

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**  
**Inspection No. 104202410270073**

**HIGHER INTENTIONS,**

Respondent.

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Respondent requested a hearing to contest the validity of both the Order to Seal, and the Notice of Violation, which had been issued by enforcement agents of the Office of Cannabis Management, at the business located at 4348 Culver Road, Rochester, New York, 14622, on October 27, 2024.

The hearing request was granted, and a virtual hearing was held on November 19, 2024.

The Respondent was represented by Christopher Lattuca, Esq.

Anthony Tropiano testified on behalf of the Respondent.

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

Investigative Specialist Sarah Tagliaferro testified on behalf of OCM.

**ISSUE**

The allegations set forth in the Notice of Violation and Order to Seal indicated 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 an inspection conducted by agents of OCM on October 27, 2024, at the business known as Higher Intentions, located at 4348 Culver Road, Rochester, N.Y. 14622.

The scope of the hearing required a determination, by a preponderance of the evidence, whether or not OCM was justified in issuing a Notice of Violation and Order to Cease Unlicensed Activity (jointly hereinafter “NOV”) and, if so, what penalty under Article 6 § 132 was warranted. Additionally, this hearing also required a determination by a preponderance of the evidence, if the sealing provisions outlined in Cannabis Law Article 6 § 138-b existed at the time of the inspection.

### **APPLICABLE LAW**

Cannabis Law Article 6 §125(1) states that “[n]o 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, or any product marketed or labeled as such, within the state without obtaining the appropriate registration, license, or permit therefor required....”

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: 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).

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)(c) provides that: “In assessing the civil penalties under this subdivision, the board or office shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation.”

### **FINDINGS OF FACT**

1. Respondent was offering cannabis products for sale without a license issued by OCM, according to the credible testimony of Investigative Specialist Tagliaferro. She testified that she received training at OCM in identifying and categorizing cannabis products and that during the inspection of the location she observed what appeared to be cannabis flower, cannabis edibles, and cannabis concentrates. She also observed ten cannabis vendor stations, cannabis edibles in gift bags located near the entrance, cannabis price lists, as well as a portable scale with empty cannisters, which she concluded was consistent with the processing and sale of cannabis products on-site. She testified that her inspection was the result of an ongoing investigation by the Irondequoit Police Department and that it was conducted pursuant to a search warrant (Exhibit A) issued for that location, to search for cannabis being sold at an open market event advertised for that date and location. She corroborated her testimony with numerous photographs that she took at the time of the inspection. (Exhibits C1-4, D1-49).
2. According to the credible testimony of the Investigator, it was shown by a preponderance of evidence, that no part of the premises that was sealed was being used as a residence. She testified that she did not see any signs indicating that it was used in any manner other than as a commercial business and no evidence was offered to contradict these observations.

3. The unlicensed activity, which warranted an order to seal, also constituted more than a “de minimis” portion of the business activity at that location, according to the credible testimony of the Investigator. She testified that she found a large variety and volume of illicit cannabis products during the inspection at this location. Cannabis Law Article 6 §138-b (7) and OCM Regulations 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. From the photographs entered as evidence during the hearing and the testimony of the Investigator listing the items found at this location, it was demonstrated by a preponderance of the evidence that this location had a large variety and a substantial volume of illicit cannabis products being offered for sale.
4. This unlicensed activity constituted an imminent threat to public health, safety, and welfare due to the offers to sell cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. The Investigator established that many of the cannabis products contained either counterfeit New York labels, or labels indicating they were cannabis products from California, and many were brightly colored or depicted characteristics with special appeal to children, all in violation of New York law. (Exhibits D29-34,39). Moreover, she identified Zip-lock bags of loose cannabis flower, processing equipment and a portable scale, which she testified strongly indicated that untested and unregulated cannabis processing was occurring at this location. (Exhibits D14,15,27,42).
5. The Notice of Violation and Order to Seal were properly served upon the respondent on October 27, 2024. The Investigator’s credible and undisputed testimony established that the Notice of Violation and Order to Seal was personally served to the business owner who was present at the time of the inspection and that it was also conspicuously posted on the front of the premises, as required by Cannabis Law Article 6 §138(b)(2). (Exhibits C1-4).
6. OCM requested that the maximum fine of \$10,000 be levied for the violations that were discovered during this inspection. While the statute does not provide extensive guidance for determining the penalty for violations under Cannabis Law Article 6 §125, 132, and 138-a, it does require a penalty proportionate to the violation (Cannabis Law Article 6 §132(1)(c)). In this case, Investigator Tagliaferro testified that ten cannabis vendors were operating at the location at the time of the inspection and that the volume and variety of cannabis products offered was substantial. On the other hand, it appears that the vendors were independent operators, and that the business owner was only receiving a flat fee from each vendor of \$75.00. There is no evidence that he was storing cannabis at this location or conducting any direct sales himself. The business owner credibly testified that cannabis was only sold at his location during the occasional open market events and that on all other days he sold clothing and other legal merchandise. This practice does differentiate his operation from the traditional illicit dispensary operations that are normally investigated by OCM. Therefore, after a balancing of these various factors, an intermediate range fine of \$5,000 would be more proportionate for this violation.

**DECISION**

The Respondent engaged in the sale of cannabis and cannabis marketed products without a license, registration, or permit to do so, at 4348 Culver Road, Rochester, New York, 14622 on October 27, 2024. 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, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON OCTOBER 27, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION, and**

**PURSUANT TO CANNABIS LAW ARTICLE 6 § 132(1), THE RESPONDENT IS HEREBY ORDERED TO PAY A \$5,000 FINE, AS A PROPORTIONATE PENALTY FOR THE UNLICENSED SALE OF CANNABIS AND CANNABIS MARKETED PRODUCTS ON OCTOBER 27, 2024.**

Dated: November 26, 2024

*Thomas Kidera*

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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 November 26, 2024, to the following:

Celena Ditchev, Esq.  
Nickolas Perry  
Sheila Wagner  
Christopher Lattuca, Esq.  
Sisi Wu, Esq.