

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. 107202412040033**

**Purple Haze II Shop Inc.**

Respondent.

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Respondent requested an emergency hearing after 5pm on December 4, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred December 4, 2024.

The emergency hearing was conducted on December 10, 2024, which is within three (3) business days of the Respondent's request.

The Respondent was represented by Phil Modrzynski, Esq.

The Office of Cannabis Management (hereinafter "OCM") was represented by Kevin Brown, Esq.

Investigative Specialist Darrick Wakefield testified on behalf of OCM.

**ISSUE**

The allegations set forth in the Notice of Violation indicate 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 a regulatory inspection which was conducted 484 Delaware Avenue Buffalo, New York 14202.

The scope of the emergency hearing was limited solely to the issue as to whether or not the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance off the evidence.

Respondent avers that the majority of the evidence obtained during the regulatory inspection of Respondent's store should be suppressed as Petitioner searched a locked back room of the premises without the consent of Respondent. Respondent cites Cannabis Law 132(b)'s provision of penalties of up to \$8,000 in the event that a person engaging in proscribed conduct initially refuses to permit OCM from conducting a regulatory inspection. The Cannabis Law's provision of a penalty for refusing a search does not grant the Respondent an ability to refuse a lawful regulatory search. Regulatory or administrative searches are historically an exception to U. S. Constitution's Fourth Amendment protections and the New York State Constitution's Article 1 §12 protections against warrantless searches and seizures. If Respondent felt as though the search violated Respondent's rights under either the United States or New York Constitution, remedies were available to Respondent outside of this administrative forum. Additionally, Respondent's request was untimely as it was made during the hearing, and not in a motion prior to the inception of this proceeding.

There were no allegations of improper service in this case. Exhibit D13 contains a picture of the individual who identified themselves as the owner of the business, holding a copy of the Notice of Violation and Order to Seal, hereinafter "NOV and OTS," that were issued by Petitioner during the inspection. The signature of the owner is also featured on the NOV and OTS in evidence as Exhibit A.

### **APPLICABLE 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. 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 orders to seal: 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(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).

## **FINDINGS OF FACT**

1. Respondent was offering cannabis products for sale without a license issued by OCM. Investigator Darrick Wakefield testified that he conducted the inspection of Purple Haze II Shop, Inc. with employees of the New York State Department of Tax and Finance, hereinafter “DTF”. He explained that prior to his entry into the premises a DTF agent entered to premises and an offer to sell a cannabis product, which was retrieved from the backroom of the premises, was made to that agent. The package that was offered for sale is featured in Exhibit B12. Its label states: West Coast Cure, (3) 1 Gram Joints; ingredients: Cannabis Flower. During the hearing Investigator Wakefield described his experience and training with OCM. He stated that he received both on the job and online training in identifying cannabis. He stated that he does so using the appearance, odor, packaging and labeling. In addition to the product offered for sale to the DTF agent, Investigator Wakefield testified that he observed a large number of cannabis products on the premises of Purple Haze II Shop, Inc., which he identified on the Notice of Violation and Order to Seal, namely: cannabis flower, cannabis concentrate, and cannabis edibles. (Exhibit A). Though the products were not on display at the premises, the offer to sell to a DTF agent, and retrieval from the room in which the bulk of the products were observed, indicates, beyond a preponderance of the evidence, that Respondent was offering to sell items locked in the storage room on the premises.

2. 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.” Investigator Wakefield testified that no part of the premises he inspected was being used as a residence, and that in addition to the main store area, the premises consisted of a lounge area and bathroom.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. Exhibit A, lists the observations of cannabis sales being a more than de minimis part of the business activity based on the volume and variety of illicit Cannabis on site. The Cannabis Law outlines four non-exclusive factors to be considered when determining whether business activity should be considered as de minimis. Of those four factors, at least two were present at Purple Haze II Shop, Inc.: a large volume of illicit products and a large variety of illicit products. The illicit products were found in a hidden compartment, which opened using a key fob. The nature of the hidden compartment alone, suggests consciousness of guilt. Inside of the compartment were various cannabis products such as: cannabis flower, concentrate, edibles, and vapes. The variety of products observed on the premises consisted of the following: bags of cannabis flower, vacuum sealed bags of pre-rolls, Jungle Boys Cannabis Flower- Apple Jam 25.25521% Total THC, Fiore Cannabis Flower, Pappya Cake Cannabis product, Zkittlez x Wedding Cake Cannabis Flower, High Volume Beazy Buds Fumi Duck Sauce edible, Diamonds Exclusive Sugar Cookies Concentrate, Smart Gummies Peach Edibles 100 mg per gummy THC edibles, Driven Moodz Pre-roll dipped in Hash Oil and Dusted in

Golden Kief, Supreme Pre-roll, 5 Joints by Sluggers Hit Runtz- Juiced with Diamonds and Hash, multiple bags of West Coast Cure- Cure Joints, Single Premium Indoor Flower Joints by Smart Joints labeled Premium Cannabis, Besima Cannabis product, Cookies cannabis product, Sherbinskis' Premium Indoor Flower, Mad Labs Wedding Cake Indica Premium Indoor Flower, Raw Pre-rolls, Stiizy Curated Live Resin Cannabis Concentrate in Kush Cake, Exclusive Diamonds in Biscotti, Sin Mintz, Apples and Bananas and Georgia Pie, Ghost Liquid Diamonds in Grease Monkey Indica Dominant, in addition to other products. (B29-30/ C1, and C4-25). Additionally, the inventory sheet in D14 lists the quantities of items retrieved from the premises, namely: 488 cannabis pre-rolls, 61 cannabis flower packages at 3.5 grams, 8 cannabis "Wonka Bar" edibles, 8 large flower packages, 82 cannabis concentrate "Battery Vapes," 16 assorted gummy edibles, 24 cannabis concentrates in various amounts and varieties, in addition to other products. (Exhibit D14). Though Respondent argues the premises were sealed based on the prior inspection, the NOV and OTS in Exhibit A have an alternate basis for sealing and finding that the sale of cannabis was more than a de minimis part of the business activity, to wit: there was both a variety and volume of cannabis at the premises.

4. The unlicensed activity at Purple Haze II Shop, Inc., constituted an imminent threat to public health, safety, and welfare in that: there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Multiple products observed during the hearing were not labeled in accordance with New York Law. The products featured in Exhibits C4-6, C8, C10-11, C16-20, were labeled with the California cannabis warning label. The products featured in C1, C7, C9, C12-13, C15, C22-24 also appear to not contain a cannabis warning label and thus were not labeled in accordance with New York Law. There was also evidence of unlicensed processing occurring on the premises. Investigator Wakefield testified that Exhibit C1 contained pre-roll cigarettes in a vacuum packed bag, In C2 and C3, there were rolling trays, rolling papers, and a rolling apparatus that appear to be producing similar products to the ones featured in C1.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON DECEMBER 4, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: December 16, 2024

*Laurie Cartwright*  
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 December 16, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Celena Ditchev, Esq.  
Kevin Brown, Esq.  
Phil Modrzynski, Esq.