

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

-----X

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Complaint No. 118202505010122

COXSACKIE BEVERAGES LLC

Respondent.

-----X

On May 1, 2025, Respondent requested a hearing regarding an inspection which occurred on May 1, 2025.

The hearing was scheduled for and conducted on May 14, 2025.

Palwinder Singh, owner of Cocksackie Beverages LLC, appeared on behalf of the Respondent.

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

Investigative Specialist Zachary Roubelakis testified on behalf of OCM.

ISSUE

The allegations set forth in the Notice of Violation (hereinafter “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 11684 Route 9, Cocksackie, NY 12192.

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

FINDINGS OF FACT

On May 1, 2025, Investigator Roubelakis conducted an investigation of Coxsackie Beverages LLC. At the conclusion of the investigation, a copy of the NOV (Exhibit A) was served upon the person in charge of the store at the time of the inspection who identified himself as the owner of the business. The document, which was completed by Investigator Roubelakis, identified that person by name, indicated the name and address of the business, as well as contained his observations regarding the products observed which were the subject of the NOV (Exh A). At the bottom of the NOV, Investigator Roubelakis signed the document as well as indicated his badge number, and the date and time (Exh A). I note that under the section entitled “Statement of Charges,” the date was left blank (Exh A). When questioned regarding the omission of the date in that section, Investigator Roubelakis stated that it was a “clerical error.” I find that the omission of the date constitutes a deficiency in the charging document. In so finding, I note the decision on appeal of the Cannabis Control Board (hereinafter “the Board”) In the Matter of The Jerk Shack LLC against New York State Office of Cannabis Management, issued February 14, 2025, in which similar to the present case, the date was left blank in the “Statement of Charges” section of the NOV however was written at the bottom of the document. The Board held that the Appellee did not move to amend the charges contained in the NOV to include the missing information. The Board further held that “the Appellee did not move to conform the charges to the testimony before summing up and submitting the matter to the ALJ for decision.” (Cf. Mandelstam v. McDonald, 229 A.D.3d 912 [3rd Dept. 2024](requirements of due process [in administrative cases] are not as exacting ... as in criminal cases and the governing rule allows an amendment “at any time prior to the submission of the hearing officer’s report,” provided there is “no substantial prejudice” to the accused); Matter of Roberts v. New York State Bd for Professional Med. Conduct, 215 A.D.3d 1093, 1097 [3d Dept. 2023]; Matter of Kosich v. New York State Dept. of Health, 49 A.D.3d 980, 982 [3d Dept. 2008], *appeal dismissed* 10 N.Y.3d 950, [2008]. I note that the omission of the date located by the “Statement of Charges” section was raised during the hearing in the present case however at no time prior to the conclusion of the hearing did the OCM attorney move to amend the charges so as to correct the charging document. The charging document did not contain specific enough details to provide actual and sufficient notice to the Respondent. (Matter of Block v. Ambach, 73 N.Y.2d at 333; Wolfe v. Kelly, 79 A.D.3d at 410).

CONCLUSION

I find that the absence of the date in the section entitled “Statement of Charges” on the NOV failed to satisfy the minimal due process requirements and thus resulted in a fatal defect. It was incumbent upon OCM to provide the Respondent with a completed charging document or in the alternative, move to amend the document to correct the omission, prior to the conclusion of the hearing. I find that the NOV was deficient on its face and therefore, the NOV is hereby dismissed and no penalty is assessed.

DATED: May 16, 2025

Karen Lavery
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 May 16, 2025 to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Anthony Pitnell, Esq.
Palwinder Singh