

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. 112 2023 0720 0062

MOSA'S ON MARKET

Respondent.

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The above noted matter was held as a Webex hearing before the undersigned, Laurie Cartwright, on August 24, 2023.

The Respondent failed to appear.

The Office of Cannabis Management (hereinafter "OCM") was represented by Assistant Counsel Jessica Dell'Anno.

Investigative Specialist William McKay testified on behalf of OCM.

Regulations at 9 NYCRR 133.16 (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 31 E. Market St. Corning, New York, on July 20, 2023 (State's Exhibit 1).

FINDINGS OF FACT

1. The NOV was personally served on an employee of the Respondent at the time of the regulatory inspection. That employee refused to sign the NOV. A copy of the NOV was also affixed to the front door of the premises. The NOV indicated that a hearing was scheduled for August 9, 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. A pre-hearing conference was held on August 9, 2023 at 10:00 a.m. The Respondent did not appear at the pre-hearing, nor did the Respondent or anyone on behalf of the Respondent contact the Office of Administrative Hearings (State's Exhibit 1). During the pre-hearing conference, a hearing date of August 18, 2023 at 10:00 a.m. was selected. Subsequently, counsel for OCM, Ms. Dell'Anno requested an adjournment of the hearing until August 24, 2023. The hearing proceeded on that date. Neither the Respondent nor anyone representing the Respondent contacted the Office of Administrative Hearings prior to the hearing on August 24, 2023.

2. On July 20, 2023, Investigative Specialist William McKay, conducted a regulatory inspection at 31 E. Market St. Corning, 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).

3. Investigative Specialist McKay credibly testified that at the time of the regulatory inspection, he observed numerous cannabis products at the location, many of which had labels: stating that the product contained cannabis, depicting cannabis flowers, or which indicated the amount of THC contained within (State's Exhibits 4-17). Investigative Specialist McKay also testified that he observed cannabis containing vape cartridges, cannabis concentrate, cannabis edibles including butter, candies and cookies, cannabis pre-rolls, pre-packaged cannabis flower, and a cannabis plant (State's Exhibits 4-20). He explained that he was familiar with many of the brands and labeling methods of these products, and that in his experience the products he observed contained cannabis. Beneath the cash box were labels with the price of certain products listed. Additionally, Investigative Specialist McKay identified and photographed itemized paper records describing cannabis product sold on July 18th and July 19th (State's Exhibit 22 and 23-24), what is purported to be an inventory log (State's Exhibit 25), records of two individual customer transactions (State's Exhibit 27 and 28) and a square sales report (State's Exhibit 33). Investigative Specialist McKay testified that he filled out a voucher form containing inventory of what had been seized during the inspection on July 20, 2023 (State Exhibit 3).

4. Investigative Specialist McKay 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 at 31 E. Market St. Corning, NY (State's Exhibits 1, 34 and 35). He also testified that he attempted to serve the store's sole employee, Christopher Maynard, with the NOV, however he refused to sign it or accept it. Investigative Specialist McKay, explained that he told Mr. Maynard that he would be leaving a copy of both the NOV and voucher form. As per Investigative Specialist

McKay's testimony, a copy of the evidence voucher (State's Exhibit 3) was left with an individual who identified himself as the owner's brother.

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.

DECISION

The evidence presented during this hearing showed by a preponderance of the evidence that 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 31 E. Market St. Corning, NY. 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 July 20, 2023.

Laurie Cartwright

Administrative Law Judge

Dated: August 30, 2023

This decision was sent via email on August 31, 2023 to the following:

Nickolas Perry
Sheila Wagner
Jasmine Norman, Esq.
Jessica Dell'Anno, Esq.

This decision was sent via regular first-class mail on August 31, 2023 to the following:

MOSA'S ON MARKET INC..
31 E. Market St.
Corning, NY 14830