

STATE OF NEW YORK
OFFICE OF CANNABIS MANAGEMENT
CANNABIS CONTROL BOARD

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IN THE MATTER OF
670 MAIN LLC DBA MAIN STREET MINI MART,
APPELLANT-RESPONDENT,

-against-

NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT,
APPELLEE-PETITIONER.

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DECISION ON APPEAL

INSPECTION No.:
003 2024 0627 0002

Appellant-Respondent 670 Main LLC (“Appellant”) appeals from a decision and order of the Office of Administrative Hearings (“OAH”) wherein the presiding Administrative Law Judge (“ALJ”) extended a sealing order issued against Appellant’s business. The sealing order was issued by Appellee-Petitioner New York State Office of Cannabis Management (“OCM”) pursuant to New York State Cannabis Law (“Cannabis Law”) Article 6 §§ 138-a and 138-b and Title 9 of the Codes, Rules, and Regulations of the State of New York (“NYCRR”) § 133.25.

Appellee- Petitioner OCM (“Appellee”), conducted a regulatory inspection of Appellant’s place of business and determined Appellant was engaging in unlicensed activity of cannabis and products marketed as cannabis in violation of the Cannabis Law and implementing regulations. Following the regulatory inspection, Appellee issued a Notice of Violation (“NOV”), an Order to Cease Unlicensed Activity (“Cease Order”) and an immediate Order to Seal (“OTS”) for Appellant’s place of business because the unlicensed activity posed an imminent threat to the public health, safety, and welfare. Appellant requested a hearing with the OAH. Following the hearing, the presiding ALJ issued a decision extending the Order to Seal for one year. Appellant takes exception to the ALJ’s decision and has submitted the instant administrative appeal, and the exceptions noted therein, to the Cannabis Control Board (“Board”) for review pursuant to Cannabis Law §§ 10(18) and 17(8) and 9 NYCRR § 133.25(k).

BACKGROUND

In March 2021, New York enacted the Marihuana Regulation and Taxation Act (“MRTA”). The MRTA legalized the recreational adult-use of marijuana and created a regulated industry. The Cannabis Law governs medical cannabis (Cannabis Law Article 3), adult-use cannabis (Cannabis Law Article 4), and cannabinoid hemp and hemp extract (Cannabis Law Article 5). The Cannabis Law also contains general provisions, (Cannabis Law Article 6), including the enforcement framework.

Cannabis sativa is a plant with many names. Under the Cannabis Law, the term cannabis is used instead of marijuana. Cannabis is defined as all parts of the plant of the genus Cannabis, whether growing or not, including its seeds, resin, and any derivative, mixture, or extract. (Cannabis Law § 3[5]). The cannabis plant produces 100 different natural cannabinoids or natural occurring compounds.¹ The most common cannabinoids in the cannabis plant are tetrahydrocannabinol² (“THC”), the principal psychoactive compound in cannabis, and cannabidiol (“CBD”).³ CBD is one of the naturally occurring hemp-derived phytocannabinoids.⁴ Hemp is the same genus and species of plant as adult-use or medical cannabis, Cannabis sativa, but it contains lower levels of delta-9 THC.⁵ Unlike THC, CBD does not have a psychoactive effect by itself.

Cannabis does not include hemp, cannabinoid hemp or hemp extract or any drug products approved by the federal Food and Drug Administration as cannabis. (Cannabis Law § 3[5]). The Cannabis Law defines hemp as the plant Cannabis sativa and any part of such plant, whether growing or not, with a delta-9 THC concentration of not more than three-tenths of a percent (0.3%) on a dry weight basis.⁶ (Cannabis Law § 3 [27]). Cannabinoid hemp product means hemp, or any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three-tenths of a percent (0.3%) delta-9 THC. (Cannabis Law, § 3[3]). Cannabinoid is defined as any hemp-derived phytocannabinoid and does not include synthetic cannabinoids, as that term is defined in subdivision (g) of section 3306 of the Public Health Law. (Cannabis Law § 3 [2]). The licensing and production of the cannabinoid hemp program are coordinated between the New York State Department of Agriculture and Markets and Appellee.⁷ The Department of Agriculture and Markets oversees hemp cultivation and hemp used exclusively for industrial or food purposes. Appellee regulates processors of cannabinoid hemp that is used or marketed for its cannabinoid content, such as CBD.”⁸

Cannabis Law Article 5 governs the sale of cannabinoid hemp flower and gives Appellee the authority to promulgate regulations governing how cannabinoid hemp flower products are sold. Title 9 NYCRR Part 114 governs the processing and retail sale of cannabinoid hemp products in New York

¹ New York State Office of Cannabis Management (“OCM”). (April 2025). *Adult Use Information. What’s Cannabis*. <https://cannabis.ny.gov/adult-use-information>.

² Tetrahydrocannabinol (“THC”) means Delta-9-tetrahydrocannabinol; Delta-8-tetrahydrocannabinol; Delta-10-tetrahydrocannabinol and the optical isomer of such substances. (Cannabis Law § 3[52]).

³ OCM. (April 2025). *Adult Use Information. What Is THC?* <https://cannabis.ny.gov/adult-use-information>.

⁴ OCM. (April 2025). *Hemp: Supporting Agricultural Innovation. What is CBD*. <https://cannabis.ny.gov/hemp>.

⁵ OCM. (April 2025). *Hemp: Supporting Agricultural Innovation. What is Hemp*. <https://cannabis.ny.gov/hemp>.

⁶ This definition is consistent with the definition of hemp under the Agriculture Improvement Act of 2018 (“Farm Bill”); United States Code Annotated Title 7 § 1639o(1).

⁷ OCM. (2025). *Hemp: Supporting Agricultural Innovation. Overview*. <https://cannabis.ny.gov/hemp>.

⁸ *Id.*

State. These regulations were adopted for the preservation of public health, safety, and welfare of consumers in New York State and to protect the public from intoxicating cannabinoid hemp products in New York State.⁹ Pursuant to Part 114, a Cannabinoid Hemp Licensee must offer cannabinoid hemp products that, inter alia, comply with the packaging and labeling standards in section 114.9 and comply with product testing standards in section 114.10. (9 NYCRR §114.8[8] and [9]).

Cannabis Law § 125 states that “[n]o person¹⁰ shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product¹¹, medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, within the state without first obtaining the appropriate registration, license or permit” that is required under the law. Cannabis Law Cannabis Law § 132(1)(a) prescribes penalties for “[a]ny person who cultivates for sale, offers to sell, or sells cannabis, cannabis products, medical cannabis, or any product marketed or labeled as such, without having an appropriate registration, license or permit therefor[.]” Illicit cannabis means and includes any cannabis flower, concentrated cannabis and cannabis product on which any tax required to have been paid under any applicable state law, has not been paid. (Cannabis Law § 136[1]). Illicit cannabis shall not include any cannabis lawfully possessed in accordance with the Cannabis Law or the penal law. (*Id.*) Appellee is authorized to conduct, without notice, site visits, inspections, or investigations of any person and any premises cultivating, processing, distributing, selling, or offering for sale cannabis, cannabis product, cannabinoid hemp or cannabinoid hemp extract product, or any product marketed or labeled as such in this state, or engaging in an indirect retail sale, without obtaining the appropriate registration, license, or permit. (Cannabis Law § 138-a and 9 NYCRR § 133.25[a]).

In response to a violation of the Cannabis Law, and related regulations, Appellee is authorized to take various actions, including issuing a notice of violation, an order to cease unlicensed activities, and an immediate order to seal the premises. (Cannabis Law §§ 138-a and 138-b). Appellee can issue an immediate “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”¹² and upon a finding of an imminent threat to public health, safety, and welfare.

⁹ New York State Office of Cannabis Management. (October 2024). *Cannabinoid Hemp Regulations Guidance for Licensees*. [cannabinoid-hemp-regulations-guidance-for-licensees_v2.pdf](#)

¹⁰ Cannabis Law § 3(40-a) broadly defines person “an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity.”

¹¹ Cannabis products, or adult-use cannabis products, means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer. (Cannabis Law § 3[9]). A cannabis-infused product is defined as “products that have been manufactured and contain either cannabis or concentrated cannabis and other ingredients that are intended for use or consumption.” (Cannabis Law §3[10]).

¹² “[P]lace of business” shall not include a residence or other real property not otherwise held out as open to the public or otherwise being utilized in a business or commercial manner or any private vehicle on or about the same such property,

(Cannabis Law § 138-b(1); 9 NYCRR § 133.25[f]). Factors that determine an immediate 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.” (Cannabis Law § 138-b[4]; 9 NYCRR § 133.25[f][1]).

After establishing an imminent threat, Appellee must also demonstrate that (a) no part of the premises to be sealed is used in part or lawfully zoned and occupied as a residence; and (b) the unlicensed activity is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to the order. In assessing whether unlicensed activity is more than a de minimis part of the business activity at the premises, Cannabis Law § 138-b(7) states: Appellee “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.”

Following the issuance of an OTS pursuant to Cannabis Law § 138-b(1), an OTS is effective for one year unless vacated by the Board or Office. (Cannabis Law § 138-b[9]). Provided, however, that if a respondent submits sufficient evidence to the Office or the Board by an affidavit and such other proof that the unlicensed activity has been abated, an OTS shall be vacated. (*Id.*; 9 NYCRR § 133.25[h][6]). An OTS must explicitly state the procedure to request a hearing on the sealing order within seven days. (Cannabis Law § 138-b[2]; 9 NYCRR § 133.25[h][2]). The hearing must occur within three business days if the business submits a verified statement of ownership. (Cannabis Law § 138-b[3] and 9 NYCRR § 133.25[h][2]-[3]). The presiding ALJ must issue a written decision based on findings of facts and conclusions of law. (9 NYCRR § 133.25[i][2]). Within thirty (30) days of the issuance of the ALJ’s determination, any party may submit an appeal of the ALJ’s determination to the Board and such appeal shall be based solely on the record on appeal. (9 NYCRR § 133.25[k]).

unless probable cause exists to believe that such residence, real property, or vehicle are being used in such business or commercial manner as described herein.” Cannabis Law § 10(8).

In this case, Appellant timely filed an appeal on August 20, 2024, and asserts the OTS was erroneously extended because Appellee failed to meet their burden of establishing unlicensed cannabis activity.

ISSUES ON APPEAL

Whether Appellee is over enforcing orders to seal by failing to distinguish between cannabis and prohibited cannabinoids, whether Appellee established the seized items constituted cannabis under the law, whether the ALJ's properly determined the unlicensed activity was more than a de minimis part of Appellant's business activity, and whether Appellee failed to comport with statutory and regulatory requirements to consider evidence of abatement as a factor to vacate the order to seal?

FINDINGS OF FACT

The Board accepts the credibility findings of the ALJ and finds no basis in the hearing record to depart from them here. Accordingly, we find the following facts.

Regulatory Inspection

Appellant conducts business as Main Street Mini Mart located at 670 S. Main Street, Central Square, NY 13036. On June 27, 2024, Appellee conducted a regulatory inspection, Inspection No. 003202406270002, of Appellant's business at the above-mentioned location pursuant to Cannabis Law § 138-a and 9 NYCRR § 133.25(a). Following the inspection, Appellee issued a NOV alleging unlicensed cannabis sales in violation of Cannabis Law §§ 125 and 132, a Cease Order pursuant to Cannabis Law § 138-a(1) and 9 NYCRR § 133.25(c), and an immediate OTS pursuant to Cannabis Law § 138-b(f), based on a determination that there was an imminent threat to public health, safety, and welfare. The NOV, Cease Order, and the OTS were issued and served simultaneously.¹³

On July 2, 2024, Appellant, through counsel, submitted a verified statement of ownership and requested an emergency hearing challenging the OTS issued by Appellee.

Administrative Proceedings

A hearing was held on July 8, 2024, before Administrative Law Judge (ALJ) Laurie Cartwright. Both Appellant and Appellee were represented by counsel. The scope of the hearing was

¹³ Appellee's NOV, Order to Cease Unlicensed Activity and Order to Seal are all contained on a single, 8 x14, page document, that also includes a Certificate of Service section. The first portion of the document is the NOV and Order to Cease Unlicensed Activity, the second the Order to Seal, and the last section is the Certificate of Service.

limited to determining whether or not the provisions of Cannabis Law § 138-b were met by a preponderance of the evidence.

Appellee presented testimony and photograph exhibits in support of its argument that the Order to Seal was properly issued. Assistant Director for Enforcement Mark LaMonte testified regarding his experience conducting regulatory inspections and his training in identifying adult-use cannabis and cannabinoid hemp products. Assistant Director LaMonte testified that Appellant did not have a license issued by Appellee. He also testified that he confirmed the premises was not used as a residence. During the inspection, he observed a variety of cannabis products displayed for sale with price tags, including pre-rolls, flower, extracts, resin, vapes, and edibles. He identified photograph exhibits taken during the inspection. The exhibits showed the cannabis and cannabinoid hemp products that were not labeled in accordance with the Cannabis Law. There were products with labels from other states, labeling with cartoon images, and some products were packaged and branded as popular cereal and candy brands, such as Reese's and Fruity Pebbles.

The evidence also included a two-page invoice that was found and photographed during the inspection next to the register area. The invoice listed a variety of products including but not limited to various strains of flower; STIIZY gummies, STIIZY pre rolls, Punch Bars, Punch Gummies, and various disposable vape brands. Assistant Director LaMonte also testified that two hidden or secret compartments were found during the search near the register. He indicated that there were untaxed cigarettes and a volume of individually packaged strains of cannabis flower labeled as cannabis flower. Photograph exhibits of these products were introduced by Appellee without objection by Appellant.¹⁴ Assistant Director LaMonte further authenticated the Order to Seal, NOV and the Cease Order, which he prepared following the inspection, and served on the employee present at the time of the inspection. He then left a copy in the vicinity, conspicuously posted another copy on the exterior of the business. Appellee subsequently mailed a copy to the business address, as documented in an Affirmation of Service by Mailing.

Appellant called Jamal Saleh ("Mr. Saleh") as a witness. He testified he is the owner of 670 Main LLC. Mr. Saleh testified that he was rarely present at the store, as he managed another business and frequently traveled. He stated that he was unaware of cannabis sales occurring at the premises prior to the inspection. Mr. Saleh further testified that the store was being run by the individual who was present during the inspection. He testified that 670 Main LLC is approximately 1100 square feet and that he sells chips, sodas, candy, tobacco, wraps, glass pipes and bongs. Mr. Saleh also identified a notarized affidavit of compliance that he prepared following the inspection. He testified that he intended to be at the store more often and take greater efforts to ensure it would not happen again.

¹⁴ Appellant has not raised any challenge to this evidence on appeal.

Hearing Decision

On July 12, 2024, the presiding ALJ issued a decision extending the OTS for one year. The ALJ found that Appellant, 670 Main LLC, was engaged in unlicensed cannabis sales in violation of Cannabis Law §§ 125 and 132, as well as 9 NYCRR § 120(i). The ALJ determined that premises was not used or occupied as a residence, the unlicensed activity was an imminent threat to public health, safety, and welfare, and that the unlicensed activity was more than a de minimis part of Appellant's business activity. The ALJ relied on the volume and variety of the products that were on display with price tags, the fact that many products did not contain warning labels and were not labeled in accordance with New York law, and the presence of concealed storage compartments containing additional cannabis products that were not labeled in accordance with the law. The ALJ further found that the unlicensed offers to sell cannabis and products marketed as cannabis posed an imminent threat to public health, safety, and welfare, noting that some products lacked proper labeling or contained warnings from other states.

The ALJ also found Appellee's testimony and evidence of the various products, various brands, and the lack of product labeling in accordance with the law provided sufficient evidence that Appellant was engaged in unlicensed activity in violation of the Cannabis Law. The ALJ noted that Appellant did not dispute the presence of the illicit products, but rather claimed he was unaware it was going on because he had been working at his other business.

Arguments on Appeal

On appeal, Appellant asserts that Appellee failed to distinguish between prohibited cannabinoids, for which no license is applicable, and cannabis. Appellant contends that such failure resulted in insufficient evidence to sustain the OTS because prohibited cannabinoids are not a basis for issuing a sealing order pursuant to Cannabis Law 138-b. Thus, Appellant argues Appellee is over enforcing sealing orders by failing to distinguish between prohibited cannabinoids and cannabis products. Additionally, Appellant argues that Appellee failed to establish that the seized items constituted cannabis under New York State law. Specifically, Appellant argues that Appellee failed to establish the seized items contained greater than 0.3% of Delta-9 THC. Appellant maintains that Appellee improperly relied on packaging, branding, and warning labels from other states and did not conduct any testing. Appellant asserts that the failure to establish the seized items were cannabis resulted in the OTS being erroneously extended.

Appellant further argues that the ALJ's finding that the unlicensed activity was more than a de minimis part of Appellant's business activity was based on inapplicable considerations. Appellant argues that the ALJ's reliance on all the products found was improper because the prohibited cannabinoids products are not illicit cannabis as defined by the Cannabis Law. Finally, Appellant

argues that Appellee failed to consider evidence of abatement as a factor to vacate the OTS. Appellant argues that under Cannabis Law § 138-b(9) and 9 NYCRR § 133.25(h)(6), they were entitled to an opportunity to demonstrate compliance and seek vacatur of the sealing order. Appellant contends the absence of a structured review mechanism deprived them of due process and resulted in an indefinite enforcement action without a fair opportunity for relief. Appellant requests the ALJ's decision not be affirmed, and the OTS be vacated.

Appellee submitted an opposition to Appellant's appeal on September 9, 2024. Appellee contends that the evidence introduced at the hearing, including testimony from Assistant Director LaMonte and photographic exhibits, established that Appellant was engaged in the unlicensed sale of cannabis and products marketed as cannabis. Appellee argues that the ALJ properly considered factors such as cannabis-related advertising and the volume of seized products in determining that unlicensed activity was more than de minimis. Additionally, Appellee maintains that Appellant's argument regarding Cannabis Law § 138-b(9) is inapplicable because it is outside the scope of the emergency proceeding. Appellee contends that the expedited nature of the hearing is limited to a review of Appellee's decision to issue the OTS and not for a review of materials submitted in support of a respondent's request for removal of the padlock on other grounds. Appellee asserts a request pursuant to Cannabis Law § 138-b(9) may take place at a later time and outside the emergency hearing without depriving a respondent of their right to due process. Appellee requests that the appeal be denied, the ALJ's decision be affirmed, and the Order to Seal be upheld.

OPINION AND REASONING

Following a review of the record on appeal, the Board finds the decision to extend the OTS was supported by the evidence.¹⁵

Appellant's argues Appellee is over enforcing sealing orders by failing to distinguish between cannabis and prohibited cannabinoids. This argument is premised on a facial challenge to Appellee's enforcement authority pursuant to Cannabis Law § 138-b and Title 9 NYCRR § 133.25(f). Appellant contends Appellee is limited to issuing orders to seal *only where there is evidence of unlicensed activity*, not simply where there is possession or sales of prohibited and unlawful products. Thus, Appellee bears the burden of establishing a prima facie case that "cannabis products" were offered for sale.

To the extent Appellant raises facial challenges to Appellee's enforcement authority under the law, such arguments is beyond the scope of an administrative appeal. An administrative appeal is not the appropriate mechanism or means by which Appellant can challenge the per se constitutionality of

¹⁵ The record on appeal includes the parties' pleadings, consisting of Appellant's Memorandum in Support of Respondent's Appeal and Appellee's Response and Opposition to Appellant's Appeal, Appellant's verified statement, the ALJ's decision, the hearing transcript, and the evidentiary exhibits.

Appellee's rules and regulations. Relief from rules shown to be unwise by experience or change in conditions must be through appeal to the legislative authority or by legal challenge to the continued validity of the rule. (Mun. Gas Co. of City of Albany v. Pub. Serv. Comm'n, Second Dist., 225 N.Y. 89 [1919]; Levy v. Bd. of Standards & Appeals of City of New York, 267 N.Y. 347, 354 [1935]; Cherry v. Brumbaugh, 255 AD 880 [2d Dept., 1938]). There can be no relief in such a case by appeal to an administrative board vested with limited powers. (Levy v. Bd. of Standards & Appeals of City of New York, 267 N.Y. at 354).

In this matter, the record supports a finding that the premises inspected was a commercial business owned by Appellant and Appellant did not have a license to sell cannabis or cannabinoid hemp. Appellant's own testimony confirmed that he had not been issued a license by Appellee. Additionally, the record supports a finding that Appellant was offering cannabis and cannabinoid hemp products for sale at the time of the regulatory inspection. Indeed, the Appellant did not deny the unlicensed activity, but testified he was unaware because he was spending most of his time at his new store. Appellee is authorized to inspect and 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 unlicensed activity. (emphasis added) (Cannabis Law § 138-a[2]). Furthermore, Appellee is authorized to issue a sealing order for the premises of any business engaged in unlicensed activity, when such premises is occupied as a business as described in Cannabis Law § 138-b(8). Here, there is substantial evidence supporting Appellee's issuance of the OTS. Substantial evidence means "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (300 Gramatan Ave. Assocs. v. State Div. of Human Rights, 45 N.Y.2d 176, 180 [1978]).

Similarly, Appellant's arguments that Appellee failed to establish that the items seized were cannabis and thus the OTS was erroneously extended based on the ALJ's consideration of cannabis and cannabinoid products are also both without merit. As noted above, Appellee is authorized to inspect, seize, and seal the premises of a business engaged in unlicensed activity pursuant to Cannabis Law §§ 138-a and 138-b. Neither Cannabis Law §§ 138-a and 138-b draw any distinction between the various types of licenses Appellee issues, including a license to sell adult-use cannabis or a cannabinoid hemp license. Thus, where, as here, a statute is unambiguous, the courts must give effect to its plain meaning. (Yatauro v. Mangano, 17 N.Y.3d 420 [2011]; Roberts v. Tishman Speyer Props., L.P., 13 N.Y.3d 270, 286 [2009]). Moreover, the Cannabis Law does not require Appellee to test the cannabis and cannabis products before they are seized. In fact, Appellee is authorized to 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 unlicensed activity. (emphasis added) (Cannabis Law § 138-a[2]). Here, the decision to extend the OTS was based on the testimony and photograph exhibits establishing cannabis, cannabis products, and cannabinoid hemp products were

being offered for sale. In their decision, the ALJ relied upon the variety and volume of products found, the display of products offered for sale, and the packaging of the products, including the failure of such packaging to be in accordance with the Cannabis Law. The ALJ also found the lack of warning labels and presence of labeling from other states supported a finding that the unlicensed activity was an imminent threat to public health, safety, and welfare.

Finally, Appellant argues that the OTS was unlawful and deprived Appellant of due process due to Appellee's failure to consider the evidence of abatement of the violation testified to by Appellant. Appellant argues it is a statutory and regulatory requirement for Appellee to consider evidence of abatement as a factor to vacate the OTS. Appellant's argument is unavailing for several reasons. First, while Appellant submitted an affidavit of compliance and testified to wanting to do better and be at the store more, there is no indication on review of the record that Appellant requested the OTS be vacated based on abatement of the violation. Moreover, Appellant's argument fails to consider the limited scope of the emergency proceeding. As noted by the ALJ at the start of the hearing, the scope of the proceeding was limited to whether Appellee's decision to issue an OTS was in accordance with the provisions of Cannabis Law § 138-b. (Cannabis Law § 138-b[2]and[3]). The regulations also set forth that an emergency hearing is a hearing on the sealing order issued pursuant to Cannabis Law 138-b. (9 NYCRR § 133.25[h][1]). Furthermore, Appellant also overlooks the plain language of the Cannabis Law which states "[a]n order to seal *shall be vacated by the office or the board*, upon notice to the office, if the respondent *submits sufficient evidence to the office or the board*[" (emphasis added). (Cannabis Law § 138-b[9]). There is no evidence in the record that Appellant provided notice to the Office or Board, made a specific request to vacate the OTS based on abatement, or that Appellant provided the evidence to the Office or the Board outside of the hearing.

CONCLUSION

Based on the foregoing, the Board denies Appellant's appeal and affirms the decision of the ALJ, and the extension of the sealing order for one year against Appellant's business.

The foregoing constitutes the final decision of the Board.

DATED: April 24, 2025