

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. 203202411060031

AAA MOUNT VERNON GAS INC.

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 140 W Sanford Blvd., Mount Vernon, New York, 10550, on November 6, 2024.

A virtual hearing was held on December 10, 2024 from the Albany Office of Cannabis Management before Administrative Law Judge Karen Lavery. Sisi Wu, Esq. appeared on behalf of the New York State Office of Cannabis Management and Senior Investigator James Schlipmann (hereinafter “Inspector Schlipmann”) testified on behalf of OCM. Amit Bachan, the owner of AAA MOUNT VERNON GAS INC. testified on behalf of the Respondent.

FINDINGS OF FACT

On November 6, 2024, OCM Senior Investigator James Schlipmann was part of a regulatory inspection at AAA Mount Vernon Gas Inc. located at 140 W Sanford Blvd., Mount Vernon, New York, 10550. The location consisted of a gas station/convenience store (Exh B1). At the time of the inspection, Investigator Schlipmann observed a vending machine located in the store accessible to anyone in the store, from which a patron could obtain cannabis products (Exh A, B2-9). The vending machine displayed a screen with several menus which a patron could scroll through to see the cannabis products available for sale including a description, quantity, and

price (Exh B3-8, 10-13). Such products offered for sale included several varieties of cannabis flower, cannabis pre-rolls, cannabis edibles, and cannabis concentrate (Exh B3-8). Some of the products were labeled with the California label which Investigator Schlipmann testified were not legal to sell in New York State (Exh B10-12). According to Investigator Schlipmann, the vending machine was fully functional and contained 50-100 illicit cannabis products in total. He further testified that there were no other cannabis products located or offered for sale in the store.

The store owner credibly testified that he had seen a similar vending machine at an out of state convenience store and obtained the phone number and contacted the vendor, Ben Gross, to inquire about placing a similar machine in AAA Mount Vernon Gas Inc. The Respondent was not in possession of an Adult Use Cannabis Retail License issued by OCM however was aware that such a license was required. He credibly testified that Ben Gross assured him that he (Ben Gross) had the necessary licenses required and provided the Respondent with a sealed envelope which he indicated contained sufficient proof of licensure. According to the Respondent, he had the vending machine at the location for approximately three weeks. At some point on November 6, 2024, subsequent to the inspection, Ben Gross arrived for the purpose of removing the vending machine from the location. After the inspection had occurred, the Respondent opened the sealed envelope provided by Ben Gross which contained only the analysis of the products in the vending machine and no copy of any licenses. At the conclusion of the inspection, Investigator Schlipmann served the Notice of Violation/Order to Cease Unlicensed Activity on the person working at AAA Mount Vernon Gas Inc. who identified himself as an employee (Exh A). In addition, he posted a copy of that document as well as a warning sticker putting the public on notice that illicit cannabis had been seized from that location, on the storefront (Exh C2, 3).

OCM is seeking the maximum penalty of \$10,000 for Respondent's sale of illicit cannabis without a license issued by OCM. In this case, I believe that a penalty is warranted. In assessing a penalty, several factors have been considered. The Respondent's testimony that he received assurances from the owner of the vending machine that the license requirement was satisfied, I find to be credible. In addition, there were no other cannabis products offered for sale in the store with the exception of those contained in the vending machine. The Respondent testified that he did not have a key to open it, was not responsible for re-stocking it, nor at any time did he receive remuneration for the vendor placing it there or any commission from any sales which occurred. It was only on the premises for approximately three weeks. Most significant was the testimony of Investigator Schlipmann who testified that he "believed that it was a misunderstanding that the vending company had sold him a bill of goods saying he was licensed." Investigator Schlipmann also testified that he "believed it to be a misunderstanding on what was allowed or not allowed in the State of New York."

It is also undisputed that illicit cannabis was being offered for sale from this location and that the Respondent was not in possession of a license issued by OCM to do so. Investigator Schlipmann testified that there were 50-100 illicit products in the vending machine. The products contained the California label therefore were not legal to sell in New York and were untested and the safety

of the products unknown. I note that the vending machine containing illicit, untested cannabis products was potentially accessible to people under 21 years old who entered the store and wanted to purchase them. No testimony was provided, or evidence presented, that there were any safeguards in place to ensure that the use of the machine was limited to persons 21 years of age or over. As such, those untested cannabis products posed a potential health risk to anyone who may have purchased them, including people under the age of 21, who would no doubt have been attracted to the easy access of obtaining them.

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 §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(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.”

WHEREFORE, RESPONDENT IS HEREBY ORDERED:

To pay a **\$3,000** fine for the sale of illicit cannabis and cannabis products without a license on November 6, 2024.

Karen Lavery
Administrative Law Judge

DATED: December 11, 2024

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 11, 2024, to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Sisi Wu, Esq.
Amit Bachan