

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 0607 0005

**LAGUARDIA SMOKE, AKA LAGUARDIA CONVENIENCE
CORP, AKA LAGUARDIA SMOKE AND CONVENIENCE INC.**

Respondent.

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The above noted matter was held as a Webex hearing before the undersigned, Karen Lavery, on June 22, 2023.

The Respondent failed to appear.

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

Investigative Specialist Bryant Paredes testified on behalf of OCM.

Regulations at 9 NYCRR 133.15(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 Respondent was 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 510 LaGuardia PL, New York, NY, on June 7, 2023 (State’s Exhibit 1). Petitioner also alleges that the NOV was removed by the Respondent less than two hours after the conclusion of the inspection.

FINDINGS OF FACT

1. The NOV was personally served on the Respondent at the time of the regulatory inspection. The NOV indicated that a hearing was scheduled for June 22, 2023 at 10:00 a.m. An email address for OCM's Office of Administrative Hearings was also provided to the Respondent at that time. The Respondent did not appear at the hearing, nor did the Respondent or anyone on behalf of the Respondent contact the Office of Administrative Hearings (State's Exhibit 1).

2. The Respondent has a Certificate of Authority issued by the New York State Department of Taxation and Finance, validated February 14, 2023, Identification Number 92-2334914, for a business designated as Bleeker Convenience Corp. located at 510 LaGuardia Pl, New York, NY 10012-4919 (State's Exhibit 20).

3. On June 7, 2023, Investigative Specialist Paredes, in addition to members of the Enforcement Division from the New York State Department of Taxation and Finance, conducted a regulatory inspection at 510 LaGuardia PL, New York, NY, based upon complaints alleging that the business was selling illicit cannabis. Respondent was not in possession of a license issued by OCM to sell cannabis or any products containing cannabis (State's Exhibit 2).

4. Investigative Specialist Paredes credibly testified that at the time of the regulatory inspection, he observed numerous types of products, all of which were labeled as containing cannabis and some of which indicated the amount of THC contained in each product. Investigator Paredes also testified that he observed cannabis containing vape cartridges, cannabis edibles including gummies and chocolate bars, cannabis pre-rolls, and pre-packaged cannabis flower (State's Exhibits 4-9, 11-13, 16-19). The display cases containing the products were labeled with a detailed price list for each item contained therein and a cash register was present on the countertop (State Exhibit 10-11, 14). Investigative Specialist Paredes testified that he observed the detailed documentation of the cannabis containing inventory recorded by the representative of Taxation and Finance which consists of seven pages of the products seized from the site (State Exhibit 3).

5. Investigative Specialist Paredes testified that at the conclusion of the regulatory inspection, he placed a copy of the NOV and a Warning Notice (hereinafter "WN") on the main public door of 510 LaGuardia Pl, New York, NY (State's Exhibits 1 and 21). Investigator Paredes testified that he also served a copy of the NOV to the person who was working behind the counter of the business and instructed him to leave both the NOV and the WN in place until directed otherwise by OCM.

6. Investigative Specialist Paredes testified that approximately one- and one-half hours later, he drove by 510 LaGuardia Pl, New York, NY and saw that the NOV was no longer posted on the door (State's Exhibit 22). Investigative Specialist Paredes testified that he stopped at the site and spoke with the person on whom he had served the NOV, inquiring as to the reason for its removal. According to Investigative Specialist Paredes, the person indicated that he removed the

NOV from the door because he did not feel comfortable with his name being publicly displayed on the NOV. Investigative Specialist Paredes testified that he directed him to put the NOV back on the door as it had been originally placed however the Respondent refused to do so.

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.

Regulations at 9 NYCRR 133.23(4) provide that when a Notice of Violation and Order to Cease Unlicensed Activity are issued relating to the sale of illicit cannabis, “such Notice of Violation and Order to Cease Unlicensed Activity shall not be removed except when authorized by the Office. Any removal of such Notice of Violation and Order to Cease Unlicensed Activity 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.”

DECISION

The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 510 LaGuardia Place, New York, NY. Furthermore, Respondent’s agent improperly removed the NOV from the door. In so doing, Respondent violated Cannabis Law Article 6 § 125(1) and §132(1)(a), as well as Regulations at 9 NYCRR 133.23(4). The Order to Cease Unlicensed Activity is hereby affirmed.

WHEREFORE, THE RESPONDENT IS HEREBY ORDERED:

To pay a **\$10,000** fine for the sale of illicit cannabis and cannabis products without a license on June 7, 2023; and an additional fine of **\$5,000** for the improper removal of the NOV on the same date.


Administrative Law Judge

Dated: July 14, 2023

This decision was sent via email on July 17, 2023 to the following:

Nickolas Perry
Sheila Wagner
Jasmine Norman, Esq.

This decision was sent via regular first-class mail on July 18, 2023 to the following:

LAGUARDIA SMOKE, AKA LAGUARDIA CONVENIENCE
CORP, AKA LAGUARDIA SMOKE AND CONVENIENCE INC.
510 LaGuardia PL
New York, NY 10012-4919