

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. - 137202402130015

FLAVOR SMOKE SHOP, INC.

Respondent.

Respondent requested a hearing to adjudicate the Notice of Violation/Cease Unlicensed Activity (hereinafter “NOV”) issued by the Office of Cannabis Management (hereinafter “OCM”). Respondent’s request occurred on November 4, 2024, and stemmed from an inspection conducted on February 13, 2024.

The hearing was originally scheduled for March 17, 2025, but that date was adjourned as the parties were involved in continuing settlement negotiations. A second hearing date was scheduled for April 8, 2025, and commenced via WebEx on that date at 10 am.

The Office of Cannabis Management was represented by Kevin Marek (supervised by Abir Ahmed, Esq.).

Investigator Joshua Coons (hereinafter “Coons”) appeared as a witness for OCM.

The Respondent, Raymond Enriquez, did not appear.

ISSUE

The allegations set forth in the NOV indicate 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 which was conducted at 1159 N. Goodman Street, Rochester, NY 14609.

The scope of the hearing involves determination of whether OCM, by a preponderance of the evidence was justified in issuing to Respondent the NOV and what penalty, if any, under Article 6 § 132 is justified. OCM requested the maximum fine of \$10,000.

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....”

HEARING

1. Respondent failed to appear at the hearing. An initial conference in this matter was held on February 25, 2025. Correspondence with Respondent to schedule the conference occurred via email (address: renatoenriquez84@gmail.com). Respondent listed this email on his Request for Hearing form and responded from this email address on February 14, 2025, agreeing to attend the conference. Respondent appeared at the conference and agreed to a hearing date of March 17, 2025. Correspondence with Respondent from the Office of Administrative Hearing (hereinafter “OAH”) continued via this email address throughout. OCM reported on March 17, 2025, that settlement discussions were continuing between OCM and Respondent and requested an adjournment. The adjournment was granted, and a second hearing date (April 8, 2025) was scheduled, and

notification occurred on March 17, 2025. Further communication occurred on April 7, 2025, requesting an update on the settlement discussions and reminding the parties that a hearing was scheduled for April 8, 2025. An email with the virtual link for the hearing was sent during the morning of April 8, 2025. At 10:05 am, five minutes after the scheduled start time of the hearing, OAH prepared another email to Respondent and sent it asking for a response. No response was received, and the hearing proceeded at approximately 10:18 am. It should also be noted that Respondent was present on the date of the inspection (see Ex. A4) and was, therefore, provide sufficient notice of the charges against him.

2. A default judgment was entered in this matter due to Respondent's failure to appear at the scheduled hearing. The sole issue being determined at the hearing held on April 8, 2025, involved whether OCM proved by a preponderance of the evidence that the allegations set forth in the NOV were supported by the evidence. The default judgement acts to support such a finding and Respondent is found to have been selling illicit cannabis products without the necessary license under New York State Cannabis Law as alleged in the NOV. I would state that regardless of the default judgement entered, the evidence supports a finding that Respondent was selling illicit product without a license. OCM testified that Respondent possessed no license and that much of the product discovered was displayed in the "showroom" of the store. The store had all the hallmarks of a business, including hours of operation, staff schedules, and point of sales systems. Many of the items had price tags, menus were present listing cannabis products, and ledgers recording the sale of cannabis were also discovered. A large variety and volume of cannabis was discovered throughout the store which supports a finding that significant sales were occurring. All evidence supported a finding that illicit sales were occurring, and it is highly likely, using the standard of a preponderance of the evidence, that a finding against the Respondent would have occurred as a result of a full hearing due to the overwhelming evidence.
3. OCM presented evidence and testimony by Coons to support its request that Respondent be fined the maximum amount allowed under the law (\$10,000) under Cannabis Law Article 6 §132.

DECISION


1. 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. Due to this necessary consideration, OCM submitted evidence and testimony from Coons to support its request for a \$10,000 fine. Coons testified that the amount of illicit product seized from Flavor Smoke Shop, Inc. (hereinafter "Flavor") constituted a large amount and exceeded the amounts that he observed at many of the more than 200 inspections he had participated in during his time with OCM. He stated that signs of processing were found on site and that none of the products in the store appear to have been tested or labeled in accordance with New York State law. A single product appeared to have a New York State stamp (Ex. D 28), however, Coons testified that the stamp was counterfeit and that he knew this due to his

training and experience. The product on which the stamp appeared would not be approved for sale in the New York due to the packaging, its similarity to food products, and the amount of THC contained in the product. Further, Coons testified that some of the products found on site were in violation of the New York law, due to their bright color and cartoon mascots (Ex. D24-27) which run the risk of appealing to children. Coons also testified that processing was occurring on site as evidenced by the photos he took on the date of the inspection (Ex. C12-14 & D20-23). It is highly unlikely that the proper sanitation measures were being adhered to, based on the photographic evidence submitted by OCM. Finally, some of the products discovered at Flavor had a high concentration of THC, beyond what is allowed under New York law (Ex. D24-29).

2. The products being sold by Flavor were of a significant quantity. Hundreds of products were seized, all of which appear to contain illicit cannabis (Ex. B1-12). Many of the products seized were dangerous, due to their non-conforming packaging, a high concentration of THC, or the unsanitary processing which was likely occurring. The volume was significant and constituted an above average amount according to Coons. I believe that the evidence supports this assertion as does my experience as the arbiter of past cases. Further, the blatantness with which the store operated and the amount of processing which appears to have occurred, shows a disregard for the law. Finally, the records indicate that a significant number of sales occurred at Flavor, moving a significant amount of product (see Ex. D10-11), and had been occurring for a significant amount of time (see Ex. D40). The output of the store is increased by the processing which allowed for large volumes of flower to be sold on site.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §132, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$10,000 FINE FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR UNLICENSED SALE OF ILLICIT CANNABIS ON FEBRUARY 13, 2024.

Dated: April 21, 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 April 21, 2025, to the following:

Abir Ahmed, Esq.

Kevin Marek

Raymond Enriquez

Nickolas Perry

Sheila Wagner

Celena Ditchav