

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**GREEN BOYS INC.**

Respondent.

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**DECISION**

**Inspection No.** 114202412100077

Respondent requested an emergency hearing on December 11, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on December 10, 2024.

The emergency hearing was conducted on December 16, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented by Phil Modrzynski, Esq.

No witnesses testified on behalf of the Respondent.

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

Investigator Eva Chumsky 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 325 Union Road, Cheektowaga, NY 14225.

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. Respondent was offering cannabis products for sale without a license issued by OCM (Exh A). Investigator Chumsky credibly testified that at the time of the inspection, she observed a wide variety of cannabis products including cannabis flower, cannabis pre-rolls, cannabis concentrate and cannabis edibles (ExhC 15-56). Most of the products were labeled as cannabis and many were labeled with a California label which according to the Investigator, were

unlawful to sell in New York State (ExhC 17-20, 26, 28, 30, 32, 33, 35-40, 43-50, 52-56). Investigator Chumsky testified that the cannabis was found hidden in a back storage room in an area which could be accessed by a “movable door” which when closed, appeared to be normal shelving, however when opened using a button depicted in Exhibit C14, exposed the room containing the concealed illicit cannabis products (Exh C12-23). That hidden room contained cannabis products on shelves as well as in bags and boxes on the ground and in and on a black plastic drawer unit (Exh C15-30). In addition to the storage area, Investigator Chumsky testified regarding what she described as a break room accessed through a door in the main store (ExhC 3, 6-9). She testified she observed a green table with a pull-out drawer under it (Exh C7). On the top of the table she described a tray with what she testified, based upon her training and experience, to be an area where cannabis pre-rolls were being processed (Exh C7-9). The table contained a grinder, rolling papers, two scales, and what she described as pre-roll tubes contained in packages (Exh C7-9). Exhibits C7 and 9 depict a tray with cannabis residue which is indicative of processing. Investigator Chumsky testified to a point-of-sale system as well as an ATM which she testified indicated that the business was engaged in sales although admitted that there were other products for sale in the store (Exh C4-5).

2. Investigator Chumsky testified that 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 testimony was undisputed.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part of the business activity according to the Investigator. She testified that she found a large variety and volume of illicit cannabis products during the course of the inspection of this location. This is supported by the vouchers that were completed by the NYS Department of Tax and Finance (hereinafter “DTF”), investigators from which were also present at the time of the inspection (Exh D). Investigator Chumsky testified that she oversaw the counting of the illicit cannabis products seized which were documented in the vouchers authored by DTF investigators (Exh D). According to the vouchers, the investigators seized approximately: 598 packages of cannabis concentrate in various sizes, 36 packages of cannabis edibles, 430 packages of cannabis flower in various quantities, and 479 pre-rolls (Exh D 1-10). 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. Inside the location, in clear view to any patron of the store were several signs and stickers depicting cannabis leaves (Exh C3). The signs indicated “Medical Marijuana,” “Stoner,” and “Stoner Ave” all of which she testified are language used to describe cannabis (Exh C3). Also in the breakroom were signs and images depicting cannabis leaves and cannabis use (Exh C6). While there were no menus or price lists, an indicator that cannabis was being offered for sale were the bags of money Investigator Chumsky testified were found in bags throughout the store totaling approximately \$5,000 (ExhC 7, 10-11). Furthermore, the location of the illicit cannabis products, clearly well hidden in a concealed room behind a moveable wall in a storage area is an indicator that these products were being offered for sale.

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 Chumsky testified that many of the cannabis products were packaged with labels bearing the California label which were not legal to sell in New York State (ExhC 17-20, 26, 28, 30, 32, 33, 35-40, 43-50, 52-56). The credible testimony of the Investigator in conjunction with the DTF vouchers establish that there was a large variety of illicit cannabis products onsite. Furthermore, the location of these products is suggestive that they were clearly intended to be hidden from anyone who might be inspecting the location. It is significant that the clerk working at the time of the inspection advised Investigator Chumsky that he was aware of the products and how to access them. Many of the cannabis products were in brightly colored packages labeled with bubble font and depicted images which could appeal to children, all of which is in violation of New York State law (Exh C16, 18-23, 25-47, 49-56). Furthermore, Investigator Chumsky identified two scales, a grinder, pre-roll tubes, and a tray which contained cannabis residue which she testified is indicative of processing of untested and unregulated cannabis at the location (ExhC 7-9).

5. The Order to Seal/Notice of Violation were properly served upon the Respondent on December 10, 2024. Investigator Chumsky's credible and undisputed testimony established that the Order to Seal/Notice of Violation was personally served upon the employee who was in control of the store and was the only employee present at the time of the inspection and who signed the document (ExhA, Exh E1). Furthermore, the Order to Seal/Notice of Violation was also conspicuously posted on the front door of the premises, as required by Cannabis Law Article 6 §138(b)(2) (ExhE 3-4). Respondent's attorney contends that service was defective given Investigator Chumsky's testimony that she spoke by phone to the store owner who provided her with his phone number and address, however no evidence was presented to establish that a copy of the Order to Seal/Notice of Violation was mailed to the owner of the business pursuant to Cannabis Law Article 6 §138(b)(2). The standard for service in an administrative proceeding is whether the notice under all the circumstances is reasonably calculated to make the parties are of the proceedings so as to afford them the opportunity to be heard. (see Reda v. Dep't of Health of City of New York, 137 Misc. 2d 61, 63, (Sup. Ct. 1987), aff'd, 143 A.D.2d 1073 (1988) citing Matter of Infante v Donohue, 42 Misc. 2d 727 [Sup Ct., Albany County 1964].) When deciding if a defect in service is merely technical "courts must be guided by the principle of notice to the defendant – notice that must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" (Ruffin v. Lion Corp., 15 N.Y.3d 582-83, citing Raschel v. Rish, 69 N.Y.2d 694, 696 [1986], quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, [1950]). In the present case, not only was the representative of the subject location personally served but in addition, Investigator Chumsky had a telephone conversation with the owner thereby putting him on notice of the issuance of the Order to Seal/Notice of Violation. Furthermore, the Order to Seal/Notice of Violation was conspicuously posted on the storefront (ExhE 3-4). Here I find that the failure to mail the Order to Seal/Notice of Violation to the business owner was merely a technicality and not a defect of service as the Respondent had a full and fair opportunity to present their case within the statutory timeframe and no allegations of prejudice have been asserted resulting from Petitioner's failure to mail the Order to Seal/Notice of Violation to the business owner. Therefore, I find that based upon a preponderance of the evidence, service was properly effectuated in accordance with Cannabis Law Article 6 §138(b)(2).

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON (DECEMBER 10, 2024) IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: December 17, 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 17, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Celena Ditchev, Esq.  
Sisi Wu, Esq.  
Phil Modrzynski, Esq.