

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. 102202412160088

BRAVO CONVENIENCE INC.

Respondent.

Respondent requested an emergency hearing on December 20, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on December 16, 2024.

The emergency hearing was conducted on December 26, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by Lance Lazzaro, Esq.

Mohammed Khan testified on behalf of the Respondent.

The Office of Cannabis Management (hereinafter "OCM") was represented by William Pham, Esq.

Investigative Specialist Bladimir Nunez 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 218 Avenue U, Brooklyn, New York 11223.

The scope of the emergency hearing was limited solely to the issue as to whether or not the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance of the evidence.

Should either party file a request for an additional hearing to adjudicate the sufficiency of the Notice of Violation and the Order to Cease Unlicensed Activity, that hearing will be scheduled for a later date.

APPLICABLE 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 § 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)(2) requires any sealing order be served 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. The sealing order must also be posted at the building or premises that was sealed, secured, or closed. Additionally, “a copy of the sealing 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...*” (emphasis added).

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)).

FINDINGS OF FACT

1. According to the credible testimony of Investigator Nunez, Respondent was offering cannabis products for sale without a license issued by OCM (Exh A). Investigator Nunez testified as to what he identified at the time of the inspection to be cannabis flower, cannabis concentrate, and cannabis pre-rolls which were located in bag in a safe in the backroom (Exh D1-5, 9-24, Exhs 1- 2). The illicit cannabis products were labeled as containing cannabis and many of the labels contained the California label which are not legal to sell in New York State (Exh D1-5, 9-24). He also observed a point-of-sale system, an ATM machine, and a cash register, all of which indicate that sales are being made from the location (Exh C4-6). Investigator Nunez also observed a scale, a grinder and empty packaging for cannabis flower, some of those empty packages were identical to those at the location containing cannabis which the Investigator testified are indicators that processing of cannabis was occurring at the location (Exh D6-8, 10, 13, 16-17, 24-26). It is significant that Bravo Convenience Inc. was also the subject of a regulatory inspection on September 9, 2024 at which time the location was not sealed however a Notice of Violation and Warning Sticker were affixed to the storefront (Exh C1).
2. According to the credible testimony of Investigator Nunez, 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.” 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 Nunez. He testified that he found a variety of illicit cannabis products during the course of the inspection of this location which included different strains of cannabis flower, various brands and flavors of cannabis concentrate as well as pre-rolls (Exh D1-5, 9-24). 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. In the present case, one such indicator was the sale of at least one sweatshirt depicting a person smoking cannabis with the letters “THC” under the picture (Exhs C3, D4). Furthermore, Investigator Nunez credibly testified that the cashier who was in control of the premises at the time of the inspection advised the Investigator that he had sold THC pre-rolls the day before the inspection. When questioned by Respondent’s attorney as to why that was not documented on the Notice of Violation, Investigator Nunez testified that it was something that he would have written in his notes. Although no such notes were part of OCM’s exhibits, at the request of Respondent’s attorney and with the consent of Petitioner’s attorney, Investigator Nunez produced a copy of his “Investigative Notes” from the December 16th inspection of Bravo Convenience Inc. which clearly supported his testimony that he was advised by the store employee that pre-rolls were sold the day before the inspection (Exh F1). 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 cannabis products on display or 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 Nunez testified that many of the cannabis products were packaged with labels bearing the California label which are not legal to sell in New York State (Exh D1-3, 9-10, 12-16). The Respondent’s testimony that the employee working at the shop that day, who he claimed he did not know that cannabis products were offered for sale is rejected as lacking credibility based upon Investigator Nunez’s credible testimony supported by his note on which he documented the employee’s admission (Exh F1). 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 D1-5, 9-23). Furthermore, Investigator Nunez identified a scale, a grinder, and empty packaging, some of which was consistent with packages of cannabis flower found at the location, all of which he testified is indicative of processing of untested and unregulated cannabis (Exh D6-8, 10, 13, 16-17, 24-26).

5. The Notice of Violation and Order to Seal were properly served upon the Respondent on December 16, 2024. The credible and undisputed testimony of Investigator Nunez established that the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was signed by and personally served upon the person who identified himself as an employee of Bravo Convenience Inc. at the time of the inspection. The employee on which the document was served testified to signing it and pursuant to the direction of Investigator Nunez, providing it to the store owner which he testified he did later that same day (Exh A). 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 E1-2). Because neither the name or address of the business owner was provided to the Investigator by the store employee at the time of the inspection, no further steps were required by statute or regulations to complete service.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON DECEMBER 16, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: December 27, 2024

Karen Lavery
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 27, 2024 to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
William Pham, Esq.
Lance Lazzaro, Esq