

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. 112202306130016**

**THE REZZ,  
312 FOURTH ST.  
ITHACA, N.Y. 14850**

Respondent.

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The above noted matter was held as a Webex hearing before Thomas Kidera, on August 9, 2023.

The Respondent was represented by Paula Collins, Esq.

Yusuf Broaster testified on behalf of the Respondent.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Senior Attorney Carrie Costanzo, Esq.

Investigative Specialist William McKay testified on behalf of OCM.

**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 312 Fourth St. Ithaca, New York, on June 13, 2023 (State’s Exhibit 1).

## FINDINGS OF FACT

1. That on June 13, 2023, Investigator McKay, in addition to members of the Enforcement Division of OCM, as well as members of the Enforcement Unit of the New York State Department of Tax and Finance (hereinafter “DTF”) conducted a regulatory inspection of The Rezz, located at 312 Fourth Street. Ithaca, New York.
2. That Investigator McKay has training and experience in identifying cannabis and cannabis containing products and that there are certain characteristics he looks for when identifying cannabis products, including packaging that contains the letters THC or CA, as well as a triangle symbol with a leaf in the center.
3. That the investigators entered the location for this inspection when the store was open, and upon entry Investigator McKay saw a display case with packages of pre-rolls and boxes of vape cartridges. He also viewed posters containing QR codes that came back to cannabis price lists when scanned. He found large bags of loose cannabis flower, a digital scale, grinders, and empty baggies for packaging the loose flower. He also found evidence of the RezzLife 420 Instagram account advertising cannabis with prices listed, as well as a Rewards Program and information indicating an online ordering system.
4. That Investigator McKay photographed the various cannabis products he discovered, and those photographs were received into evidence to confirm his testimony. (State’s Exhibits 5-17). Investigator McKay also explained that the cannabis products he observed were inventoried and seized by the DTF investigators. (State’s Ex. 2)
5. That prior to beginning the regulatory inspection, OCM engaged in a diligent search of their records and determined that the Respondent was not in possession of any registration, license or permit issued by OCM which would permit him to sell cannabis. (State’s Ex. 3)
6. That the NOV was personally served on Yusuf Broaster the owner of The Rezz. (State’s Exhibit 1). A copy of the NOV was also affixed to the front of the premises. (State’s Ex. 18 and 19).
7. That the NOV indicated that a hearing was scheduled for June 28, 2023, at 2:00 p.m. A Notice of Appearance was subsequently filed by attorney Paula Collins, Esq. and the hearing was rescheduled and conducted on August 9, 2023.
8. That Yusuf Broaster credibly testified during the hearing that he was the owner/operator of The Rezz and that he had decided to offer cannabis products for sale in his store due to community demand. (Hearing Tr.1:54:22).

## 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 § 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) provides that: “In assessing the civil penalties under this subdivision, the board or office shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation.”

Cannabis Law Article 1 § 3(46) Retail sale" means to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell, made by any licensed person, whether principal, proprietor, agent, or employee, of any cannabis, cannabis product, cannabinoid hemp or hemp extract product to a cannabis consumer for any purpose other than resale.

## SUMMARY

The burden in this case is on OCM to prove by a preponderance of the evidence that Respondent has violated the Cannabis Law. In this matter, the element in question is whether Respondent delivered cannabis to consumers or sold to consumers product which contained cannabis or was marketed or labeled as such.

There is nothing in evidence to show that the product in this case was tested and found to be cannabis. However, I find that Investigator McKay credibly testified that he has training and experience in identifying cannabis, and that the products he observed that day resembled cannabis in appearance or were marketed and labeled as cannabis. (See Exhibits 5-17)

I also find that Investigator McKay testified credibly regarding the entire regulatory inspection of The Rezz on June 13, 2023. He explained that on the day of the inspection, investigators entered the store during regular business hours. This was evidenced by the time on the NOV, which was signed at approximately 2:12 in the afternoon. (State's Ex. 1). I further find that prior to entering the premises, Investigator McKay was aware that the location did not have a license to sell cannabis. As such, any quantity of product, marketed or labeled as cannabis and exposed for sale would be properly considered in violation of Cannabis Law Article 6 § 125(1) and § 132(1)(a).

It is evident from the labeling and positioning of the cannabis products in display cases accessible to the public, the presence of price lists and QR codes, as well as grinders, baggies, and production equipment to manufacture pre-rolls, that the cannabis in The Rezz was exposed, kept, and marketed for sale. For those reasons I find that The Rezz violated Cannabis Law Article 6 § 125(1), § 138(a), and § 132(1) (a) by selling cannabis or products marketed and labeled as cannabis, on June 13, 2023.

Finally, while the Respondent has alleged violations of the Fourth Amendment of the United States Constitution, any Fourth Amendment challenge is irrelevant for this administrative proceeding. The purpose of this proceeding is solely to determine whether the Respondent violated Cannabis Law Article 6 §§ 125 and 132; whether the Notice of Violation and Order to Cease Unlicensed Activity issued according to 9 NYCRR § 133.23 should be enforced; and what penalties, if any, should be assessed against the Respondent.

Regardless, I do find that the investigators were free to enter The Rezz during regular business hours, like any other member of the public. The investigators were lawfully able to observe the cannabis in plain view when they entered the premises. Well established case law regarding the "plain view" doctrine dictates that officers can seize unlawful and incriminating evidence which is readily visible. This doctrine "rests on the premise that police should be able to seize incriminating evidence in plain view if they had the right to be where they were when they saw it. [L]aw enforcement officers may properly seize an item in 'plain view' without a warrant if; (i) they are lawfully in a position to observe the item; (ii) they have lawful access to the item itself when they seize it; and (iii) the incriminating character of the item is immediately apparent." (*People v. Brown*, 96 N.Y.2d 80, 88–89, 725 N.Y.S.2d 601, 749 N.E.2d 170; see *People v. Diaz*, 81 N.Y.2d 106, 110, 595 N.Y.S.2d 940, 612 N.E.2d 298; see also *Horton v. California*, 496 U.S. 128, 136–137, 110 S.Ct. 2301, 110 L.Ed.2d 112).'" *People v. Velasquez*, 110 A.D.3d 835, 972 N.Y.S.2d 678 (2013). In this case, investigators upon entry were able to observe the cannabis products displayed in the store so they had lawful access to these items and were free to both photograph and seize them.

The Respondent has also argued that the Cannabis Law is unconstitutional and should be deemed preempted by *Owner Operator Indep. Drivers Ass'n v. N.Y. State Dep't of Transp.*, 2023 N.Y. Slip Op. 3184 (N.Y. 2023). However, it has long been established that Administrative Law Judges lack the jurisdiction to determine the constitutionality of statutes. See *Wang v Department of State Division of Licensing Services*, 1 DOS APP. 01, 23 DOS 00, (2000); see also *Cherry v. Brumbaugh*, 7 NYS 2d 956 (2nd Dept., 1938). Since this proceeding is before an administrative tribunal, the constitutionality of the Cannabis Law is not addressed in this decision.

**DECISION**

The evidence presented during this hearing showed by a preponderance of the evidence that the Respondent engaged in the sale of cannabis and cannabis products without a license, registration, or permit to do so, at the location of 312 Fourth St. Ithaca, New York, on June 13, 2023. In so doing, Respondent violated Cannabis Law Article 6 § 125(1), §138(a), and §132(1)(a). The Order to Cease Unlicensed Activity is hereby **Affirmed**.

**WHEREFORE, THE RESPONDENT IS HEREBY ORDERED:**

To pay a **\$10,000.00** fine for the unlicensed sale of cannabis and cannabis products without a license, registration, or permit to do so on June 13, 2023.

Dated: November 20, 2023

*Thomas Kidera*

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Administrative Law Judge

This decision was sent via email on November 20, 2023, to the following:

Nickolas Perry  
Sheila Wagner  
Jasmine Norman, Esq.  
Paula Collins, Esq.

**PLEASE BE ADVISED:** Either party may appeal this decision within 30 calendar days of receipt, according to the specific manner described at 9 NYCRR 133.23(g)(5).