

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. - 118202406060016

SMOKERS DREAM SHOP, INC.

Respondent.

Respondent requested a hearing on October 23, 2024, for an inspection which occurred on June 6, 2024

The initial date for the hearing, October 30, 2024, was rescheduled after the parties' request for an adjournment was granted on October 29, 2024. The hearing was then scheduled and commenced on November 18, 2024. A second day of testimony occurred on November 26, 2024, at which time the hearing concluded.

The Respondent was represented by Robert Abdella, Esq. who requested that substitute counsel be allowed and who did not attend the hearing. The representative during the hearing for Respondent was Joseph R. Sise, supervised by Joseph Sise.

The Office of Cannabis Management (hereinafter "OCM") was represented Luwick Francois, Esq.

Investigators William McKay (hereinafter "McKay") and Investigative Specialist 1 Zak Roubelakis (hereinafter "Roubelakis") 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 at 293 N. Comrie Ave., Johnstown, NY 12095.

The scope of the hearing involves determination whether OCM, by a preponderance of the evidence were justified in issuing to Respondent the Notice of Violation and Order to Cease Unlicensed Activity (jointly hereinafter “NOV”) and what penalty under Article 6 § 132 is justified. OCM requested the maximum fine of \$10,000. Additionally, this hearing was to determine the issue of whether the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance of the evidence.

APPLICABLE LAW

Cannabis Law Article 6 §125(1) states that “[n]o 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, or any product marketed or labeled as such, within the state without obtaining the appropriate registration, license, or permit therefor required....”

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 §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.

Cannabis Law Article 6 §132 (1)(c) requires that any civil penalties assessed “shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation....”

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. On June 6, 2024, OCM conducted an inspection of Smokers Dream Shop, Inc. (hereinafter “Smokers Dream”) located at 293 N. Comrie Ave., Johnstown, NY (Ex. A). At that time, a Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was issued and the premises were sealed (Ex. A). In October of that same year, Respondent requested a hearing, which was held on November 18 and 26, 2024. During the hearing, McKay first appeared and began to testify on behalf of OCM. After brief testimony, OCM requested a continuation McKay, who was not present on the day of the inspection, had difficulty discussing the facts of the case and authenticating the documents OCM was trying to introduce into evidence. When the hearing re-commenced, McKay did not attend. His testimony had not been concluded during the previous hearing and Respondent’s attorney, after some discussion and the opportunity to recall McKay and cross-examine him, decided to proceed, foregoing the right to cross-examine McKay. As McKay’s testimony had primarily been foundational as to his work experience and training, it offered nothing of substance, other than the introduction of Exhibit A to the record, which Respondent’s attorney allowed to enter without objection. OCM next called Roubelakis, who provided the entirety of the testimony upon which this decision is based.

Smokers Dream acted as a retail store and was open to the public. It had all the typical signs of a retail store (store hours, an open sign) and also had a multitude of signs and symbols that advertised it as a “smoke shop” (Ex B 1-2). These symbols, along with the paraphernalia on display in the windows, could readily be viewed and interpreted as belonging to a store that traded in not only paraphernalia but possibly cannabis, by consumers seeking to purchase. Roubelakis testified as to these symbols and advertisements and that upon entering the store, he discovered a wide array of cannabis products (Ex. B & C). While other legal products were on display in the store, a significant amount of store space was dedicated to products which would qualify as illicit under Cannabis Law Art. 6. Within this significant amount, a wide variety of forms, brands, and flavors of cannabis products were present. Many of these products were prominently displayed with sales stickers attached (see e.g., Ex. B 4, 11, 14, 16, & 17-22). Further, advertisements were displayed throughout the establishment which stated, often times explicitly, that cannabis products were on sale at Smokers Dream (Ex B 5, 7, 8, 10, 11, 14). Concentrates, edibles, pre-rolls, vapes, gummies, loose cannabis, and other consumable products were either on display or referenced on printouts that resemble menus (Ex. B 5, 7-11, 17-21, C 1-20). Upon searching the store, Roubelakis stated, and the evidence supports, that numerous products found in the store were labeled as cannabis, contained an explicit reference to the product containing THC, or possessed a sticker/stamp that identified it as containing cannabis (Ex. B & C). Other packaging had warning labels stating that the product contained cannabis or other writing on the label that suggested a cannabis product was contained within (Ex. B & C). Additional products were discovered in storage (Ex. C 21). Many of these products also contained signs and symbols on the packaging that indicated a cannabis product (Ex. B & C). Among the collection found on site, were products made by well-known brands of cannabis

producers, including: Runtz, Stiiizy, Flav, Munchies, Jeeters, and Snow (Ex. B 8, 12, 18-19, & 25, C 14, 17, & 19). Roubelakis further stated that Smokers Dream had a cash register/point of sale system (Ex. B 4), which allows for the conclusion that it regularly conducted business as a publicly operating store.¹ A continuation of the signs and symbols displayed on the outside continued within the shop. Bonges, pipes, hookahs, rolling papers, products with cannabis leaves or otherwise embossed with a cannabis symbols, & other products and displays which, although legal, lend heavily to the evidence that cannabis may be present for sale on site (Ex. B 1-4). Finally, Roubelakis testified that Smokers Dream did not possess an adult-use cannabis license; Respondent did not refute this testimony.

The factors introduced into evidence and through testimony indicate by a preponderance of the evidence that Respondent was offering cannabis products for sale without the necessary license being issued by OCM. A multitude of cannabis products were readily on display which most anyone who entered the store would see. Advertisements, sales tags, and even a “free giveaway promotion,” all blatantly said that cannabis could be procure at Smokers Dream. The store appeared to operate openly in its sale of cannabis, and I believe the evidence supports this. The products discovered were labeled as cannabis, either explicitly or with some marking that identified it as containing cannabis and there were numerous varieties and a literal menu of options to choose from. Warning labels, the “CA!” mark that indicates out-of-state production, and ingredient lists would readily indicate to the average consumer that the product was labeled as cannabis and likely contained cannabis within. In total, Roubelakis testified that the total weight of product seized from Smokers Dream was 272lbs, with over 50lbs of cannabis flower only. While Respondent correctly questioned the exactness of these numbers and highlighted that the voucher, which Roubelakis referenced in his testimony, was not produced by OCM, the numbers he stated align with the photos submitted into evidence. Even if Roubelakis’ numbers are not entirely accurate, although I found his testimony exceptionally credible and his answers remarkably exact, the evidence clearly shows a large volume of product. The amount possessed by Smokers Dream is clearly beyond what could ever be claimed for personal use and taken as a whole, the store constituted a fairly sophisticated cannabis operation.

2. Roubelakis testified that no part of the premises to be sealed was used in part as a residence. He stated that a complete search of the location was conducted and that no indications that it was being used as a residence were found. Further, he testified that the owner, who was present at the time of the search, stated that the location was not used as a residence. Respondent made no assertion to the contrary.

3. The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. A large variety and volume of

¹ Although I do not typically find evidence of an ATM machine on premises to be particularly persuasive or indicative of a shop that trades in cannabis -- many stores contain ATMs that have no connection to cannabis or even smoke shops -- in this case, having the presence of an ATM advertised prominently in the front window (Ex. B 1), supports the conclusion, if only to a negligible degree, that cannabis sales were occurring on site. ATMs allow for cash transactions and an advertisement for an ATM at a smoke shop may attract customers who wished to purchase cannabis and to do so in cash, to avoid a paper trail.

illicit products were discovered at Smokers Dream. A variety of brands were observed on premises (see above). Also, a variety of product types were observed (see above). In fact, Roubelakis testified that in his roughly 200 inspections with OCM, he had only ever participated in one inspection which possessed more product. From the photographic evidence submitted by OCM, there appears to be hundreds of individual products seized from Smokers Dream. Advertisements were numerous and prominently displayed, both inside and out, some explicitly announced that cannabis could be purchased on site.

Respondent's attorney argued that the total volume of business conducted at Smokers Dream should be measured against the illicit product which was seized from the location. By comparing the two, he argues, the legal product would produce a "counterbalance" to the illicit product, thereby allowing a store which conducts significant legal business to possess a larger amount of illicit product while still qualifying the illegal sales as a "de minimis part of the business activity." Respondent further argued that such an analysis would allow a store like Smokers Dream, which Respondent argued had a large number of legal sales, to possess the illicit product which OCM seized and not be subject to an order to seal. I find this interpretation of Cannabis Law § 138-b(7) to be both unworkable and misguided. First, any single factor under this section of law could produce a finding of "more than de minimis." Volume, variety, signs and symbols, or marketing, "any one or more" of these could lead to a finding of more than de minimis (Can. Law § 138-b(7)). Further, the information necessary to compare legal sales to illicit ones, would require a full accounting of the business, a highly cumbersome process and one that I do not believe was intended by the statute. Finally, Respondent would seem to want a finding of de minimis, if the illicit activity is a minority share of the total business. While the statute could have said a "minority part of the business activity," it does not. It likewise does not set a standard which allows for the illicit sales to be a "minimal part of the business activity." The standard explicitly stated in the statute is "de minimis," which means that any activity that rises above a "trifling" or "negligible" amount violates this statute.

In the Matter of Smokers Dream, the sale of cannabis appears to have become a significant portion of the business. The store devoted significant space to the displaying of cannabis products. Further, the blatant advertisements, signs, and symbols within the store highlighted the sale of cannabis. Additionally, the store's development of personalized stickers and the processing of cannabis shows a new avenue for cannabis sales, further increasing an already significant volume and variety of products. Finally, it is difficult to imagine the large volume and variety of cannabis products which were shown in the pictures submitted into evidence to be de minimis in any store, regardless of size. Taken as a whole, the significant amount of time, money, and effort which the store dedicated to ordering, displaying, processing, and selling cannabis products, regardless of the "legal sales," makes it impossible to view the cannabis sales as a de minimis part of the business. While the size of a store and the amount of its legal sales may impact a future determination of de minimis, given the right set of circumstances, Smokers Dream presents no such circumstances. Under no logical conclusion can I reach a finding of "de minimis" as it relates to Smokers Dream. The store was operating a significant cannabis operation. It violates at least three of the four factors listed in the statute (signs and symbols, variety, and volume). And while Smokers Dream may have also traded in legal products, the amount of cannabis product and effort to promote those products were highly

significant. I find that by a preponderance of the evidence, the amount of cannabis at Smokers Dream constituted more than a de minimis part of the business activity.

4. The unlicensed activity being conducted at Smokers Dream constituted an imminent threat to public health, safety, and welfare. There were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Those that did have labels, were labeled from outside New York State or possessed generic labels (see generally Ex. B & C). It is more likely than not that few, if any products in the store were tested for quality and safety using New York standards. Further, the presence of a “bump box,” labels produced by Smokers Dream, loose flower, empty tubes (which Roubelakis stated he understood to be used for pre-roll joints), pre-rolls, and jars affixed with the personally-printed labels, all suggest that production of cannabis was occurring on site (Ex. B 12-13, 15, 20, & 23, C 16, 21-23, & 25). Roubelakis testified that Respondent possessed no producers license and Respondent presented nothing to counter this testimony. Due to the probable processing and the volume of untested product available, the activity occurring at Smokers Dream constituted an imminent threat to public health, safety and welfare.

5. OCM requested the maximum fine of \$10,000 be levied against Smokers Dream for the violations that were discovered during the inspection. While the statute does not provide extensive guidance for determining the penalty for violations under Cannabis Law Article 6 §125, 132, and 138-a, it does require a penalty proportionate to the violation (Cannabis Law Article 6 §132(1)(c)). In the Matter of Smokers Dream, Roubelakis testified that the amount of cannabis discovered during the inspection constituted one of the largest he had ever been a part of. Bags of product were collected and seized from the location (Ex. C 24). The signs and symbols as well as the sophistication of the operation made this a store that operated openly as a unlicensed cannabis shop. The volume and variety, coupled with the directness with which the store operated requires a significant penalty. For those reason, I am assessing the maximum fine of \$10,000.

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 293 N. Comrie Ave., Johnstown, NY 12095. In so doing, Respondent violated Cannabis Law Article 6. The Order to Cease Unlicensed Activity and Order to Seal are hereby affirmed and a penalty is assessed.

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

FURTHER, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$10,000 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS

**A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT
CANNABIS ON JUNE 6, 2024.**

Dated: December 3, 2024


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 3, 2024, to the following:

Joseph R. Sise, Esq.

Luwick Francois, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchev