

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. 101 2023 0719 0060

OLD G CONVENIENCE CORP

Respondent.

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The above noted matter was held as a Webex hearing before the undersigned, Karen Lavery, on August 9, 2023.

The Respondent failed to appear.

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

Investigative Specialist Alex Tuminello testified on behalf of the Office of Cannabis Management.

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 license, registration, or permit. This allegation was based upon observations made during a regulatory inspection which was conducted at 18 W 14th St., New York, NY on July 19, 2023 (State’s Exhibit 1). It is significant that a regulatory inspection of 18 W 14th St., New York, NY had been conducted on June 15, 2023 at which time illicit cannabis products were seized from the site as the Respondent was not in

possession of a license, registration, or permit issued by OCM which authorized the sale of such products. OCM also alleges that the Respondent tampered with the NOV and Warning Sticker (hereinafter “WS”) which were affixed to the storefront at the time of the June 15, 2023 inspection, by covering them with a large sign which rendered them no longer visible to the public.

FINDINGS OF FACT

1. On June 15, 2023, the Respondent’s shop located at 18 W 14th St., New York, NY, was the subject of a regulatory inspection by members of the Enforcement Units from OCM and the New York State Department of Taxation and Finance (hereinafter “DTF”). A default hearing was held on July 5, 2023 as the Respondent did not appear. As the counsel for OCM indicated that they were seeking penalties in this matter, testimony was given by OCM Investigative Specialist Tuminello who credibly testified that at the time of the regulatory inspection, he observed numerous products offered for sale which contained cannabis, cannabinoid hemp, Delta, and hemp products (State’s Exhibit 2). Investigative Specialist Tuminello also testified that the Respondent was not in possession of a license, permit, or registration issued by OCM to engage in the sale of any of the aforementioned products (State’s Exhibit 2). A decision was issued by the undersigned, holding that *“The Respondent engaged in the sale of cannabis, cannabinoid hemp, Delta, and hemp products without a license, registration, or permit to do so, at the location of 18 W 14th St., New York, NY. In so doing, Respondent violated Cannabis Law Article 6 §125(1) and §132(1)(a),”* affirming the Order to Cease Unlicensed Activity, and ordering the Respondent *“To pay a \$10,000 fine for the sale of cannabis, cannabinoid hemp, Delta, and hemp products without a license on June 15, 2023”* (State’s Exhibit 2).

2. On July 19, 2023, members of the Enforcement Units for OCM and DTF re-inspected the Respondent’s shop located at 18 W 14th Street, New York, NY. The NOV for the re-inspection was personally served on the Sufiyan Muhammed who identified himself as a cashier at the Respondent’s shop. The NOV indicated that a hearing was scheduled for August 9th, 2023 at 10:00 a.m. An email address for the OCM’s Office of Administrative Hearings, was also provided to the Respondent at that time (State’s Exhibit 1). 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

3. The Respondent has a Certificate of Authority issued by the New York State Department of Taxation and Finance, validated April 19, 2021, Identification Number 86-2825779, for a business designated as OLD G CONVENIENCE CORP located at 18 W 14th St., New York, NY 10011-7501 (State’s Exhibit 21).

4. Investigative Specialist Tuminello credibly testified that at the time of the July 19, 2023 re-inspection, he observed THC edibles, THC concentrate, THC pre-rolls, cannabis flower labeled with the strain and weight, as well as hemp wrap, and Delta products offered for sale (State’s Exhibit 16-19). In addition, he testified to observing an ATM machine, a cash register and receipts (State’s Exhibits 20).

5. Investigative Specialist Tuminello also testified that the shop located at 18 W 14th St., New York, NY, continued to operate without possession of a license, registration, or permit issued by OCM, to engage in the sale of cannabis or hemp products (State's Exhibit 4).

6. Investigative Specialist Tuminello testified that at the conclusion of the regulatory inspection, he affixed the NOV and Warning Sticker from the July 19, 2023 regulatory inspection, on the glass door of the shop located at 18 W 14th St., New York, NY (State's Exhibit 23).

7. At the conclusion of the June 15, 2023, Investigator Tuminello placed the NOV and WS adjacent to each other on the glass storefront to the left of the door (State's Exhibit 2). He further testified that when he returned to 18 W 14th St., New York, NY on July 19, 2023 to conduct the re-inspection, he observed that the NOV had been removed and placed behind the WS and that both notices were completely covered and blocked from public view by an ATM sign placed vertically over them so that neither notice was visible from the outside (State's Exhibit 23).

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 §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...”

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.”

Regulations at 9 NYCRR §133.23(b)(3) provide that “the Office may affix a copy of such notice of violation and order to cease unlicensed activity on the front window, door, or exterior wall of the location where such activity is taking place. The notice and order shall be within five feet of the front door or other opening to such location where customers enter from the street, at a vertical height no less than four feet and no more than six feet from the ground or floor. When an establishment does not have a direct entrance from the street, the person shall permit the Office to post such notice of violation and order to cease unlicensed activity at its immediate point of entry in a place where potential customers or members of the public are likely to see it.”

Regulations at 9 NYCRR §133.23(b)(4) provide that “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.”

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.”

DECISION

As a result of the Regulatory Inspection which occurred on June 15, 2023 and the subsequent decision issued July 14, 2023, it was determined that the Respondent engaged in the sale of illicit cannabis products without a license, registration, or permit to do so, at the location of 18 W 14th St., New York, NY. At that time, the Respondent was issued a Notice of Violation and WS which were affixed to the storefront and to be displayed there until further notice from OCM. The NOV directed that the Respondent immediately cease the sale of illicit cannabis products. On July 19, 2023, during a re-inspection of the same location, the Respondent was continuing to sell illicit cannabis products as well as hemp products without a license issued by OCM. The evidence is clear that such products were being sold on June 15, 2023 and July 19, 2023. While there is no evidence as to when the Respondent re-stocked their product and began selling after the June 15, 2023 regulatory inspection, the only date that such conduct has been proven by a preponderance of the evidence is July 19, 2023. Pursuant to the NOV and the WS, the Respondent was on notice to cease the sale of illicit cannabis however disregarded such notice and continued to do so in violation of Cannabis Law Article 6 §132(1)(a).

Furthermore, Investigative Specialist Tuminello has established through both his testimony and photographic evidence that the Respondent improperly tampered with the NOV and the WS affixed at the time of the June 15, 2023 regulatory inspection by moving the NOV behind the WS and covering both notices with a large sign. In so doing, he completely concealed both notices from public view. It should be noted that the writing on the large sign was such that it should be positioned horizontally. The sign was placed vertically so that the dimensions were conducive to covering the documents. While the NOV was clearly removed and placed behind the WS, the Respondent is in violation of 9 NYCRR §133.23(b)(4). With respect to the WS, the placement of the sign was for the purpose of intentionally concealing the documents advising the public that the shop had been the subject of a regulatory inspection where illicit cannabis was discovered and seized. One must look at the legislative intent which resulted in the inclusion of specific language as to placement of the WS and the NOV. 9 NYCRR § 133.23 (b)(5) provides

languages which permits “the Office to affix one or more warning stickers at or near the front door or other opening 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.” As such, the intent is clear that the detailed description of the placement of the WS in such a place is to “advise the public” that the business has been directed to stop the illicit sales of cannabis and goes further to indicate that its other purpose is to advise the public of the “public health and safety concerns relating to illicit cannabis.” Based upon this language, it is clearly the legislative intent that these documents remain visible to the public. The Respondent’s act of intentionally placing a sign over the documents for the purpose of concealing them from public view is contrary to that intent and thus constitutes a constructive removal. Therefore, it is my finding that the Respondent is also in violation of 9 NYCRR § 133.23 (b)(6).

WHEREFORE, RESPONDENT IS HEREBY ORDERED:

To pay a **\$20,000** fine for the sale of illicit cannabis and cannabis products without a license after having been ordered to cease such conduct on June 15, 2023. The fine is for the date of the second Regulatory Inspection on July 19, 2023; and an additional fine of **\$5,000** is imposed for the improper removal of the Notice of Violation as well as **\$5,000** for the constructive removal of the WS for that same date.

Karen Lavery

Administrative Law Judge

DATED: August 15, 2023

This decision was sent via email on August 15, 2023 to the following:

Nickolas Perry
Sheila Wagner
Jasmine Norman, Esq.

This decision was sent via regular first-class mail on August 15, 2023 to the following:

OLD G CONVENIENCE CORP
18 W 14th St.
New York, NY 10011-7501