

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. 117 2023 0802 0080

BMillzz LLC and Bartholomew Miller Jr.

Respondents.

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The above matter was held as a Webex hearing before the undersigned, Karen Lavery, on September 25, 2023.

The Respondents failed to appear.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Deputy Counsel for Litigation, Jasmine Norman.

Investigative Specialist James Schlipmann 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 Respondents were 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 BMillzz LLC located at 2016 Pine Ave, Niagara Falls, NY, on August 2, 2023 (State’s Exh 1).

FINDINGS OF FACT

1. The NOV was personally served on the Respondents' employee Charlie Jackson who was working as a cashier at the time of the regulatory inspection. The NOV indicated that a hearing was scheduled for August 28, 2023 at 2:00 p.m. An email address for OCM's Office of Administrative Hearings was also provided to the Respondents at that time hearing (State's Exhibit 1). The hearing was adjourned and re-scheduled for September 25, 2023 and the Respondents were put on notice of the new hearing date. The Respondents did not appear at the hearing.

2. On August 2, 2023, Investigative Specialist Schlipmann, 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 2016 Pine Ave Niagara Falls, NY. Two Niagara Falls police officers were located outside the door but did not participate in the inspection but rather remained outside the store (State's Exh 3). Investigative Specialist Schlipmann testified that he went into the shop on August 2, 2023 and observed cannabis products offered for sale. Investigative Specialist Schlipmann further testified that he had done a diligent search of the OCM database prior to the regulatory inspection and determined that Respondents were not in possession of a license, permit or registration issued by OCM to sell cannabis or any products containing cannabis.

3. Investigative Specialist Schlipmann credibly testified that at the time of the regulatory inspection, he observed numerous types of products including cannabis edibles, cannabis concentrates, cannabis flower, and cannabis pre-rolls, all identified as containing cannabis by their labeling and packaging, which were stored on shelves and in boxes located in the unlocked room behind the service counter (State's Exhs 11-23, 25- 28). In addition, he observed a sales log behind the counter with a list of the products sold and their prices as well as a document dated August 1, 2023, which was divided into categories of "Flower, Carts, Dabs (1.0) and Edibles" which appeared to either be the sales or inventory for that date (State's Exhs 31-34). Investigative Specialist Schlipmann also testified that he observed a cash register at the location (State's Exh 29).

4. Investigative Specialist Schlipmann testified that he witnessed the completion of the DTF voucher listing the type and quantity of the cannabis products inventoried and seized at the August 2, 2023 regulatory inspection (State's Exh 2).

5. Investigative Specialist Schlipmann testified that at the conclusion of the regulatory inspection, he placed a copy of the NOV and a Warning Sticker (hereinafter "WS") on the store front of 2016 Pine Ave, Niagara Falls, NY (State's Exh 35).

6. Investigative Specialist Schlipmann testified that he drove by 2016 Pine Ave, Niagara Falls, NY on September 21, 2023 and observed that the BMillzz flag and banner were no longer there nor was there any evidence of the prior BMillzz store (State's Exh 37). The WS and the

NOV were no longer affixed to the store front, and the sign on the door indicated that the business was a “smoke shop” (State’s Exh 37).

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 Respondents engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 2016 Pine Ave, Niagara Falls, NY. In so doing, the Respondents violated Cannabis Law Articles 6 § 125(1) and §132(1)(a). I note that OCM only requested a penalty for the Respondents engaging in the illicit sale of cannabis products without a license to do so, therefore that is my finding. The Order to Cease Unlicensed Activity is hereby affirmed against BMillzz LLC and Bartholomew Miller Jr.

WHEREFORE, RESPONDENTS ARE HEREBY ORDERED:

For Respondents BMillzz LLC and Bartholomew Miller Jr. to pay a **\$10,000** fine for the sale of illicit cannabis and cannabis products without a license on August 2, 2023.

Karen Lavery
Administrative Law Judge

DATED: September 27, 2023

This decision was sent via email on September 27, 2023 to the following:

Nickolas Perry
Sheila Wagner
Jasmine Norman, Esq.
Bartholomew Miller Jr.

This decision was sent via regular first-class mail on September 27, 2023 to the following:

BMillzz LLC and Bartholomew Miller Jr.
2016 Pine Ave
Niagara Falls, NY 14301