

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. 120 2023 0622 0035

TOP 1 CONVENIENCE CORP

Respondent.

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The above noted matter was held as a Webex hearing before the undersigned, Karen Lavery, on July 14, 2023.

The Respondent failed to appear.

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

Investigative Specialist Lisa Warner testified on behalf of OCM.

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 flower, Delta 8 products, and THC edibles, as defined by Cannabis Law § 3, for sale without an appropriate registration, license, or permit. This allegation is based upon observations made during a regulatory inspection which was conducted at 158 1st Ave, New York, NY, on June 22, 2023 (State’s Exhibit 1).

FINDINGS OF FACT

1. The NOV was personally served on the Respondent at the time of the regulatory inspection. That NOV indicated that a hearing was scheduled for July 14th, 2023 at 10:00 a.m. An email address for the OCM's Office of Administrative Hearings, was also provided to the Respondent at that time. The Respondent did not appear at the hearing, nor did the Respondent or anyone on behalf of the Respondent contact the Office of Administrative Hearings (State's Exhibit 1).

2. On June 22, 2023, Investigative Specialist Warner, in addition to members of the Enforcement Division from the New York State Department of Taxation and Finance, conducted a regulatory inspection at 158 1st Ave, New York, NY, based upon a complaint alleging that the business was selling illicit cannabis. Respondent was not in possession of a license, permit, or registration issued by OCM to engage in the sale of cannabis products or products containing cannabis (State's Exhibit 18).

3. Investigative Specialist Warner credibly testified that at the time of the regulatory inspection, she observed numerous products containing cannabis. Investigative Specialist Warner testified that she observed cannabis edibles, bags containing cannabis flower, and Delta 8 edibles (State's Exhibits 2, 7-9, 10, 10A, 10B, 11) all of which were documented on vouchers completed by Investigative Specialist Warner as well as members of the Enforcement Division from the New York State Department of Taxation and Finance, the latter of which Investigative Specialist Warner personally witnessed the inventory and documentation of the products listed (State's Exhibit 16-17).

4. Investigative Specialist Warner testified that she observed a credit card reader on the counter of the business (State's Exhibit 13) as well as a sign labeled "Menu" which contained the price list for several strains of cannabis offered for sale in two sizes (State's Exhibits 5-6). It should be noted that the strain names and prices of the cannabis products listed on the sign were consistent with the strain names and prices displayed on the bags of cannabis flower located both in Respondent's display counter and on the shelves located on the wall behind the counter (State's Exhibits 5, 8-9,11).

5. Investigative Specialist Warner testified that at the conclusion of the regulatory inspection, she placed a copy of the NOV and a Warning Notice (hereinafter "WN") on the door of 158 1st Ave, New York (State's Exhibits 14-15). Investigative Specialist Warner testified that she also served a copy of the NOV on Davasia Sims who was working behind the counter at the time of the regulatory inspection (State's Exhibit 1).

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 cannabinoid hemp, hemp products, 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 cannabis products and Delta 8 products, without a license, registration, or permit to do so, at the location of 158 1st Ave, New York, NY. In so doing, Respondent 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 cannabis products and Delta 8 products without a license on June 22, 2023.


Administrative Law Judge

DATED: July 14, 2023

This decision was sent via email on July 17, 2023 to the following:

Nickolas Perry
Sheila Wagner
Christopher DeLuca, Esq.

This decision was sent via regular first-class mail on July 18, 2023 to the following:

TOP 1 CONVENIENCE CORP
158 1st Ave
New York, NY 10009