

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

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OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Complaint No. 115 2023 0727 0072

Bavaro Smoke Shop Inc.

Respondent.

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The above matter was held as a Webex hearing before the undersigned, Karen Lavery, on October 4, 2023.

The Respondent failed to appear.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Assistant Counsel Jessica Dell’Anno.

Investigative Specialist James Lawson 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 Bavaro Smoke Shop Inc. located at 664 W. 181st St., New York, NY, on July 27, 2023 (State’s Exh 1).

FINDINGS OF FACT

1. The NOV was served upon and signed by Mastapha Mohamed at the time of the regulatory inspection (State's Exh 1). The NOV indicated that a hearing was scheduled for August 23, 2023 at 2:00 p.m. however the hearing was adjourned to October 4, 2023 at 2:00 p.m. OCM attorney Jessica Dell'Anno made contact by phone with someone who indicated that the new hearing date and time had been provided to Mr. Mohamed and that Mr. Mohamed was unsure as to whether he was going to appear at the hearing. 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.

2. On July 27, 2023, Investigative Specialist Lawson, 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 664 W. 181st St., New York, NY. Investigative Specialist Lawson testified that he had gone into the shop on July 27, 2023 and observed cannabis products offered for sale. Investigative Specialist Lawson testified that prior to the regulatory inspection, an internal search was conducted, and it was determined that Respondent was not in possession of a license, permit or registration issued by OCM to sell cannabis or any products containing cannabis. This was further supported by an Affidavit signed by OCM's Manager of Licensing who confirmed that Respondent was not in possession of any license, permit, or registration issued by OCM (State's Exh 5).

3. Investigative Specialist Lawson credibly testified that at the time of the regulatory inspection, he observed numerous types of cannabis edibles as well as cannabis flower which were offered for sale in a glass display case (State's Exhs 8-10, 13). Many of the products were labeled with price tags (State's Exhs 10, 13). Investigative Specialist Lawson also testified that he observed a card reader at the location (State's Exh 13).

4. Investigative Specialist Lawson completed an inspection report at the time of the inspection as well as a voucher indicating the products seized by OCM (State's Exhs 2-3).

5. Investigative Specialist Lawson testified that he witnessed the completion of the voucher by a representative of Taxation and Finance which documented the cannabis products which DTF seized from the shop (State's Exh 4).

6. Investigative Specialist Lawson testified that at the conclusion of the regulatory inspection, he affixed a copy of the NOV and a Warning Sticker (hereinafter "WS") to the door of 664 W. 181st St., New York, NY (State's Exh15).

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.

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 664 W. 181st St., 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 July 27, 2023.

Karen Lavery

Administrative Law Judge

DATED: October 5, 2023

This decision was sent via email on October 5, 2023 to the following:

Nickolas Perry
Sheila Wagner
Jessica Dell'Anno, Esq.

This decision was sent via regular first-class mail on October 5, 2023 to the following:

Bavaro Smoke Shop Inc.
664 W. 181st St.
New York, NY 10033-3801