

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

5514 MYRTLE AVE CORP

Respondent.

DECISION

Inspection No. 202202410290045

Respondent requested an emergency hearing on November 15, 2024 which was made as a result of an inspection which occurred on October 29, 2024.

The emergency hearing was conducted on November 27, 2024 pursuant to a mutual agreement between the parties.

The Respondent was represented by Jacqueline Kafedjian, Esq.

Walid Ali, owner of 5514 Myrtle Ave Corp and store employee Manisha Baddam testified on behalf of the Respondent.

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

Senior Investigator Bryant Paredes 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 55-14 Myrtle Ave, Ridgewood, NY, 11385.

The scope of the hearing involves determination as to whether OCM, by a preponderance of the evidence, was justified in issuing to Respondent the Notice of Violation and Order to Cease Unlicensed Activity (hereinafter collectively “NOV”) and what penalty under Cannabis Law

Article 6 § 132 is justified. OCM requested the maximum penalty of \$10,000. Additionally, this hearing was held for purpose of determining whether the padlocking provisions of Cannabis Law Article 6 § 138-b has been met by a preponderance of the evidence.

APPLICABLE LAW

Cannabis Law Article 6 §125(1) provides that: “No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefore required by this chapter unless otherwise authorized by 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 §132(1)(a) provides that any person who sells cannabis, or cannabis products, or any product marketed or labeled as such, without having an appropriate registration, license or permit therefor, may be subject to a civil penalty of not more than ten thousand dollars for each day during which such violation continues.

Cannabis Law Article 6 §132(1)(c) requires that any civil penalties assessed “shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation...”

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)).

Cannabis Law Article 6 §138(b)(2) provides that any order to seal shall be served by delivery of the order to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises that have been sealed, secured and closed. A copy of the order shall also be mailed to any address for the owner of the business at any address provided by the person to whom such order was delivered pursuant to this subdivision. The order shall remain in effect pending a hearing and final determination of the board, or until such order is vacated by the office pursuant to subdivision six of this section. An order to seal shall explicitly state the procedure to request a hearing within seven days.

FINDINGS OF FACT

1. According to the credible testimony of Investigator Paredes, Respondent was offering cannabis products for sale without a license issued by OCM (Exh A). Investigator Paredes testified as to what he identified at the time of the inspection to be cannabis flower, cannabis edibles, cannabis concentrate, and cannabis pre-rolls which he observed in an open safe behind the counter where the cash register was located (Exh C1-17, D1-2, 4-9). Many of the illicit cannabis products were labeled as containing cannabis and contained the California label which are not legal to sell in New York State (Exh C 5, 7-12, D-2, 4-9). He also observed a point-of-sale system and a portable scale which contained cannabis residue on it as well as label maker, both of which the Investigator testified are indicators that processing of cannabis was occurring at the location (Exh B4-5, E6-7).

2. According to the credible testimony of Investigator Paredes, no part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance, is zoned and lawfully occupied as a “residence.” I note that this was not disputed by the Respondent.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part of the business activity according to Investigator Paredes. He testified that he found a large variety of illicit cannabis products during the course of the inspection of this location. While he initially testified that there was a large variety of illicit cannabis products but not a large volume, he subsequently testified, based upon the photographs as well as the Department of Taxation and Finance (hereinafter “DTF”) vouchers, that he believed it to be a large volume (Exh 4 2) When questioned whether he considered the 44 bags of cannabis flower seized as reflected in the DTF vouchers to be a large amount, he testified “it was definitely not for personal use” (Exh 4 2). Cannabis Law Article 6 § 138-b(7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. One such factor is the presence of signs or symbols, inside or outside, which advertise the sale of cannabis or otherwise indicating that cannabis is sold there. On the outside of the building, over the entrance of the shop, was a large sign identifying the store as a “DISPENSARY” (Exh B 1). Inside the store were nine pictures depicting cannabis use or denoting common references to cannabis culture for example one which stated “SMOKE WEED EVERYDAY” (Exh B 3). Based upon the totality of the evidence and testimony, it is reasonable to believe that cannabis was being offered for sale at that location. While Respondent’s attorney argues that there were no price tags affixed to the

cannabis products therefore there was no evidence of sales or offers to sell, I note that Cannabis Law Article 6 §138-b(7) provides four factors to consider when assessing whether unlicensed activity within a building is more than de minimis, and provides that “the office or board, as relevant, shall consider those factors “as any one or more.” Therefore, a finding of all four factors is not necessary to make a finding of more than de minimis.

4. The unlicensed activity constituted an imminent threat to public health, safety, and welfare based upon the offer to sell cannabis products which were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Investigator Paredes testified that many of the cannabis products were packaged with labels bearing the California label which were not legal to sell in New York State (Exh C 5, 7-12, D-2, 4-9). According to the testimony of Investigator Paredes, the volume of cannabis was more than would be possessed for personal consumption. Furthermore, the location of the cannabis products was in an open safe directly behind the cash register where an employee could easily access them. The Respondent’s testimony that the “unauthorized” employee working at the shop that day, who he claimed he did not know, placed the products there to sell while he was working, lacks credibility. In further finding that the products were offered for sale, I note that the Respondent had applied to OCM for an adult use retail license which he cited as the reason that the sign identifying the location as a “DISPENSARY” was left in place. Many of the cannabis products were in brightly colored packages with bubble font and depicted images which could appeal to children, all of which is in violation of New York State law (Exh C4-5, 7-10, 12-13, D1-2, 4-9). Furthermore, Investigator Paredes identified a label maker and a scale which contained cannabis residue which he testified is indicative of processing of untested and unregulated cannabis at the location (Exh E6-7).

5. The Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was properly served upon the Respondent on October 29, 2024. Investigator Paredes’ credible and undisputed testimony established that the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was personally served upon and signed by Hemanth Garnapally who identified himself as an employee of 5514 Myrtle Ave Corp and was in actual control of the premises (Exh A, B7). The testimony of Walid Ali that protocol was not properly followed by the person who contacted Mr. Garnapally to fill in for her on that day is rejected as irrelevant as to his presence working on the day of the inspection. Furthermore, the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was also conspicuously posted on the front door of the premises, as required by Cannabis Law Article 6 §138(b)(2) (Exh E8). Because the address of the business owner was not supplied to the Investigator by that store employee at the time of the inspection, no further steps were required by statute or regulations to complete service. Therefore, I find that service was properly effectuated in accordance with Cannabis Law Article 6 §138(b)(2).

6. OCM requested that the maximum penalty of \$10,000 be levied for the violations that were discovered during the inspection. While the statute does not provide extensive guidance for determining the penalty for violations under Cannabis Law Article 6 §125, 132, and 138-a, it does require that a penalty be proportionate to the violation (Cannabis Law Article 6 § 132 (1)(c)). In the Matter of 5514 Myrtle Ave Corp, Investigator Paredes testified and provided photographic evidence which established that a large variety and volume of illicit cannabis products were seized from the store. Such a conclusion was also based upon his review of the DTF voucher of products seized during the regulatory inspection (Exh 4 2). There were also a

significant number of signs and symbols, both outside and inside the store which were an indicators that cannabis was being sold at the location. The amount of cannabis observed and seized, as well as the signage, and the evidence of processing occurring at the location. After a balancing of these various factors, an intermediate range fine of \$6,000 would be proportionate to the violation. As such, I am assessing 5514 Myrtle Ave Corp, a penalty of \$6,000.


DECISION

The Respondent engaged in the sale of illicit cannabis and cannabis products without a license issued by OCM, at the location of 5514 Myrtle Ave, Ridgewood, NY, 11385. In so doing, Respondent violated Cannabis Law Article 6. The Order to Cease Unlicensed Activity and Order to Seal are hereby affirmed and a penalty is assessed.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON OCTOBER 29, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

FURTHERMORE, PURSUANT TO CANNABIS LAW ARTICLE 6 § 132 (1), THE RESPONDENT IS HEREBY ORDERED TO PAY A \$6,000 FINE, AS A PROPORTIONATE PENALTY FOR THE UNLICESSED SALE OF CANNABIS AND CANNABIS MARKETED PRODUCTS ON OCTOBER 29, 2024.

Dated: December 9, 2024



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 December 9, 2024, to the following:

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.

Abir Ahmed, Esq.

Jacqueline Kafedjian, Esq.