

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

ANDY STAR, INC.,

Respondent.

DECISION
Inspection No. 102202412160089

Respondent requested an emergency hearing to contest the validity of an Order to Seal, which had been issued by enforcement agents of the Office of Cannabis Management on December 16, 2024, at his business located at 198 Avenue U in Brooklyn, New York, 11223.

The emergency hearing request was granted since it was received within 7 calendar days of issuance of the Order to Seal. A virtual hearing was held on December 27, 2024, which was 3 business days after receipt of the emergency hearing request. Prior to the hearing, Respondent's attorney sought dismissal of the Order to Seal, claiming that the emergency hearing was held more than 3 business days after his hearing request was made, which he argued was electronically sent to the Office of Administrative Hearings (OAH) at 5:55 pm on Friday, December 20, 2024. Since his hearing request was submitted after the close of business, OAH was not able to process the hearing request until business reopened on Monday, December 23, 2024. Therefore, the hearing date of December 27, 2024, met the statutory 3 business day requirement and the application for dismissal of the Order to Seal on timeliness grounds was denied.

The scope of the emergency hearing was limited solely to determine if the sealing provisions of Cannabis Law Article 6 § 138-b were proven to have existed at the time of the inspection, by a preponderance of the evidence. Following the issuance of this decision, should either party request that a hearing be scheduled on the underlying Notice of Violation and Order to Cease Unlicensed Activity, that hearing will be scheduled in accordance with the requirements of 9 NYCRR 133.25(h)(4), 133.10(a) and 133.10(e).

The Respondent was represented by Lance Lazzaro, Esq.

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

Investigator Bladimir Nunez testified on behalf of OCM.

ISSUE

The allegations set forth in the joint Notice of Violation, Order to Cease Unlicensed Activity and Order to Seal (hereinafter referred to collectively as the “NOV”) indicated 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 conducted by agents of OCM on December 16th, 2024, at the business known as Andy Star, Inc., located at 198 Avenue U, Brooklyn, NY. 11223.

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: 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)(2) requires any sealing order be served 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. The sealing order must also be posted at the building or

premises that was sealed, secured, or closed. Additionally, “a copy of the sealing 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...”

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. Respondent was proven by a preponderance of evidence to be offering cannabis products for sale without a license issued by OCM, according to the credible testimony of Investigator Bladimir Nunez. He testified that he received training at OCM in identifying and categorizing cannabis products and that during the inspection of the location he observed what appeared to be a large volume and variety of cannabis flower and pre-rolls, cannabis edibles, cannabis concentrates, a point-of-sale credit card reader, an ATM, and various signs and symbols of cannabis products, which he concluded was consistent with the processing and sale of cannabis products on-site. He corroborated this testimony with photographs that he took at the time of the inspection. (Exhibits B1-45).
2. According to the credible testimony of the Investigator, there was no evidence that any part of the premises that was sealed was being used as a residence. No evidence was offered to contradict his observations and testimony nor to claim that any part of the premises sealed was zoned or lawfully occupied as a residence.
3. The unlicensed activity, which warranted an order to seal, also constituted more than a “de minimis” portion of the business activity at that location, according to the credible testimony of the Investigator. He testified that he found a large variety and volume of illicit cannabis products during the inspection at this location. Cannabis Law Article 6 §138-b (7) and OCM Regulations 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. From the photographs entered as evidence during the hearing and the testimony of the Investigator listing the items found at this location, it was demonstrated by a preponderance of the evidence that this location had a large variety and a substantial volume of illicit cannabis products being offered for sale.
4. This unlicensed activity also constituted an imminent threat to public health, safety, and welfare due to the offers to sell cannabis products that were not tested or labeled

lawfully in accordance with Cannabis Law Article 6. The Investigator established that many of the cannabis products contained labels indicating they were cannabis products from California, and many were brightly colored or depicted characteristics with special appeal to children, all in violation of New York law. (See, Exhibit B11-16, B21-45).

5. Finally, the NOV was properly served upon the respondent on December 16th, 2024. The Investigator's credible and undisputed testimony established by a preponderance of the evidence that the NOV was personally served upon, and signed by, the sole store employee present at the time of the inspection, and that it was also conspicuously posted on the front of the premises, as required by Cannabis Law Article 6 §138(b)(2). (See Exhibit B3). Because the personal address of the business owner was not supplied to the Investigator by that store employee at the time of the inspection, no further steps were required by statute or regulations to complete service. Respondent's attorney posited an affirmative defense that the NOV was also required to be mailed to the sealed business address at 198 Avenue U in Brooklyn N.Y., because that business address was listed on the hemp license that had been issued by OCM for this location. Because there is no such service requirement listed in the Cannabis Law, that application is denied.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON DECEMBER 16, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: January 2, 2025

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 January 2, 2025, to the following:

Lance Lazzaro, Esq.
Celena Ditchchev, Esq.
Nickolas Perry
Sheila Wagner
Sisi Wu, Esq.