

STATE OF NEW YORK
OFFICE OF CANNABIS MANAGEMENT
OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 118202410300097

REDEYE NG, INC.

Respondent.

Respondent requested a hearing to contest the validity of an Order to Seal, which had been issued by enforcement agents of the Office of Cannabis Management, at the business located at 3400 West Ridge Road, Rochester, New York, 14626, on October 30, 2024.

The hearing request was granted, and a virtual hearing was held on November 13, 2024.

The Respondent was represented by Phil Modrzynski, Esq.

Salahaldden Ali testified on behalf of the Respondent.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Sisi Wu, Esq.

Investigator Christopher Chapman, Detective Joseph DeMarco, and Donna LaForest testified on behalf of OCM.

ISSUE

The allegations set forth in the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal (hereinafter collectively “NOV”) indicate that the Respondent was offering cannabis products for sale, as defined by Cannabis Law Article 3, without an appropriate registration, license, or permit. This allegation was based upon observations made during a regulatory inspection on October 30, 2024, at 3400 West Ridge Road, Rochester, NY 14626.

The scope of this hearing was limited solely to the issue as to whether or not OCM could prove, by a preponderance of the evidence, that at the time of the inspection the padlocking provisions of Cannabis Law Article 6 § 138-b existed at that location.

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).

Cannabis Law Article 6 §138(b)(2) provides that any order to seal shall be served by delivery of the order to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises that have been sealed, secured and closed. A copy of the order shall also be mailed to any address for the owner of the business at any address provided by the person to whom such order was delivered pursuant to this subdivision. The order shall remain in effect pending a hearing and final determination of the board, or until such order is vacated by the office pursuant to subdivision six of this section. An order to seal shall explicitly state the procedure to request a hearing within seven days.

Cannabis Law Article 6 § 138(b)(8)(c) provides that upon service and execution of the order to seal, the police officer or peace officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the unlicensed activity is being conducted, maintained, or permitted. In addition, the officer shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that the premises have been closed by order of the cannabis control board, and the name of the officer or agency posting the notice.

FINDINGS OF FACT

On October 30, 2024, OCM Supervising Investigator Christopher Coons, as well as other enforcement agents from OCM, conducted a regulatory inspection of Redeye NG, Inc., located at 3400 West Ridge Road, Rochester, N.Y. 14626. This OCM inspection was conducted along with members of the Greece Police Department, pursuant to a search warrant issued by Greece Town Court Judge Brett Granville, on October 24, 2024. (Ex B1,15,16). The inspection occurred prior to the time that the shop was open to the public and no employees were present. At the conclusion of the inspection, OCM documented their findings in the NOV and posted the document on the storefront (Ex D1-3). The premises was padlocked based upon a determination made as a result of the regulatory inspection.

Investigator Coons testified that later that day he spoke with the business owner, Salahalden Ali, who was in custody at the Greece Police Department, and showed him a blank copy of an NOV. He testified that he explained to the owner that his store had been padlocked and told him about the process he needed to follow to request a hearing. Investigator Coons did not have a copy of the completed NOV that resulted from this regulatory inspection, so he was not able to provide one to Mr. Ali. According to the Investigator, he advised Mr. Ali that once he was released from custody, he should go to the store location to read the physical copy of the NOV that was posted on the storefront so he could see the specific findings resulting from the inspection. Investigator Coons testified that he expected the Respondent to be released from custody later that day after his arraignment. Finally, OCM employee Donna LaForest testified that she mailed a copy of the completed NOV to the address of the sealed business, a week later on November 7, 2024.

“In an administrative proceeding the standard for service is whether the notice under all the circumstances is reasonably calculated to make the parties aware of the proceeding so that they have an opportunity to be heard.” See *Reda v. Dep’t of Health of City of New York*, 137 Misc.2d 61, 63, (Sup. Ct. 1987), *aff’d*, 143 A.D.2d 1073 (1988) Citing *Matter of Infante v. Donohue*, 42 Misc.2d 727 [Sup. Ct. Albany Co., 1964]). Additionally, “as with all administrative tribunals, ...[it] derives its jurisdiction and powers from the statute which created it.” *Id.* Citing *Foy v. Schechter*, 1 N.Y.2d 604, 154 N.Y.S.2d 927, 136 N.E.2d 883. Cannabis Law Article 6 §138(b)(2) provides that the NOV must be served in person; by mail sent to an address of the business owner if the address is provided by the individual personally served; and by posting a copy of it on the building or premises to be sealed. In the present case, since there were no employees at the location at the time of the regulatory inspection, personal service could not be effectuated at the time of the inspection. Thereafter, when Investigator Coon showed the Respondent a blank copy of a sample NOV, he did not effectuate personal service either. Clearly, personal service could have been accomplished, had the investigator simply provided the Respondent with a completed copy of the NOV at the time that he spoke with him at the Greece Police Department. He did not do so. Utilizing a blank NOV and advising the Respondent how to request a hearing, does not equate to personal service. I find that the Petitioner cannot circumvent the need to personally serve the NOV upon the Respondent, simply by advising him to physically go to the location to read it there once he gets released from

custody, or by mailing a copy of it to a sealed business location a week later. As such, I find that the service requirements set forth in Cannabis Law Article 6 §138(b)(2) have not been met.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE SEALING ORDER ISSUED ON OCTOBER 30, 2024, IS HEREBY VACATED.

Dated: December 9, 2024

Thomas Kidera

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 9, 2024, to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Sisi Wu, Esq.
Phil Modrzynski, Esq.