

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 115202411130063

443 Walker Convenience Corp.

Respondent.

Respondent requested an emergency hearing on November 15, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on November 13, 2024.

The emergency hearing was conducted on November 20, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was represented Joseph Bondy, Esq.

The Office of Cannabis Management (hereinafter "OCM") was represented Luwick Francois, 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 443 Route 17M Middletown, NY 10940.

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 off the evidence.

The Order to Seal, Notice of Violation, and Order to Cease Unlicensed Activity, was appropriately served on an employee of the premises. Investigator Nunez testified that he encountered two employees during his inspection of the premises, a security guard named Fernando Corona Caballero, and the individual to whom he gave the Order to Seal (Exhibit A), Rafael Andry Gonzalez Florentino. Mr. Florentino accepted service, and his signature can be seen in Exhibit A and a copy of his license can be seen in Exhibit D1. Additionally, a check written from the business, 443 Walker Convenience Corp. and made out to the security guard, Mr. Corona Caballero can be seen under what appears to be a voucher in Exhibit B16. Respondent, Sadam Alzokari, was also present with counsel during the entirety of the hearing.

APPLICABLE 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. Investigative Specialist Bladamir Nunez testified that on November 13, 2024, he and Investigative Specialist James Lawson conducted an inspection of 443 Walker Convenience Corp. Respondent held an OCM issued Cannabinoid Hemp Retail License. (Exhibit B15). Investigator Nunez stated that he had on the job training and experience in identifying and

differentiating cannabis and hemp products. He said that when identifying products, he identifies them by the manner in which the store is identifying or labeling the products. He also identifies cannabis products by their strains, if they are common, such as Gelato, Sativa, and Trump. Though it should be noted that contrary to Investigator Nunez's testimony, there are multiple strains of hemp with names that overlap with the names of cannabis strains, such as Gelato. (Respondent Exhibit 1). Additionally, he looks for any signage on the premises that promotes the sale of THC. He also looks for THC products offered for sale such as, flower, concentrates, edibles, and pre-rolls, all of which he said he observed on the premises. Investigator Nunez testified that when he entered the premises during the inspection he observed a gentleman processing what appeared to be cannabis flower. He also observed a large inflatable Raw brand blunt, which indicated to him that the store was selling cannabis products. During his inspection, Investigator Nunez observed the following products marketed as cannabis, including but not limited to: Stiiizy pre-rolls, Cali Honey THC concentrate vape cartridges, Punch Bar THC edibles, loose Cannabis flower, Honey Palm Smashers THC Gummies, Chew and Chill cannabis infused edibles, Mamba Cubes and Devour Sour Belts, and Space Face THC product. (B18, 19, B22, C4, C5, C7, C10, C15, C16, C18, and C21). The hemp regulations present in Part 114.8 of OCM regulations stipulate to the THC limits in hemp products. Part 114.8(b)(1)(i) requires that an orally consumed hemp product not contain more than 10 mg. total THC per package and not more than 1 mg. total THC per serving. Part 114.8(a)(2) states that a hemp product must not contain more than .3% total delta 9 THC concentration. Part 114.8(a)(6) forbids products from being in the form of a cigarette, cigar, or pre-roll and from containing tobacco or nicotine. Part 114.9 (c) indicates that all hemp products are to be packaged in a tamper-evident package. Many of the products observed on the premises, including the ones listed above, are labeled as either THC products or are products with greater than .3% THC. Additionally, large vats of flower were observed on the premises. They appear to be cannabis flower. Part of the reason they appear to be cannabis flower and not hemp flower is that according to the regulations, hemp products must be pre-packaged in a tamper-evident package. These large vats are not pre-packaged, nor did they contain the clear usage instructions required by Part 114.9(d)(2). Moreover, their appeared to be loose flower, flower residue, and tobacco present on rolling trays, scales, and other equipment inside the premises. The presence of the additional substances, indicates that cannabis pre-rolls and pre-rolls containing tobacco hereinafter "spliffs", were being constructed on the premises. If the substance was hemp and not cannabis, it would be in clear contravention to the hemp regulations. Many of the products observed at the location violate many of the hemp regulations and were being marketed as non-hemp cannabis products. Thus, it is not believable that the products listed above were being sold under the Respondent's Cannabinoid Hemp Retail License.

2. 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." Investigator Nunez testified that the premises was commercial in nature, and that there was no evidence of a bed, shower or other facilities commonly found in a residence.

3. The unlicensed activity which warrants an order to seal constitutes more than a "de minimis" part the business activity. Investigator Nunez testified that he determined the store should be sealed because of the wide volume and variety of product observed. The Cannabis Law outlines four non-exclusive factors to be considered when determining whether business

activity should be considered as de minimis. Of those four factors, at least two were present at 443 Walker Convenience Corp.; a relevant variety of cannabis products was present, and a wide volume of cannabis products was present. Investigator Nunez testified that there was a wide variety of products as they came in the form of edibles, concentrates, pre-rolls and flower. Additionally, he testified that there was a large volume of product present. The large volume of product is visible in Exhibits B and C. For instance, Exhibit B19 contains numerous CaliHoney cannabis oil packs, in addition to Stiiizy product. Exhibit B22 contains a number of cannabis gummies. Exhibit C7 contains jars of cannabis flower and Stiiizy product. Exhibit C11 depicts additional cannabis flower. Exhibit C18 depicts Stiiizy pre-rolls and THC Pods, and Exhibit C21 contains many Cannabis Punchbars. The large volume of confiscated product can also be observed in Exhibits C23 and C24. Though there were drinks and other products observed at the premises, they did not negate the large volume and variety of cannabis also observed on site.

4. The unlicensed activity at 443 Walker Convenience Corp., 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, and there was unlicensed processing of cannabis products occurring on site. Investigator Nunez observed unlicensed processing of cannabis, as seen in the scales covered in cannabis flower and tobacco residue in Exhibit C1, the loose and uncovered containers of cannabis flower seen from different angles in Exhibit C2 and C5 in proximity to what appears to be empty cannabis flower packaging, and the empty packaging, grinder, and tobacco seen in Exhibit C6. Additionally, the cannabis products observed in Exhibit B19, B22, C12, C10, and C14 contain a California cannabis warning label. Investigator Nunez explained in his testimony that cannabis products labeled with the California warning label are not lawful in New York. Similarly, products such as the loose flower observed Exhibit C7, C2 and C5, were without any cannabis warning label, and thus not labeled in accordance with New York law. Respondent argues that the absence of additional imminent threat factors should weigh in favor of Respondent being found to not have posed an imminent threat to public health, safety, and welfare, I disagree. Though I credit the fact that no firearms were found on the premises, and no one reported hospitalizations or illness, I find that the Exhibits depict an unhygienic and slipshod operation. The cannabis flower product observed in Exhibit C5 is on the ground next to trash and empty wrappers. From the vantage point in Exhibit C2, one can see an empty coffee cup on the floor, and a clothing item on top of the cannabis flower product. Those processing conditions, in addition to vats of unlabeled cannabis flower, and products not labeled and tested in accordance with New York law, lend themselves to situations that pose an imminent threat to public health.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON NOVEMBER 13, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: November 26, 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 November 26, 2024, to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Luwick Francois, Esq.
Joseph A. Bondy, Esq.