

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. - 104202501080079

LEAF LIFE WNY, LLC

Respondent.

Respondent requested a hearing on January 21, 2025, for an inspection which occurred on January 8, 2025.

The hearing was scheduled for and conducted on January 30, 2025.

The Respondent was represented by Phil Modrzynski, Esq.

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

Scene Investigator Sarah Tagliaferro (hereinafter “Tagliaferro”) 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 3125 Walden Ave., Depew, NY 14043.

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 January 8, 2025, OCM conducted an inspection of Leaf Life, LLC (hereinafter “Leaf Life”) located at 3125 Walden Ave., Depew NY 14043 (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 30, 2025. During the hearing, Tagliaferro appeared as the sole witness for OCM. She testified that OCM’s inspection began alongside the Department of Taxation and Finance. Tagliaferro testified that this inspection was, in part, prompted by complaints received from members of the public, who informed OCM that Leaf Life was selling cannabis from its store. Tagliaferro visited websites she believed associated with Leaf Life and discovered what she believed to be advertisements for cannabis products (Ex. B 1-10).¹ Tagliaferro testified that these advertisements were sufficient for OCM to conduct an inspection of Leaf Life. Upon arriving at the store, Tagliaferro testified that Leaf Life had large depictions of cannabis leaves on its store front (Ex C 1). Once OCM entered the store, Tagliaferro testified that she found additional references to cannabis, including a sign with a cannabis leaf and the slogan “Stop In & Say High!” (Ex C 2). This sign, she testified was by the front door and appeared to be designed for placement in front of the store. This assertion by Tagliaferro, that the sign could routinely be used as advertisement outdoors, is supported by a Post-It note discovered in the back room which appears to serve as a reminder for employees to “Bring Sign In” (Ex. C 21). She testified that the store had many of the hallmarks of a business open to the public. A point-of-sale system, ATM, and electronic payment instructions were all present (Ex. C 3-4 & 9-10). Further, the point-of-sale system displayed a number of items, which Tagliaferro testified that due to her training she was able to identify as both labeled as and appearing to be cannabis products (Ex. C 10-13). The display also listed sale prices next to each item. Tagliaferro went on to testify that products, which she believed to be illicit cannabis, were discovered in the shop (Ex. C 20-51). Some of these products were labeled as cannabis or as containing THC (Ex. C 36, 40, 42-43, & 45). Other products had markings that identified them as cannabis (e.g., cannabis leaf, “CA!”) (Ex. C 37, 43-45, & 47). Still other products, Tagliaferro testified, were known to her as likely being cannabis, due to her training as an investigative specialist for OCM due to their appearance, smell, or labeling such as a commonly known strain of cannabis (e.g., “gelato”) (Ex. C 23-32 & 51). While all of the products discovered in Leaf Life were found in a storage cabinet located in a “back room,” many of the products found corresponded to the items listed on the point-of-sale system (compare Ex C 10-13 & C 23-51). In total, there were dozens of bags of individually packaged and labeled cannabis flower and additional products ranging from edibles, concentrates, vapes, and bars, all appearing to contain cannabis. Finally, there were empty bags and “Leaf Life” stickers that appeared designed to be placed on the front of the bags for the purpose of selling cannabis flower (Ex. C 54-58).

¹ Tagliaferro testified that she discovered numerous names, in addition to Leaf Life, which she believed were associated with the business located at 3125 Walden Ave. Grass Monkey was one such name and corresponds to the advertisements that she found online (Ex. B 1). Tagliaferro stated that, although the names were not always identical, the phone number and address listed on the web pages were consistent with those used by Leaf Life. During the hearing, the use of these “advertisements” were limited to show the investigative background and the rationale behind OCM visiting and inspecting Leaf Life.

Taken as a whole, the evidence presented by OCM against Leaf Life 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. The store had obvious signs and symbols which would indicate to a consumer interested in purchasing cannabis that Leaf Life likely traded in such goods. The “sandwich board” sign which likely was set in front of Leaf Life had both a cannabis leaf and a double entendre (“high”) that indicated that a person to purchase intoxicating cannabis on site. While no items were discovered in the “show room,” the point-of-sale “ipad” likely served as a menu for customers. The items listed on the screen corresponded to product contained in the store and which were readily accessible to employees. Significant product was discovered on site making it highly likely that Leaf Life sold cannabis products. Individually packaged cannabis flower counters any argument that the product was not for sale or for personal use as it would be unnecessary to divvy the product in such a manner if it was not for sale. Although it is more likely than not that processing was occurring on site, I do not find that this is necessary to demonstrate that Leaf Life sold cannabis products. (There was a significant amount of flower discovered and the empty baggies found in the storage room were likely present for processing purposes²). Taken as a whole, the product discovered and the signs and symbols which made it likely that a customer would understand that cannabis products could be procured from the store, show by a preponderance of the evidence that Leaf Life sold cannabis product without an adult use license.

2. Tagliaferro 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 such as a dresser or clothing. Respondent made no assertion to counter Tagiaferro’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. The amount of illicit products discovered at Leaf Life likely matched or even exceeded the limited amount of legal products which were for sale at Leaf Life. Dozens, perhaps as many as 100 individual cannabis products (including the individually packaged cannabis flower) were found in the “locker” located in the back room. This likely exceeds the amount which could reasonably be claimed as a de minimis part of Leaf Life’s business. No testimony was presented by Respondent as to the size of the operation, but OCM presented photographic evidence that showed limited display cases within the show room that contained only a small amount of non-cannabis products. There was evidence discovered within the store that Leaf Life was conducting a parallel business that offered cannabis products for sale via delivery (Ex. C 16), which would increase the level of activity being conducted by Leaf Life. Even without this delivery service, I find that the evidence

² There is evidence that Leaf Life processed cannabis on site. The baggies and loose cannabis flower suggest that this act was occurring. This is supported further by the discovery of scales, which Tagliaferro testified were onsite. However, it should be noted that nothing about “processing” was listed on the NOV. I do not find that it is necessary to confirm that processing occurred on site as there is sufficient evidence that otherwise shows that cannabis was being sold at Leaf Life.

supports a finding by a preponderance of the evidence that Leaf Life's trade in cannabis was more than a de minimis part of its business.

4. The unlicensed activity being conducted at Leaf Life 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. None of the products discovered at Leaf Life appear to have been tested in New York and some of the products were labeled as containing very high amounts of THC, amounts that far exceed the limits placed on cannabis products in New York. No products had a New York State inspection sticker. While some had a warning label (either generic or from out of state), many of the products discovered on site had no labels at all, other than a product name written on the baggie in marker. The lack of testing and labeling made these products potentially dangerous. Although processing was likely occurring on site, I again am hesitant to consider this as it was not listed in the NOV. The lack of testing and labeling alone makes Leaf Life's actions a danger to the public health, safety, and welfare.³

5. Respondent challenged service, particularly the service of the Order to Seal. The service requirements of the Order to Seal are delineated in Cannabis Law (see Cannabis Law § 138-b). Respondent appears to argue that OCM did not perform proper service for the order to seal because they did not properly mail the NOV to Respondent. However, I find this argument fails as the Respondent was present on the date of the inspection. OCM submitted pictures of the Respondent and show her on-site during the inspection (Ex. C 2). Tagliaferro testified that she identified Respondent by using her driver's license (Ex. E 1), which OCM had on file due to a previously submitted application. Further, Tagliaferro testified that the Respondent signed the NOV (Ex. A). While OCM submitted an affidavit of service for Respondent (Ex. F), I find that, while this likely comports with the requirements of §138-b, such a mailing was unnecessary, and service was adequately performed.

6. Respondent argues that § 138-b, unlike 138-a, does not include within the violations, specifically 138-b(4)(g), items labeled as cannabis products (compare Cannabis Law §§ 138-a & 138-b) and, therefore, OCM's failure to test the products falls short and OCM is unable to meet its burden of proof. However, while I recognize that the language between these statutes is different, OCM's burden can be met under 138-b without testing. Many of Respondent's products were labeled as cannabis. The menu, which Tagliaferro testified she discovered on the point-of-sale system likewise had labels that indicated that the products contained cannabis (i.e., sativa and indica). Respondent was selling products as cannabis to customers who were attempting to purchase cannabis products. For Respondent to now claim that these products were not cannabis is disingenuous. If OCM's burden of proof were a higher standard such as beyond a reasonable doubt, it is plausible that testing may be necessary to remove such doubt. For this matter, however, Respondent's actions coupled with the testimony of Tagliaferro, who is trained in the detection of cannabis, leads me to believe that it is more likely than not that the products found in the store were cannabis and that they posed a threat to public safety.

³ OCM briefly raised the fact that Leaf Life conducted its business within proximity to a day care facility, and thereby violated cannabis law and presented a danger to the public. There were questions as to whether a day care facility qualified under the Cannabis Law 138-b and the proximity issue was not listed in the NOV and I, therefore, will not consider this fact in my decision.

7. It should be noted, although Respondent made no argument concerning the validity of OCM's search, I find that the search was valid and properly performed. While Leaf Life possessed no license from OCM, it did possess a certificate of authority from the Department of Taxation and Finance (hereinafter "DTF"). Tagliaferro testified that DTF entered the store and that OCM was called upon to inspect for cannabis products. This search by DTF appears to be a regulatory inspection and validly conducted.

8. OCM requested that the maximum fine of \$10,000 be levied against Leaf Life for the violations discovered on January 8, 2025. 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 Leaf Life WNY, LLC, Tagliaferro testified that the amount of cannabis recovered from the store was of significant volume and variety. She stated that there were substantially more products than other stores. However, I do not find that the amount of illicit product shown in the pictures and introduced into evidence warrant the maximum fine. Certainly, if processing of cannabis, which OCM suggested during the hearing, but did not document during its inspection, were present, this would bolster OCM's request for a maximum fine. The evidence shows, however, that while cannabis was present and likely being sold, it was not of the volume or variety frequently seen in OCM cases. I do find that Leaf Life's possession of products that contain THC levels that are substantially above the limits set by the state presented a particular danger to the public health. Tagliaferro stated that products such as the "Death Bar" had "extreme amounts of THC," and I agree. Tagliaferro testified that she understands, due to her training, that 5-10 mg of THC constitutes a typical dose. The 3000 mg of THC found in the Death Bar far exceeds this amount and could prove dangerous. For these reasons, I find a moderate penalty warranted in the matter of Leaf Life.

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 3125 Walden Ave., Depew, NY 14043. 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 JANUARY 8, 2025, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

FURTHER, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$6,000 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON JANUARY 8, 2025.

Dated: February 14, 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 February 14, 2025, to the following:

Phil Modrzynski, Esq.

Sisi Wu, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchev