served upon any other person of suitable age and discretion as may be appropriate. Relative to Respondent’s counsel assertion that affirmation of service was not in

compliance with 138b section 10 requiring service within 5 days by certified mail, I find that (12 days) it is not fatal as service was successfully accomplished notwithstanding.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON 06.12.2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: 07.11.24

Carl B. Stoll

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 07.11.24 to the following:

James Kishner, Esq.
Paul Tsui, Esq.
Nickolas Perry
Sheila Wagner

