STATE OF NEW YORK
OFFICE OF CANNABIS MANAGEMENT
CANNABIS CONTROL BOARD

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IN THE MATTER OF
C7AWSM LLC,
APPELLANT-RESPONDENT,

-against-

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

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DECISION ON APPEAL

INSPECTION NO.:
103 2024 0716 0031

Appellant-Respondent C7 AWSM 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 OTS 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).

STATUTORY 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.

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 most common cannabinoids in the cannabis plant are tetrahydrocannabinol[1] ("THC"), the principal psychoactive compound in cannabis, and cannabidiol ("CBD").[2] 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. (Cannabis Law § 3 [27]).

Cannabis Law § 125 states that "[n]o person[3] shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product[4], 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, regulatory inspections 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 without obtaining the appropriate registration, license, or permit. (Cannabis Law § 11[3][a]; 9 NYCRR § 133.25[a]). In response to a violation of the Cannabis Law, Appellee is authorized to order that the person cease the prohibited conduct and to issue a NOV. (Cannabis Law § 138-a[1]-[2]; 9 NYCRR § 133.25[b]-[c]). Appellee is authorized to seize cannabis, cannabis products, cannabinoid hemp, hemp extract, or any products marketed or labeled as such, when found

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[1] Tetrahydrocannabinol ("THC") is defined as Delta-9-tetrahydrocannabinol; Delta-8-tetrahydrocannabinol; Delta-10-tetrahydrocannabinol and the optical isomer of such substances. (Cannabis Law § 3[52]).

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

[3] 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."

[4] Cannabis products, or adult-use cannabis products, is defined as 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]).

in the possession of a person engaged in unlawful cultivating, processing, distributing or selling. Cannabis Law § 138-a[2]; 9 NYCRR § 133.25[d][2]). An administrative proceeding may be initiated to enforce the order to cease unlicensed activity and to seek a penalty be assessed for the violation. (Cannabis Law §§ 138-a[3]; 9 NYCRR § 133.25[b]).

Appellee is further authorized to 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"[5] and upon a finding of an imminent threat to public health, safety, and welfare. (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 immediate OTS, the order is effective for one year from the date of the posting of the order or the date of the judgment following a hearing on the OTS. (Cannabis Law § 138-b[9]). Provided, however, that, upon notice, if a respondent submits sufficient evidence to

[5] "[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, 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).

the Office or the Board by an affidavit and such other proof that the unlicensed activity has been abated, the 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[h][4]). 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]).

In this case, Appellant timely filed an appeal on August 13, 2024, and asserts the OTS was erroneously extended because Appellee failed to meet their burden of establishing unlicensed cannabis activity.

ISSUES ON APPEAL

Whether the record on appeal supports the finding that Appellee effectuated service of process in accordance with the Cannabis law and implementing regulations, whether the decision made findings as to Appellant's argument regarding defective service by mail, whether Appellee failed to comport with statutory and regulatory requirements to consider evidence of abatement, and whether due process of law mandates the OTS be vacated?

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

On July 16, 2024, Appellee conducted a regulatory inspection, Inspection No. 103202407160031, of Appellant's business, C7AWSM LLC. Appellant's business is located at 329 Sixth Avenue, New York, N.Y., 10014. 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.

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

The name of the business, the name of the business owner, if known, and the business address are listed at the top of the document in the NOV and Cease Order section. The document issued following the inspection of Appellant's business, Inspection No. 103202407160031, listed the Respondent to the notice as "G&G Atlantic/Ascension" and the business address as 326 Sixth Avenue, NY, NY, 10014.

On July 19, 2024, Appellant, through counsel, submitted a verified statement of ownership for C7AWSM LLC, located at 329 Sixth Avenue, NY, NY, 10014, and requested an emergency hearing challenging the OTS issued by Appellee.

Administrative Proceedings

A virtual hearing was held on July 24, 2024, before Administrative Law Judge (ALJ) Karen Lavery. Both Appellant and Appellee were represented by counsel. The ALJ indicated the scope of the hearing was limited to determining whether or not the provisions of Cannabis Law § 138-b were met by a preponderance of the evidence. Before any witnesses were called, counsel for Appellant asserted the only issue being disputed is the service for the NOV and OTS. Appellant further asserted the address on the NOV and OTS was not the premises inspected, Appellant's business. Appellant also argued the business name on the NOV and OTS was not Appellant's business name. The ALJ responded with noting it was Appellee's burden and thus the hearing would proceed.

Appellee presented evidence, including testimony and photographs in support of its argument that the Order to Seal was properly issued. Appellee's witness, Investigator Danielle Newell testified she is employed with OCM as an Investigator and performs regulatory inspections. She testified to receiving training with OCM on conducting regulatory inspections and identifying cannabis and cannabis related products. When conducting a regulatory inspection, she testified there are things she looks for to determine if cannabis is being sold or marketed at the location. She described looking for outside advertising, neon signage, a marijuana leaf, or other signage for cannabis. The investigator also identified the NOV and OTS that was prepared for the inspection of Appellant's business. She testified that she prepared and signed the document. When asked whose name was listed as the respondent, the investigator said there was no name at the top, the bottom was the name of the clerk who was in the store. The individual identified themselves as an employee and a photograph was taken of their identification. The investigator testified she attempted to serve the NOV and OTS on the employee, but he refused to accept service. As a result, she left that copy of the NOV and OTS near the register for the owner and took a photograph of it, which she identified. She testified a copy was also posted on the exterior of the premises, which was behind a metal gate. She further testified and identified an affidavit of mailing indicating the NOV was mailed to the business owner at the address of 326 Sixth Avenue, New York, NY, 10014.

The investigator also identified several photographs displaying a variety of cannabis and cannabis products. She testified to observing display cases in the front of the store with a variety of cannabis products, including cannabis flower, cannabis edibles, cannabis concentrate, and cannabis pre-rolls. She identified numerous products with a cannabis warning label from the state of California. She identified a variety of cannabis edibles that appeared like popular snacks, such as Chips Ahoy and Wonka bars. The investigator also identified price lists, a point-of-sale system, and marketing advertisements, or flyers with pricing for pre-rolls. She further identified a credit card receipt that was photographed during the inspection that listed the business name at the top as G&G Atlantic. A photograph of a business card with the name "ascension" was identified by the investigator and described as a loyalty card. The investigator stated the name ascension matched the name on the sign outside the store. She identified a NYS OCM Enforcement Division Voucher indicating 57 packages of cannabis flower was found during the inspection. The form listed the business inspected as G&G Atlantic DBA/Ascension and the address as 326 Sixth Avenue, NY, NY 10014. The investigator also identified a photograph taken of the sign that was outside the store. The photograph depicted a sign, with the name ascension that was placed on the sidewalk outside the premises inspected.

On cross examination, the investigator testified the address of 326 Sixth Avenue was the address provided as a place to be inspected on that date. The address was entered into Apple maps on their phone, and she did not recall if there was an address on the font of the premises. There was no Certificate of Authority inside the premises and no mailbox. The investigator also admitted the address on the credit card receipt photographed with the name G&G Atlantic had an address on Roosevelt Avenue in Woodside, New York. The investigator further acknowledged the advertisements found had the name ascension with an address of 329 Sixth Avenue, New York, NY, and not 326 Sixth Avenue. The investigator said they entered 326 Sixth Avenue and the application in their phone brought them to the location inspected.

Appellant presented testimony of one witness. Isiah Rodriguez testified he is employed at Appellant's business and was present the day of the inspection. He did know the exact address of the location and said he was working there just a few months. He testified he told the investigators at the time of the inspection he would not be signing or taking anything he didn't have to. He further testified that once he was told he cold leave, he left and did not take any paperwork.

The Appellant, Adeeb Alsaeidi, owner of C7AWSM LLC, also testified. He testified the business has been active for approximately six months and is located at 329 Sixth Avenue, New York, NY. Appellant identified a photograph of the NOV and OTS posted outside his business and that it depicted a different business name and a different address. Appellant also identified their certificate of incorporation with a filing date of November 8, 2023. Appellant further identified a utility bill and a tax document confirming the name of their business, the business inspected, as C7AWSM LLC,

located at 329 Sixth Avenue, New York, NY, 10014. On cross examination, the Appellant testified he learned of the inspection after his employee he called him. He was able to see the NOV and OTS because he went to the store and photographed what was posted on the exterior of the premises behind the metal gate. Appellant testified that the flyers and signs at the premises did indicate that the business was ascension. Appellant further testified that there were offers to sell the cannabis and cannabis products in the store. The ALJ asked Appellant the name of the business and he confirmed C7AWSM LLC, and that the nature of the business was a dispensary.

Hearing Decision

On July 26, 2024, a decision was issued extending the OTS against Appellant's business for one year from the date of the decision. The ALJ found that the evidence established that cannabis products were offered for sale at the location. The ALJ relied upon the testimony of Appellee's witness but also upon Appellant's testimony describing the business as a dispensary. The ALJ found the investigator testified credibly that no part of the premises was used in part as a residence. The ALJ further found that the unlicensed activity was more than a de minimis part of the business activity based on the testimony and photographs taken during the inspection. The ALJ noted the volume, variety, and that many of the products did not have a New York State label. Consequently, the ALJ found that the untested products and those not labeled accordingly constituted an imminent threat to public health, safety, and welfare.

In response to Appellant's argument that service was deficient given an incorrect business name and address was used, the ALJ ruled that "irrespective of the ambiguity regarding whether it was 326 or 329 Sixth Ave as well as the entity name, [they] find that Investigator Newell completed the NOV, Cease Order, and OTS with the information which was consistent with what she was provided regarding the subject shop." The ALJ reasoned the investigator was given a list of locations to inspect and one such business was "Ascension" with a corresponding address of 326 Sixth Avenue and that was the address entered into Apple maps before arriving at Appellant's business. The ALJ further found that personal service was completed because the store employee refused service and that is why the documents were left near the cash register. The ALJ found the employee's refusal to accept service as the reason he was not personally handed the documents. Additionally, the ALJ relied upon the posting of the document outside Appellant's business. The ALJ noted Appellant was able to take a photograph of the document and successfully requested an emergency hearing within the appropriate timeframe.

Arguments on Appeal

On appeal, Appellant asserts Appellee failed to establish personal service to the owner of business or a competent person in control of the premises at time of inspection and failed to

demonstrate a copy of the order was sent to Appellant via certified mail. Thus, Appellant argues service of the OTS was invalid, as a matter of law, and must be vacated. Appellant further contends that the ALJ did not address Appellant's argument regarding the failure of Appellee to effectuate proper service under the statute. Additionally, Appellant argues that the ALJ's decision made no finding as to the sufficiency of Appellant's affidavit in furtherance of vacating the OTS upon abatement of the unlicensed activity. Lastly, Appellant asserts that Appellee failed to create any other process or procedure for consideration of abatement. Wherefore, Appellee's failure to comport with the statutory and regulatory mandates to do so further renders the OTS unlawful and deprives the Appellant of due process.

Appellee submitted an opposition to Appellant's appeal on September 12, 2024. Appellee asserts proper service was effectuated, the ALJ properly adjudicated Appellant's service arguments, the form certificate for physical delivery of service comports with all requirements, and Appellant's contention of abatement pursuant to Cannabis Law § 138-b(9) is outside the scope of the ALJ's decision.

OPINION AND REASONING

Following a review of the record on appeal, the Board agrees with Appellant that service was not effectuated in accordance with the requirements provided for in Cannabis Law § 138-b.

Pursuant to Cannabis Law § 138-b(2) service of an OTS shall be served by (i) delivery to the owner or a person of suitable age in control of the premises, (ii) by posting of the order on the exterior of the premises, and (iii) by mailing a copy of the OTS to the business owner at any address provided by the person to whom such order was delivered pursuant to this section. In this matter, each of the service methods effectuated were defective and thus insufficient to the meet the requirements of the Cannabis Law.

In matters where the government is taking action affecting life, liberty, or property, due process of the law is inherently within the scope of the proceeding. (U.S. Const. amend. V and XIV; N.Y. Constitution Article 1 § 6). It is well settled that the principles of due process applicable to criminal trials also apply to government administrative proceedings. (Morrissey v. Brewer, 408 U.S. 471 (1972); Mathews v Eldridge, 424 U.S. 319, 334-335 [1976]; Matter of Murray v Murphy, 24 NY2d 150, 157 [1969]; People ex rel. McGee v. Walters, 62 N.Y.2d 317 [1984]; Wolfe v. Kelly, 79 A.D.3d 406, 409 [1st Dept. 2010]). Moreover, in this matter, Title 9 NYCRR § 133.17(d)(11) mandates an ALJ to conduct a hearing in "accordance with the requirements of due process."

The Supreme Court of the United States stated "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Reda v. Department of Health of City of N.Y., 137

Misc.2d 61 [Sup. Ct. 1987] *citing* Mullane v Central Hanover Trust Co., 339 U.S. 306, 314 [1950].) The Court of Appeals has held that when it comes to defects in service of process, whether a defect is technical is determined by notice and whether the method of service was sufficient to put defendant on notice that an action was pending. (Ruffin v. Lion Corp., 15 NY3d 578, 582 [2010]). When deciding if a defect in service is merely technical, the guiding principle must be one of notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Id. at 582; Raschel v. Rish, 69 N.Y.2d 694, 696 [1986]; Mullane v. Central Hanover Bank & Trust Co., 339 U.S. at 314). The actual receipt alone is not dispositive of the efficacy of service. (Ruffin v. Lion Corp., 15 N.Y.3d at 583).

Under the totality of the circumstances, the service attempts by Appellee in this matter cannot be said to have provided notice that is reasonably calculated to appraise the *interested* parties of the pendency of the action. (emphasis added). First, the NOV, Cease Order, and OTS were issued to the business G&G Atlantic/Ascension located at 326 Sixth Avenue, New York, NY, 10014, and not to Appellant C7AWSM LLC located at 329 Sixth Avenue, New York, NY 10014. Additionally, the personal service efforts taken by Appellee cannot be deemed to have been reasonably calculated to appraise any party of the action given the paperwork was left inside the premises after the employee had left and before the premises was padlocked and sealed. Further, the posting of the OTS in this matter included both the wrong address and a business name that was not the name of the business inspected. The copy of the OTS posted on the exterior of Appellant's business, located at 329 Sixth Avenue, indicated the NOV, Cease Order and OTS were issued to Respondent G&G Atlantic/Ascension at 326 Sixth Avenue, and not to the Appellant's business. The record does not establish any connection between G&G Atlantic and C7AWSM LLC. In fact, the record included evidence that G&G Atlantic was a business on Roosevelt Avenue in Woodside, NY. Moreover, Appellee's witness could not explain the discrepancy with respect to the address. The investigator could only confirm that 326 Sixth Avenue was the address provided to them as a location to be inspected and that was the address they used for directions. Appellee did mail a copy of the OTS; however, the affidavit of mailing established service was sent to G&G Atlantic/Ascension at 326 Sixth Avenue, New York, NY, 10014. The investigator testified they did not personally mail the document, but confirmed the affidavit indicated a copy of the OTS was mailed to 326 Sixth Avenue. The affidavit of mailing relied upon by Appellee was devoid of factual and descriptive information establishing service by mail to the Appellant, C7AWSM LLC, or to the premises inspected, 329 Sixth Avenue, New York, NY, 10014.

The Appellee has the burden of establishing by a preponderance of the evidence that service was properly effectuated. Based on the foregoing, Appellee did not establish service was effectuated on Appellant in accordance with the provisions of Cannabis Law § 138-b. There is no dispute personal service was not effectuated. Indeed, the ALJ determined personal service was not made based on the employee's refusal and thus a copy of the OTS was left near the register. While Appellee attempted

to effectuate service via the posting and mailing of the OTS, the sealing order in this matter was issued with an address that is different from the address of the premises inspected. Additionally, the OTS was issued to a business name that was different than that of the Appellant. The fact that Appellant was not misled or appeared through counsel and participated in the hearing does not relieve the Appellee of their burden of establishing proper service was effectuated on the Appellant. Moreover, Appellee did not move to amend the NOV, Cease Order, and OTS to include Appellant's business name or Appellant's business address to include Appellant's business name or business address. Nor did Appellee 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).

In opposing Appellant's exceptions and request to vacate the OTS, Appellee contends service was properly effectuated. Appellee argues the service methods effectuated were reasonably calculated to make Appellant aware of the proceeding and provide an opportunity to be heard. However, such an assertion overlooks the inherent flaw, or what the ALJ referred to as an ambiguity, with the address of the premises inspected and subsequently sealed. It also fails to consider that the OTS was posted at an address that was different than the address written on the sealing order. Additionally, Appellee's contention that any service deficiency was a procedural irregularity and should be overlooked because Appellee had a hearing must be rejected. Process of service, or delivery of service, to the wrong person is not merely a technical defect or procedural irregularity, but rather a substantial defect. (Ruffin v. Lion Corp, 15 N.Y.3d at 583). In a challenge to service of process, the fact that prompt notice of the action is received is of no consequence. (Macchia v. Russo, 67 N.Y.2d 592 [1986]). Notice received by means other than those authorized by statute does not bring a party within the jurisdiction of the court. (Id.; Feinstein v. Bergner, 48 N.Y.2d 234 [1979]).

CONCLUSION

The record on appeal in this matter does not support a finding, by a preponderance of the evidence, that Appellee effectuated proper service in accordance with the provisions of Cannabis Law § 138-b. Accordingly, the instant appeal is granted and the OTS in this matter is vacated.

The foregoing constitutes the final decision and order of the Board.

DATED: May 20, 2025