

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

-----X

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Complaint No. 112202306130012

THE BLACK LEAF NY LLC

Respondent.

-----X

The above noted matter was held as a Webex hearing before the undersigned, Karen Lavery, on July 21, 2023.

The Respondent failed to appear.

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

Investigative Specialist William McKay 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 registration, license, or permit. This allegation was based upon observations made during a regulatory inspection which was conducted at the business located at 103 E. State St., Ithaca, NY, on June 13, 2023.

FINDINGS OF FACT

1. At some date during the fall of 2022, Investigative Specialist McKay received a citizen complaint alleging that a business called The Black Leaf NY LLC was selling illicit cannabis. Investigative Specialist McKay conducted a Google search and determined the location of the Respondent's business. The search further resulted in the discovery of Respondent's Facebook and Instagram accounts on which they were advertising various products for sale, some of which were labeled as containing cannabis and others which appeared to be cannabis products (State's Exhibit 1). Investigative Specialist McKay testified that neither social media site had any controls restricting accessibility but rather both were open and accessible to the public.

2. At some date during the fall of 2022, shortly after the discovery of Respondent's two social media accounts on which cannabis products were advertised for sale, Investigative Specialist McKay accompanied by two other members of the OCM Enforcement Unit, visited the business located at 103 E. State St., Ithaca, New York known as The Black Leaf NY LLC. Investigative Specialist McKay testified that upon entering the store, he and his colleagues identified several cannabis containing products which were offered for sale. Investigative Specialist McKay testified that he witnessed one of his colleagues present a Cease and Desist letter to Mykal Anderson who was working behind the counter of the business. The Cease and Desist letter directed the Respondent to stop selling products which were identified as containing cannabis.

3. On June 13, 2023, Investigative Specialist McKay, accompanied by another OCM Investigator, several staff members from the NYS Department of Taxation and Finance, as well as one or two Ithaca Police Officers, conducted a Regulatory Inspection of the business located at 103 E. State St, Ithaca, NY, based upon citizen complaints which were made subsequent to the service of the Cease and Desist letter upon the Respondent. The NOV was personally served on Mykal Anderson who was working at Respondent's business at the time of the Regulatory Inspection. The NOV indicated that a hearing was scheduled for June 26th, 2023 at 2:00 p.m. An email address for OCM's Office of Administrative Hearings was also provided to the Respondent at that time (State's Exhibit 2). Neither the Respondent nor anyone on behalf of the Respondent contacted the Office of Administrative Hearings in response to the NOV. The hearing was subsequently adjourned until July 21, 2023. The OCM staff made an attempt to contact the Respondent to advise him of the rescheduled hearing date and time however all attempts to reach the Respondent by the means provided, were unsuccessful. As such, there was no appearance on behalf of the Respondent.

4. The Respondent was not in possession of a license issued by OCM to sell cannabis or any products containing cannabis (State's Exhibit 3).

5. Investigative Specialist McKay, credibly testified that at the time of the regulatory inspection, he observed numerous types of products, all of which were labeled as containing cannabis and some of which indicated the amount of THC contained in each product. Investigative Specialist McKay also testified that he observed cannabis containing vape cartridges, cannabis

edibles, cannabis butter, cannabis concentrate, and cannabis flower (State's Exhibits 6-7, 9-10). Investigative Specialist McKay testified that he observed a cash register, a pre-roll processing table, and a digital scale (State's Exhibits 5, 13). He also testified that he observed a sign on the display case indicating "Daily Specials," advertising cannabis containing products by name, weight, and price (State's Exhibits 7 and 12). It should be noted that Investigative Specialist McKay identified that the products listed as "Daily Specials" were consistent with the cannabis containing products located in the display cases (State's Exhibit 12). Investigative Specialist McKay also testified that he observed a detailed price list located on top of the display case, which identified the strain of cannabis, the specific product form, as well as the strength and the price of each product (State's Exhibit 8).

6. Investigative Specialist McKay testified that at the conclusion of the regulatory inspection, he placed a copy of the NOV and a Warning Sticker (hereinafter "WS") on the storefront of 103 E. State St., Ithaca, NY (State's Exhibit 15).

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 Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 103 E. State St., Ithaca, NY. By doing so, Respondent has violated Cannabis Law Article 6 §125(1) and §132(1)(a). The Order to Cease Unlicensed Activity is hereby affirmed.

WHEREFORE, RESPONDENT IS HEREBY ORDERED:

To pay a **\$10,000** fine for the sale of illicit cannabis and cannabis products without a license on June 13, 2023.

Karen Lavery
Administrative Law Judge

DATED: July 24, 2023

This decision was sent via email on July 26, 2023 to the following:

Nickolas Perry
Sheila Wagner
Jasmine Norman, Esq.

This decision was sent via regular first-class mail on July 26, 2023 to the following:

THE BLACK LEAF NY LLC
103 E. State St.
Ithaca, NY 14850