

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. 108 2023 0628 0043**

**JAYDEGA 7.0**

Respondent.

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**ISSUE AND PROCEDURAL HISTORY**

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 issued by the Office of Cannabis Management. This allegation was based upon observations made during a regulatory inspection which was conducted at 236 S. Main Street, Canandaigua, NY, on June 28, 2023.

A virtual hearing was held on September 1, 2023 from the Albany Office of Cannabis Management before Administrative Law Judge Karen Lavery. Jessica Dell’Anno Esq. appeared on behalf of the New York State Office of Cannabis Management (hereinafter “OCM”) and James Riotto, Esq. appeared on behalf of the Respondent. OCM Investigative Specialists Bryant Paredes and William McKay (hereinafter “Inspector Paredes” and “Inspector McKay” respectively) testified on behalf of OCM as well as Canandaigua Police Detective Daniel Visingard. No witnesses testified on behalf of the Respondent.

**FINDINGS OF FACT**

On June 28, 2023, three members of the Enforcement Division of OCM as well as members of the Enforcement Unit of the New York State Department of Tax and Finance (hereinafter “DTF”) conducted a regulatory inspection of Jaydega 7.0, located at 236 S. Main Street, Canandaigua, New York. Inspector Paredes, who was present during the June 28, 2023 inspection, testified that it is customary for the DTF Investigators to accompany the OCM Enforcement Division when

conducting regulatory inspections. At the time of the inspection, OCM and DTF Investigators were also accompanied by two Canandaigua Police Officers who were present for the purpose of providing security. According to the credible testimony of Inspector Paredes, the regulatory inspection commenced at approximately 11:00 a.m. which was consistent with the hours that the shop is open to the public. Three female employees were working at the time when OCM and DTF entered the store. Inspector Paredes obtained their information and advised them of the purpose of their visit. Inspector Paredes credibly testified that the shop owner, George West, arrived approximately five minutes after the Enforcement Units arrived at the shop and before the actual physical inspection for illicit products began. Furthermore, Inspector Paredes testified that at no time were members of the Enforcement Units denied access, directed to leave or was the investigation refused. No testimony or evidence was provided to the contrary.

Inspector Paredes testified that prior to the regulatory inspection, he did a diligent search of the OCM records and determined that Respondent was not in possession of any registration, license, or permit issued by OCM which would permit them to sell cannabis. This was confirmed by an affidavit submitted by the OCM Manager of Licensing, Christian Emblar (State's Exh 3). The affidavit also indicated that a hemp license (OCM-HMPR-2202-02610) had been issued to George F. West on June 1, 2022, and expired June 1, 2023, which authorized the sale of products derived from cannabinoid hemp. This expired license was observed at the time of the June 28, 2023 inspection (State's Exh 6). A Certificate of Authority issued by DTF was also observed at the site in the name of George F West, Jaydega 7.0, George W, 236 S. Main St, Canandaigua, NY 14423-2115 (State's Exh 5).

Upon conducting the inspection of the store, Mr. Paredes testified to observing cannabis flower, cannabis concentrates including vapes and resin, cannabis edibles, cannabis seeds, cannabis pre-rolls, and Delta 9 products, some of which were pre-packaged with labels indicating that they contained cannabis and others were labeled with the particular strain of cannabis (State's Exhs 9-12, 14-17, 19-26, 33). Numerous hemp derived products were also observed offered for sale (State's Exh 13). In addition, Inspector Paredes observed a pre-roll machine surrounded by loose cannabis flower, an ATM machine, as well as a cashbox (State's Exhs 15, 29-30). He also observed two handwritten documents affixed to the cash box (State's Exh 29). One document was a partial price list which listed five products and their accompanying prices as well as a list of cannabis strains (State's Exh 27). The second document was a price list for a number of various cannabis products (State's Exh 28). OCM and DTF recorded their inventory of the seized cannabis and hemp products on "vouchers" on which they listed both the specific products and the quantity of each product seized (State's Exh 2, 34). Inspector Paredes completed a voucher for the products seized by OCM which was signed by George West (State's Exh 2). DTF recorded the quantity and description of the products they seized in a 16-page voucher with each page being signed by George West (State's Exh 34). Inspector Paredes credibly testified that he personally observed the counting and documentation of the products described in the entirety of the DTF voucher.

In addition, at the conclusion of the investigation, Inspector Paredes completed an NOV which listed the unlicensed products observed as well as the equipment suggestive that the location was operating as a cannabis retailer (State's Exh 1). The NOV was signed by George West (State's

Exh 1). Inspector Paredes testified that he affixed a copy of the NOV to the storefront from inside the location (State's Exh 31). He also affixed two Warning Stickers (hereinafter "WS") to the outside of the store front, one placed adjacent to the NOV toward the right side of the glass and the second one on the left side of the glass store front (State's Exh 31). The WS put the public on notice that illicit cannabis had been sold at that location and that the shop was directed to immediately cease the sale of cannabis products (State's Exh 31).

On July 13, 2023, an undercover officer from the Canandaigua Police Department purchased five packages of cannabis from Jaydega 7.0. Detective Daniel Visingard (hereinafter "Detective Visingard") testified that the officer who made the purchase submitted the products to him and he sent them to a laboratory for testing, all of which was contained in an Incident Report prepared by Detective Visingard (State's Exh 35). The product submitted tested positive for cannabis, the findings of which were substantiated in a Drug Chemistry Final Report issued July 27, 2023 by NMS Labs (State's Exh 36).

On July 19, 2023, OCM attorney Jessica Dell'Anno sent an email to Respondent's attorney James Riotto, attaching a copy of the NOV as well as a picture depicting specifically where to place it in response to an alleged report that an intoxicated person had removed the sign from the storefront of Jaydega 7.0 (State's Exh 45). On August 7, 2023, Ms. Dell'Anno sent another email to Mr. Riotto attaching a WS so as to specifically confirm that the Respondent had two WS affixed to his storefront, also attaching a picture as to how they were originally located so that they could be placed in the same location (State's Exh 45). A Facebook post dated August 7, 2023, from an account entitled George West, with a picture resembling the person who represented himself to be George West at the September 1, 2023 hearing, captioned "George West is at Jaydega 7.0 Aug 7 Canandaigua," was introduced at the hearing (State's Exh 38). The post included three pictures of the front window of Jaydega 7.0, street number 236, depicting the entire storefront window covered with copies of the NOV and WS with only one copy of the NOV and one copy of the WS located in an upright position where they were originally placed and one picture included Mr. West's face smiling through a small section of the glass that was not covered. The second WS was not positioned as he was directed to place it pursuant to the picture in Ms. Dell'Anno's August 7, 2023 email but rather all the other copies of both documents were affixed sideways and upside down clearly demonstrating that one of the original WS had been removed and not replaced in a position which could be easily readable by the public (State's Exh 38, 45). The accompanying post stated "\*edit, they want them up but they don't want me to show off with it. I was asked to take it down. Creativity and art at its finest. I decided to have fun with the front windows! Make this window pop! Can you find me in the pictures" (State's Exh 38).

OCM Inspector William McKay testified that he had previously visited Jaydega 7.0 on September 21, 2022 and observed that cannabis was being offered for sale at the shop which was not in possession of a license to do so. At that time, a Cease and Desist letter from OCM was served upon George West which indicated "*You are hereby directed to cease any, and all, illegal activity immediately. Failure to cease this activity puts your ability to obtain a license in the legal cannabis market at substantial risk. The unlicensed sale of cannabis is illegal and subjects you to substantial fines and possible criminal penalties*" (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 therefore required by this chapter unless otherwise authorized by 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.”

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)(a) provides that “where such person has been ordered to cease such conduct pursuant to subdivision one of section one hundred thirty-eight-a of this chapter, such person may be assessed a civil penalty of no more than twenty thousand dollars per day for each day during which such violation continues after receiving such order in addition to the additional civil penalties set forth above...”

Regulations at 9 NYCRR §133.23(b)(5) provide that “the person served with such notice of violation and order to cease unlicensed activity shall also permit the Office to affix one or more warning stickers at or near the front door or other opening to such location where customers enter from the street advising the public that the business is ordered to stop the unlawful activity and of the public health and safety concerns relating to illicit cannabis.”

Regulations at 9 NYCRR §133.23(b)(6) provide that “such warning sticker shall not be removed except when authorized by the Office. Any removal of the warning sticker shall constitute a violation of these regulations and shall be punishable by a fine of up to \$5,000 in accordance with subdivision 1 of section 16 of the Cannabis Law.”

## SUMMARY

OCM witness Inspector Paredes credibly testified that the regulatory inspection of Jaydega 7.0 located at 236 S. Main Street, Canandaigua, NY, which was conducted on June 28, 2023, occurred during hours that the shop was open to the public for business. After entering the shop, Inspector Paredes spoke to three female employees, showed his credentials and explained the purpose of the inspection. Inspector Paredes testified that the owner, George West, arrived approximately five minutes after OCM/DTF Inspectors arrived. Upon seeing cannabis products openly on display and offered for sale to the public, OCM/DTF Inspectors began conducting their inspection of the shop.

Inspector Paredes testified that prior to the regulatory inspection, he had conducted a diligent search of OCM records for the purpose of determining if the Respondent had been issued a registration, license, or permit by OCM to sell cannabis, and concluded that no such registration, license, or permit had been issued. Respondent's failure to be in possession of a registration, license, or permit was further supported by an affidavit from the OCM Manager of Licensing which was introduced into evidence and confirmed that OCM had not issued the Respondent a registration, license, or permit authorizing the sale of cannabis. I find it significant that no evidence was offered to refute this determination nor was any argument made by Respondent indicating that he was in possession of an OCM issued registration, license, or permit authorizing the sale of cannabis. While the Respondent had been issued a Hemp License previously, it should be noted that the license was expired at the time of the July 28, 2023 regulatory inspection however hemp products were still being offered for sale. Although these hemp products were seized at the time of the regulatory inspection as the Respondent no longer possessed a valid license to sell hemp, the NOV addressed only the illicit cannabis products offered for sale without a registration, license, or permit and for that reason, the unlicensed sale of the hemp products is not considered in this matter. Therefore, based upon the testimony and evidence as well as the Respondent's failure to offer any testimony or evidence to the contrary, I find that the Respondent was not in possession of a registration, license, or permit issued by OCM, which authorized the Respondent to offer cannabis for sale to the public.

It is significant that no evidence or testimony was produced by the Respondent which indicated that the Inspectors were denied entry or that such inspection was refused at any time. The overwhelming and undisputed testimony corroborated by photographic evidence produced at the hearing establishes that the Respondent was offering numerous forms of cannabis products for sale including cannabis flower, cannabis pre-rolls, cannabis edibles, and cannabis concentrate. The cannabis products were either pre-packaged with labels identifying the product as containing cannabis or in packaged bags and containers located in bins and drawers which were labeled with the specific strains of cannabis which Inspector Paredes recognized as a result of his training and experience. In addition, Inspector Paredes observed a cash box with two price lists affixed to it, a machine to make cannabis pre-rolls, as well an ATM machine, the screen on which indicated "Welcome to Jaydega 7.0." I would also note that Jaydega 7.0 had been put on notice to stop selling illicit cannabis based upon receipt of the Cease and Desist Letter served upon George West on September 21, 2022 as credibly testified to by Inspector McKay. I conclude that the Respondent knew or should have known that its actions were in violation of the law but blatantly disregarded such notice and continued selling cannabis.

Therefore, based upon the overwhelming evidence of the substantial amount of cannabis products located in Jaydega 7.0 on June 28, 2023 which were clearly being offered for sale to the public, I find that the Respondent is in violation of Cannabis Law Article 6 §125(1) on June 28, 2023 for selling cannabis without a registration, license, or permit issued by OCM.

Detective Visingard credibly testified as to an undercover purchase of five cannabis products from Jaydega 7.0 which occurred on July 13, 2023. Such testimony was substantiated by both an

inspection report as well as a laboratory report confirming that the products purchased did in fact contain cannabis. Once again, I note that the Respondent provided no testimony or evidence to refute Detective Visingard's testimony or evidence. The Respondent had been put on notice that he was engaging in the illicit sale of cannabis without a license only fifteen days prior at the time of the June 28, 2023 regulatory inspection and all the cannabis products were seized from Jaydega 7.0 on that date. I find that the Respondent once again disregarded the directive of OCM and continued the practice of selling cannabis without a permit, license or regulation in violation of Cannabis Law Article 6 §125(1) on July 13, 2023. It should be noted that while it is OCM's position that the Respondent had been selling cannabis during the 15 days between the regulatory inspection and the Canandaigua Police Department's undercover purchase, I am constrained to the two dates on which it was established beyond a preponderance of the evidence that the Respondent was engaging in the sale of illicit cannabis without a license.

The testimony of Inspector Paredes and accompanying photographic evidence establish that he affixed two WS and one NOV to the glass store front upon completion of the regulatory inspection on June 28, 2023. The NOV and one WS were placed next to each other toward the right side of the glass store front and a second WS was affixed to the left side of the store front. At some point, a replacement copy of the NOV was requested based upon notice alleging that an intoxicated person had removed the original one placed on the store front of Jaydega 7.0. The evidence establishes that on July 19, 2023, Ms. Della'Anno sent Mr. Riotto a copy of the NOV and indicated in her email that it needed to be placed in accordance with the original placement by Inspector Paredes and Ms. Dell'Anno also attached a picture of the original placement for reference. Subsequently, on August 7, 2023, Ms. Dell'Anno also sent Mr. Riotto a copy of the WS specifically reminding him that two WS needed to be affixed to the store front, again attaching a picture depicting the manner in which they were originally placed by Inspector Paredes on June 28, 2023 so as to ensure that the placement would be the same. I find the August 7<sup>th</sup> 2023 Facebook post to be credible as it is under the name of George West, states at Jaydega7.0, shows a picture of the person who was the same person who represented himself to be George West at the September 1, 2023 hearing, and his location on the post indicated Canandaigua. Furthermore, the post depicted the storefront of what had been previously identified by Inspector Paredes at the time of the hearing as that of Jaydega 7.0, with a 236 as the building number visible in the post. In the Facebook pictures, the entire store front window was covered with copies of the NOV and WS affixed randomly in all positions except two documents. While the Respondent's actions of doing so including the accompanying message was clearly petulant, I find that the NOV and one WS were placed in a legible fashion on the right side of the store front, similar to their original placement by Inspector Paredes. However, I find that in his attempt to "be creative," the Respondent removed the second WS originally located on the left side of the window and placed it, along with many other copies of both documents, sideways, upside-down and not in the manner that it was originally placed or even in a position so that it was easily readable. I also find that the covering of the entire window with WS and NOVs affixed in all positions is not in concurrence with the specific directives he received and constitutes a removal of one of the original WS, irrespective of its subsequent placement in a sideways position. Therefore, it is my finding that

by removing the second WS, the Respondent is in violation of Regulations at 9 NYCRR §133.23(b)(6).

**WHEREFORE, RESPONDENT IS HEREBY ORDERED:**

To pay a **\$10,000** fine for the sale of illicit cannabis and cannabis products without a license on June 28, 2023; a fine of **\$20,000** for the sale of illicit cannabis on July 13, 2023 after having been ordered to cease such conduct on June 28, 2023; and an additional fine of **\$5,000** is imposed for the improper removal of one of the WS at some point between June 28, 2023 and August 7, 2023.

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

Nickolas Perry

Sheila Wagner

Jessica Dell'Anno, Esq.

James Riotto, Esq.