

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**

**Complaint No. 103 2024 0718 0034**

**BRECKENRIDGE CAFÉ NYC LLC  
D/B/A BRECKENRIDGE CANNABIS CAFE**

Respondent.

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**ISSUE AND PROCEDURAL HISTORY**

The allegations set forth in the Notice of Violation and Order to Cease Unlicensed Activity and Notice of Hearing (hereinafter “NOV”) indicate that the Respondent was offering cannabis products, as defined by Cannabis Law § 3, for sale without an appropriate, registration, license, or permit issued by the Office of Cannabis Management. This allegation was based upon observations made during a regulatory inspection which was conducted at 319 Wythe Ave, Brooklyn, NY, on July 18, 2024.

A virtual hearing was held on November 18, 2024 from the Albany Office of Cannabis Management before Administrative Law Judge Karen Lavery. Abir Ahmed, Esq. appeared on behalf of the New York State Office of Cannabis Management (hereinafter “OCM”) and Joshua Bauchner, Esq. appeared on behalf of the Respondent. OCM Senior Investigator Joshua Coons (hereinafter “Investigator Coons”) testified on behalf of OCM. Tyler Lehmann, the owner of Breckenridge Cafe NYC LLC d/b/a Breckenridge Cannabis Café, testified on behalf of the Respondent.

**FINDINGS OF FACT**

On July 18, 2024, OCM conducted a regulatory inspection of Breckenridge Cafe NYC LLC d/b/a Breckenridge Cannabis Café located at 319 Wythe Ave, Brooklyn, NY. OCM Investigator

Danielle Newell (hereinafter “Investigator Newell”) was present at the inspection and completed a Notice of Violation/Order to Cease Unlicensed Activity with respect to her observations (Exh A). Investigator Newell was not present at the hearing. Investigator Coons testified that at the time of the July 18, 2024 inspection, he was Investigator Newell’s supervisor however he was not present at the time of the inspection and had never been to the subject premises. Petitioner’s counsel attempted to enter into evidence a number of exhibits which included photographs taken by Investigator Newell during the course of the inspection. Investigator Coons testified that he had reviewed these documents at some time after July 19, 2024 which was the date that he testified that Investigator Newell uploaded them onto the shared drive system utilized by the Enforcement Unit. As Investigator Coons’ testimony would have been solely based upon his review of the exhibits rather than firsthand knowledge that they were a fair and accurate depiction of the contents of the photographs, the exhibits were denied entry into evidence as the proper foundation could not be established.

In the absence of the testimony of Investigator Newell or any evidence which she could have authenticated, OCM has failed to prove beyond a preponderance of evidence that Respondent was engaged in the sale of illicit cannabis and cannabis products without a license. While Petitioner’s attorney attempted to prove that the products contained in Respondent’s exhibits contained cannabis (Exh 6), Respondent was in possession of a Hemp Distributor’s License which he credibly testified allowed him to sell products online to buyers outside New York State. Absent any testimony or evidence that these products were the ones which resulted in the Notice of Violation/Order to Cease Unlicensed Activity issued by Investigator Newell, OCM has failed to substantiate that the document was properly issued.

**WHEREFORE:**

As OCM failed to prove by a preponderance of evidence that Respondent engaged in the sale of illicit cannabis and cannabis products without a license on July 18, 2024, this case is dismissed.

*Karen Lavery*  
Administrative Law Judge

DATED: November 18, 2024

This decision was sent via email on November 18, 2024 to the following:

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.

Abir Ahmed, Esq.

Joshua Bauchner, Esq.