

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. - 116202412170011

ROLLINGWOOD, INC.

Respondent.

Respondent requested a hearing on January 9, 2025, for an inspection which occurred on December 17, 2024

The hearing was scheduled for and conducted on January 23, 2025.

The Respondent was represented by Neal Trivedi, Esq.

Saeed Hussain (hereinafter “Hussain”) testified on behalf of Respondent.

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

Investigative Specialist Gisela Loforte (hereinafter “Loforte”) testified on behalf of OCM.

ISSUE

The allegations set forth in the Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal (jointly hereinafter “NOV”) asserts that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. These allegations are based upon observations made during a regulatory inspection which was conducted at 474 Main St., Islip, NY 11751.

The scope of the hearing involves determination whether OCM, by a preponderance of the evidence were justified in issuing to Respondent the 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 of Cannabis Law Article 6 § 138-b 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 December 17, 2024, OCM conducted an inspection of Rollingwood, Inc. (AKA Island Wood Cigar and Smoke Shop) (hereinafter “Rollingwood”) located at 474 Main St., Islip, NY (Ex. A). At that time, an NOV was issued, and the premises were sealed (Ex. A). In January 2025, Respondent requested a hearing, which was held on January 23, 2025. During the hearing, Loforte appeared as the sole witness for OCM. She testified that OCM’s inspection began after the Department of Taxation and Finance, who she stated was conducting an administrative-regulatory inspection for tax related matters, found what appeared to be illicit cannabis in the store. OCM then entered the store and began its own investigation into whether Rollingwood was selling illicit cannabis without an adult use license. Loforte stated that upon arriving at the store, it was open and had many of the hallmarks of a business open to the public. A point-of-sale system, ATM, and credit card reader were all present (Ex. B 3-6). Further, the point-of-sale system printed out receipts that showed recent transactions (Ex. B 7).¹ Finally, Loforte testified that customers approached the store during the inspection but were turned away. Loforte went on to testify that products, which appeared to be illicit cannabis, were discovered in the shop, in drawers near the cash register (Ex. B 8). Many of these products were labeled as cannabis (Ex. B 13, 15, 17, 20, & 24), had markings that identified them as cannabis (e.g., cannabis leaf, “CA!”) (Ex. B 11-12, 14, 16, 19, & 24), or were identified by Loforte as cannabis through her training as an investigative specialist for OCM due to their appearance, smell, or labeling (e.g., “strain name,” “gelato”) (Ex. B 21-22, 25-26, 28). Some of these products had prices attached, which supports a finding that they were for sale (Ex. B 9-10, 13, 15, 21, & 24). Additional product, in the form of cannabis flower, was discovered in a storage room, connected to the “show room” (Ex. B 27-29). Scales, empty baggies, and other processing equipment or evidence of processing cannabis, such as residue, were found near the cannabis flower in the storage space (Ex. B 30-32). Finally, Loforte testified that she searched OCM records and found no adult use or hemp license for Rollingwood; Respondent presented no evidence that a Rollingwood had a valid license.

Taken as a whole, the evidence presented by OCM against Rollingwood is sufficient to determine by a preponderance of the evidence that the store was selling illicit cannabis products to the public. The store was open to the public and had the hallmarks of a typical business. It did not possess an adult use license, which is necessary to sell cannabis products. While the store had very few “signs and symbols” of cannabis sales, a typical trait of stores conducting clandestine sales, it is hard to dismiss the product found in the show room, readily available to an employee, and marked with a price tag. Respondent argued that the product found was for personal use, and while this is not entirely without merit – two of the products found in the drawers were open and appeared to have been partially used – and if the sole items discovered in the store were the ones found in these drawers, it would have been more difficult to establish sales, but the cannabis flower in the storage room solidified this determination. There was a significant amount of flower discovered, that likely exceeded the amount that might reasonable be claimed as personal use. Further, the empty baggies found in the storage room were identical to the baggies containing cannabis flower that were present in the show room (Ex. B 21 & 30). If the cannabis

¹ Loforte testified that the receipt which printed out struck her as odd, since it showed a generic transaction that she stated is sometimes evidence of illicit transactions.

flower was for personal use, as Respondent claimed through the testimony of Hussain, then there would be no reason for the flower to be placed in individual baggies. These bags were clearly for distribution purposes and this finding is supported by the fact that the baggies present in the show room were labeled with a price (Ex. B 21). Finally, although the amount of product found in the store was not overwhelming, it was still significant and likely exceeded a “personal use” amount.

2. Loforte testified that no part of the premises to be sealed was used in part as a residence. She stated that the location did not contain a bed, shower, kitchen, or other accoutrements typical of a residential location. Respondent made no assertion to counter Loforte’s testimony that the location was being used solely as a business.

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. While the amount of product found on site was not highly voluminous when compared to other investigations which have been conducted by OCM, it was not a trivial amount. Dozens, perhaps as many as 75 individual products were found in the drawers adjacent to the point-of-sale system. This alone likely exceeds the amount which could reasonably be claimed as a de minimis part of Rollingwood’s business. Respondent admitted that the store was a small operation, 1000 square feet by Respondent’s estimation. Even if the estimate by Respondent, that there was \$30,000-\$40,000 worth of merchandise present in the store, such an amount would not make the illicit products, which sold for \$40-\$65 apiece, de minimis. Regardless, however, it is the presents of cannabis flower and processing equipment that best demonstrates the illicit amount of business activity at Rollingwood. The large bags of cannabis flower coupled with the baggies that were clearly designed for individual sales, would allow Rollingwood to make significant sales for illicit product. Such activity provides the opportunity for Rollingwood to make significant sales with only the products it currently maintained. By a preponderance of the evidence, I find that Rollingwood’s unlicensed sale of cannabis constituted more than de minimis part of the business and that the volume of flower found onsite leads to the conclusion that Rollingwood was making significant sales of illicit cannabis.

4. The unlicensed activity being conducted at Rollingwood constituted an imminent threat to public health, safety, and welfare in that there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6 and that a significant amount of cannabis processing was occurring on site. This processing, for which Respondent did not possess a license, created a threat to the public as none of the flower being processed appeared to have been tested under any standards. The storage space itself also seemed to be haphazardly arranged and lack processing safety measures, which would make processing safe and sanitary (see Ex. B 27-32). Further, the items other than cannabis flower found in the store all lack the necessary stamps/stickers that show that they have been tested in New York. Some contain identifiers that allow one to conclude that they come from out of state, such as those that possess the “CA!” label (Ex. B 12, 14, 19, &24). Some contain no sticker at all (Ex. B 16-17, 21, & 22). It is, therefore, more likely than not that none of the products were

tested in New York as the products shown in the photographs and submitted into evidence lacked the inspection stamp of New York State. Due to the amount of untested product discovered and the processing occurring on site, I find that Rollingwood's actions were an imminent threat to the public health, safety, and welfare.

5. Respondent made no challenge to the question of service. Service, however, appears to have been validly conducted and Respondent received adequate notice of the NOV. OCM issued the NOV to the employee working at Rollingwood on the day of the inspection. Loforte testified that no address for the owner was given to OCM by the employee, but Hussain testified that the owner worked regularly at the store and would, therefore, be presented with the NOV/OTS when they attempted to enter the store that had been padlocked by OCM. Respondent's act of obtaining counsel to appear on their behalf also lends support for a finding that notice and service were properly and adequately performed.

6. It should be noted, although Respondent made no argument concerning the validity of OCM's search, that, while Rollingwood possessed no license from OCM, it did possess a certificate of authority from the Department of Taxation and Finance (hereinafter "DTF"). Loforte testified that she saw such a license and Hussain testified that Rollingwood possessed a "state license" for at least the last six years. DTF conducted a valid regulatory search of Rollingwood and only after finding illicit cannabis in the store did DTF request the participation of OCM. Although it is common for these two entities work in conjunction with one another during such inspections, it is equally likely that OCM would not have any role in the inspection had illicit cannabis not been found during DTF's inspection. Similarly to the plain view exception, once DTF found what was clearly illicit product (as much of it was labeled as cannabis), it could not reasonably ignore the product and was free to utilize the expertise of OCM in its inspection for any illicit product. Since DTF's inspection was of a regulatory nature and since illicit cannabis was discovered by them during the inspection, I find OCM's participation in the search was valid.

7. OCM requested that the maximum fine of \$10,000 be levied against Rollingwood for the violations discovered on December 17, 2024. While the statutes do 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 Rollingwood, Inc., Loforte testified that the amount of cannabis recovered from the store was of significant volume and variety. However, I do not find that the amount of illicit product shown in the pictures and introduced into evidence warrant the maximum fine. Certainly, the processing of cannabis is a significant act occurring on site, but the total product found does not rival the larger seizures that OCM has performed. Further, I do not find that the products generally were packaged in containers that made them particularly appealing to children or even violated the standards of New York State to a great degree. Finally, I do not see any products that contained an inordinately high amount of THC, making them dangerous due to the concentration of the chemical.

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 474 Main St., Islip, NY 11751. 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 DECEMBER 17, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

FURTHER, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$4,000 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON DECEMBER 17, 2024.

Dated: January 30, 2025


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 30, 2025 to the following:

Neal Trivedi, Esq.

Sisi Wu, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev