

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**Q's Smoke Shop Corp.,**

Respondent.

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**DECISION**

**Inspection No. - 301202408210027**

Respondent requested a hearing on February 20, 2025, for an inspection which occurred on August 21, 2024.

The hearing was originally scheduled for April 3, 2025. By mutual request of the parties, the hearing was moved to and proceeded on April 24, 2025.

The Respondent (Kujtim Zherka) was represented by James Monteleon, Esq. and testified on his own behalf.

The Office of Cannabis Management (hereinafter "OCM") was represented Kevin Merek, supervised by Kevin Brown, Esq.

Supervising Investigator Dawn Kiely (hereinafter "Kiely") testified on behalf of OCM.

**ISSUE**

The allegations set forth in the Notice of Violation and Order to Cease Unlicensed Activity (jointly 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 2450 Eastchester Rd., Bronx, NY 10469.

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....”

## **FINDINGS OF FACT**

1. On August 21, 2024, OCM conducted an inspection of Q’s Smoke Shop Corp (hereinafter “Q’s Smoke”) located at 2450 Eastchester Rd., Bronx, NY (Ex. A 1). At that time, an NOV was issued (Ex. A). In February of the following year, Respondent requested a hearing, which was held on April 24, 2025. During the hearing, Kiely appeared as the sole witness for OCM and Respondent testified on his own behalf. Kiely testified that while Respondent possessed a hemp license, he did not possess an adult use license; Respondent did not dispute this fact. On the date of the inspection, employees from OCM, the New York State Department of Taxation and Finance, and the New York State Department of Labor (8-12 people in total) entered Q’s Smoke and searched the location. Kiely testified that the store was open at the time of their search and that the store had the “hallmarks” of a business open to the public, including a sign that read “Yes, We’re Open,” a cash register/point of sale system, and outward facing signs that advertised products available in the store (Ex. B 1-5). Kiely also testified that Q’s Smoke possessed a license to collect tax through the Department of Taxation and Finance, which further supports that Q’s Smoke was operating as a business at the time of the inspection. During the

search, two boxes of items labeled as cannabis or believed to be cannabis by Kiely, due to her training and experience, were discovered behind the counter of the shop (Ex. B 13-14). These two boxes, containing approximately two dozen individual items and two bags of loose cannabis flower, were the total of cannabis products discovered in the store. Respondent admitted that these items were present but testified that they were for personal use and that he kept them at the store so that he could consume them during his long shifts. The evidence also shows that a number of empty packages were discovered during the inspection, including packets that previously likely contained cannabis flower and plastic tubes that previously likely contained pre-rolled joints (Ex. B 6-8 & 10). Respondent testified that while these packages did, at one time, contain cannabis, that they were present so that he could remember the types of products he had used, and the tubes were kept for future use to hold partially smoked pre-rolls.

After reviewing the evidence submitted and the testimony of the Kiely, I find that OCM did not meet their burden of proof of showing that Q's Smoke violated cannabis law. Cannabis law allows for civil penalties when a store without an adult use license is, among other things, processing or selling cannabis. While it is undisputed that Q's Smoke did not possess either a processing or retail license, OCM failed to demonstrate by a preponderance of the evidence that either of these activities were occurring. While OCM seized empty bags, which they argue could be used for processing, the bags seized were an eclectic assortment— some had obviously been ripped open and used, making “re-sale” unlikely – and not a collection of bags that would be used in a processing enterprise (Ex. B 6-8). Respondent claimed that he kept the bags as a reminder of the products he had previously used and likened it to a collection of beer bottles that one might keep on a shelf. I find this a plausible explanation and do not agree with OCM's assertion that these baggies are a sign of processing. OCM highlighted the label maker found on the premises, but they could not testify if it was operable – an assertion the respondent made. Further, while label makers can be used in a processing enterprise to tag items or brand them, Kiely testified that she saw no evidence of the label maker being used in this capacity. In fact, she stated that she saw no evidence of the label maker being used at all, which supports Respondent's testimony that the label maker was inoperable or at least not being used. Many past instances of businesses processing cannabis are proven by highlighting individualized manufactured bags that have consistent labels, pictures, designs, or brands listed on the bags. This practice supports the business ends of branding a store's product and making it look professional. None of these ends are progressed by the motley assortment of previously used baggies found in Q's Smoke. I find Respondent's testimony a more likely explanation than OCM's assertion that the shop was engaged in processing cannabis. I should also note that no scales or other devices commonly used in processing operations were discovered at Q's Smoke.

While products containing THC were found on the premises (Ex. B 13-14), it is unclear whether these products were being sold by Q's Smoke. First, the totality of the products does not appear to constitute more than the amount an individual over the age of 21 is allowed to possess in New York State (see NY Penal Law 222.05). While this threshold is not entirely relevant, if the products do not exceed this quantity and personally belong to the owner of the store, as Respondent testified they did, then the possession was legal under New York Law.<sup>1</sup> The

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<sup>1</sup> OCM posited that possession of adult use cannabis on the store's premises violated Respondent's hemp license. While this fact might jeopardize Respondent's hemp license, it would seem to have no impact on assessing a civil penalty under the Cannabis Law.

relevance of this could be important in a case where a larger amount of cannabis seized (e.g., two or three times the legal limit) would beg the question of why such a large amount were kept in the store if not for resale. In this matter, Kiely was unable to testify that the loose flower constituted more than the three (3) ounces allowed under the law. Although she testified that she “thought” the concentrate constituted more than the twenty-four (24) grams allowed, a review of the evidence calls this assertion into question. Exhibit B 13 shows a small number (in total, approximately 18) of products that are variously flower, concentrate, or oil. It is unclear how much THC is contained in some of the products; Exhibit B 12 is a closeup of three of the products but does not provide complete information. Some of the products can be seen to contain one (1) gram of THC/Cannabis, but even if this amount (the highest amount established for any product) is attributed to each of the non-flower items, which I cannot do, the total amount does not appear to exceed twenty-four (24) grams. Exhibit B 14 shows approximately 10 “Punch Bars,” chocolates, each of which contain one (1) gram of concentrate. Even adding the contents of the two boxes together, it is not probable that the total THC content exceeds the legal limit of twenty-four (24) grams.<sup>2</sup> Even if this assortment of products exceeds the allowable amount of twenty-four (24) grams, the scant photographic evidence does not show this by a preponderance of the evidence. While it is true that vouchers were submitted that detail the items seized from the store, I find these vouchers muddled and unclear. The voucher prepared by OCM lists “gummies” as items seized. This assertion is not supported by the evidence, as I see no gummies in the photographic evidence. Further, all the vouchers are prepared in a manner that seems to leave out critical information, such as brand names of products or better descriptions that might directly link the items shown in evidence with items listed on the voucher. Although the vouchers were admitted into evidence, their lack of clarity make them almost unusable in the current proceedings. Also, most of the vouchers were not prepared by OCM and Kiely had a difficult time explaining the intricacies of the record keeping process of the Department of Taxation and Finance or giving suitable answers to questions concerning their details. Finally, and perhaps most importantly, it should also be noted that many of the telltale signs of illicit cannabis sales (presence of cannabis paraphernalia, signs indicating or insinuating that cannabis can be found on the premises, price tags on the items, items on display, menus of products<sup>3</sup>) were not demonstrated by the evidence. I find it difficult to reach the conclusion that Q’s Smoke was selling product without an explanation of how customers would become aware of this fact. The lack of products on display, price tags, or advertisements make Respondent’s explanation – that the products were for personal use – more likely. Certainly, word of mouth could be used to advertise an illicit trade, but this would be conjecture on my part as no evidence of this was submitted by OCM. Kiely did not know of any sales that occurred nor did she know of any controlled buys undertaken by the State or law enforcement. Finding small amounts of illicit products on the premises of the store, in and of itself, is insufficient to establish sales. While certainly a large amount of product could support a finding that a store is “moving” and selling

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<sup>2</sup> Some of the products in Exhibit B 13 contain flower, which would not contribute towards the 24 grams legal limit. We can see from the evidence that the “Viscous” product contains less than 1 gram (Ex. B 12). It is unclear how much THC the “oil” in the yellow box contains. It is possible that it contained a large amount, due to Respondent’s testimony that it was “strong,” but without further pictures of these products, it is impossible to establish exact amount for this product and the total across all items.

<sup>3</sup> One menu was found near the cash register, but it lists items that do not appear to be cannabis and do not comport with any of the illicit products seized from the store.

product, in a case such as this where it is likely that illicit product seized does not exceed personal usage amounts – or if it does, by a small amount – such a conclusion cannot be drawn.

2. Respondent made assertions that the search of the business violated the 4<sup>th</sup> amendment. I find it unnecessary to explore this point but will say that a license issued by the State (in this case a hemp license by OCM and authorization to collect taxes from the Department of Taxation and Finance) typically provides the authority for a regulatory search. Due to my finding in section 1, assessment of this point is immaterial.

### **DECISION**

OCM failed to prove by a preponderance of the evidence that the Respondent engaged in the processing or sale of illicit cannabis or cannabis products without a license, registration, or permit to do so, at the location of 2450 Eastchester Rd., Bronx, NY 10469. I find that Respondent did not violate Cannabis Law Article 6. The Order to Cease Unlicensed Activity is hereby dismissed, and no penalty is assessed.

Dated: May 5, 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 May 5, 2025, to the following:

Kevin Merek

Kevin Brown, Esq.

James Monteleon, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.