

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

**Order To Vacate Sealing Order
Inspection No. 18202408130069**

A and A Inc. Baba Smoke Shope

Respondent.

Respondent requested a hearing on August 18, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on August 13, 2024.

The hearing was conducted on October 30, 2024.

The Respondent was Pro Se.

No person testified on behalf of the Respondent.

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

No person 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 137 Saratoga Avenue, South Glens Fall, NY 12803. The scope of the hearing was limited solely to the issue as to whether the padlocking provisions Cannabis Law Article 6 § 138-b of law 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. Michael Waller, an attorney admitted to practice before Courts of this State, affirmed under penalty of perjury that: OCM did not issue an Order to Seal during an inspection of the above referred to business at the above referred to location on August 13, 2024.
2. Further, Respondent filed an Administrative Hearing Request on August 18, 2024, to contest a Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal issued on August 13, 2024. The request was granted.
3. A hearing date was set for October 30, 2024, for Respondent to contest the Order to Cease Unlicensed Activity, and Order to Seal.
4. At the hearing counsel for OCM made a motion to Vacate the Order to Seal portion of Notice of Violation # 18202408130069 as no Order to Seal was issued.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON 08.13.2024, WHICH THE RESPONDENT REQUESTED A HEARING TO RESPOND TO IS HEREBY VACATED.

Dated: 11.15.24

Carl B. Stoll

Administrative Law Judge

Michael Waller, Esq.
Kamran Babar
Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.

