

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Complaint No. 112 2023 0607 0004

Baby Jeeter,
a/k/a 793 Convenience Corp.
793 Broadway
New York, N.Y.

Respondent.

The above matter was held as a Webex hearing before the undersigned, Thomas Kidera, on July 12, 2023.

The Respondent failed to appear.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Deputy General Counsel Christopher DeLuca.

Investigative Specialist William McKay testified on behalf of OCM.

Regulations at 9 NYCRR 133.16 (a)(3) provide that “If a party fails to appear at the hearing and no adjournment has been requested and granted for cause, the administrative law judge shall recommend a default order.” As such, a default judgment in this case is hereby entered. As the Petitioner is seeking penalties in this matter, a default hearing was held in this matter.

ISSUE

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. This allegation was based upon observations made during a regulatory inspection which was conducted at Baby Jeeter, aka 793 Convenience Corp., located at 793 Broadway, New York, NY, on June 7, 2023 (Ex.1).

FINDINGS OF FACT

1. The NOV was presented to an employee who refused to sign it at the time of the regulatory inspection, and it was left on the counter in proximity of that employee. The NOV indicated that a hearing was scheduled for June 22, 2023, however the Respondent did not appear, and the hearing was then adjourned to July 12, 2023, at 2:00 p.m. OCM attorney Christopher DeLuca made several attempts to contact the Respondent by phone to advise them of the adjourned date, but he was unsuccessful in reaching them. An email address for the OCM's Office of Administrative Hearings was also provided on the NOV. The Respondent did not appear at the hearing, nor did the Respondent or anyone on behalf of the Respondent contact the Office of Administrative Hearings (Ex.1).

2. On June 7, 2023, Investigative Specialist McKay, in addition to members of the Enforcement Division from the New York State Department of Taxation and Finance (hereinafter "DTF"), conducted a regulatory inspection at 793 Broadway, New York, NY, 10003. Investigative Specialist McKay testified that he had previously gone into the shop during normal business hours on June 6, 2023 and observed cannabis products offered for sale. Respondent was not in possession of a license, permit or registration issued by OCM to sell cannabis or any products containing cannabis (Ex. 22).

3. Investigative Specialist McKay credibly testified that at the time of the regulatory inspection, he observed numerous types of products including cannabis edibles, cannabis concentrates, pre-rolls, and cannabis flower, which were offered for sale in glass display cases (Exhs. 3, 5, 7, 9, 11, 13, 15). According to his testimony, many of the cannabis products were labeled with price tags (Exhs. 3, 7, 9). He also testified that he observed a cash register at the location (Ex.15).

4. Investigative Specialist McKay completed an inspection report at the time of the inspection, listing the products that were seized (Ex.20).

5. Investigative Specialist McKay testified that he also observed his OCM colleague complete the OCM voucher, which provided a detailed inventory of the cannabis seized by OCM (Ex.21). He further witnessed the completion of a 10-page voucher, completed by a representative of Taxation and Finance, which documented the cannabis products that DTF seized. (Ex.19).

6. Investigative Specialist McKay further testified that at the conclusion of the June 7, 2023, regulatory inspection, he placed a copy of the NOV and a Warning Notice on the store front of 793 Broadway, New York, NY (Ex.18).

7. Investigative Specialist McKay also testified that at a later date he viewed and downloaded a video from a Tik Tok social media account, named *@bentonmclintock*. The video purported to be taken inside the Baby Jeeter store sometime after the NOV and Warning Notice had been affixed on June 7, 2023. (Ex.23). While the video seemed to indicate that the store had been restocked with a few cannabis related products, the video was not verified for authenticity, nor were the individuals on the video identified or known by the Investigator. In fact, Investigative Specialist McKay testified that the voices heard on the video were not the same as the voices of any employee he had spoken to at the store. Finally, there was no indication on what date the video had been made. Because of the unreliable nature of this exhibit, OCM failed to establish by a preponderance of evidence, that the Respondent continued to sell cannabis products on any day after June 7, 2023.

CONCLUSIONS OF 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 therefor 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)(a) provides that where such person has been ordered to cease such conduct pursuant to subdivision one of section one hundred thirty-eight-a of this chapter, such person may be assessed a civil penalty of no more than twenty thousand dollars per day for each day during which such violation continues after receiving such order in addition to the additional civil penalties set forth above.

DECISION

The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 793 Broadway, New York, NY. In so doing, Respondent violated Cannabis Law Articles 6 § 125(1) and §132(1)(a).

The Order to Cease Unlicensed Activity is hereby **Affirmed**.

WHEREFORE, RESPONDENT IS HEREBY ORDERED:

To pay a **\$10,000** fine for the sale of illicit cannabis and cannabis products without a license on June 7, 2023.

Thomas Kidera

Administrative Law Judge

DATED: October 3, 2023

This decision was sent via email on October 3, 2023, to the following:

Nickolas Perry
Sheila Wagner
Christopher DeLuca, Esq.

This decision was sent via regular first-class mail on October 3, 2023, to the following:

Baby Jeeter
a/k/a 793 Convenience Corp
793 Broadway
New York, NY 10003