

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. - 109202505200031

ALBION MINIMART, LLC

Respondent.

Respondent requested a hearing on May 22, 2025, for an inspection which occurred on May 20, 2025.

The emergency hearing was scheduled for May 27, 2025. Parties stated prior to the start of the hearing on May 27, 2025, that a settlement had been reached. The hearing was adjourned awaiting a finalized settlement. Parties later stated that a settlement had, in fact, not been reached and a hearing was scheduled for June 10, 2025. The hearing was again adjourned at the request of Respondent and was then scheduled and conducted on June 18, 2025.

The Respondent, Zakarya Alharbi appeared, representing himself and testifying on his own behalf.

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

Investigator Daniel Gregory (hereinafter “Gregory”) testified on behalf of OCM.

Joshua Pennel, Esq. Administrative Law Judge (the Presiding Judge)

I. ISSUE

The allegations set forth in the Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal (jointly hereinafter “NOV”) asserts that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration,

license, or permit. These allegations are based upon observations made during an inspection which was conducted at 45 N. Main St., Albion, NY 14411.

The scope of the hearing involves determination whether OCM, by a preponderance of the evidence was justified in issuing to Respondent the NOV and what penalty under Article 6 § 132 is justified. OCM requested the maximum fine of \$10,000. Additionally, this hearing is to determine whether the padlocking provisions of Cannabis Law Article 6 § 138-b have been met by a preponderance of the evidence.

II. 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....”

Cannabis Law Article 6 § 138-b(1) provides that orders to seal: In addition to any other authority conferred in this chapter, pursuant to the provisions of this section, the board or the office shall have the authority to issue an 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 as described in subdivision eight of section ten of this chapter, in violation of subdivision one or one-a of section one hundred twenty-five or subdivision one or eight or section one hundred thirty-two of this article.

Cannabis Law Article 6 §138-b(6) provides that an order to seal may be issued by the office or the board pursuant to subdivision three of this section only if:

- (a) no part of the premises to be sealed is used in part as a residence and pursuant to local law or ordinance is zoned and lawfully occupied as a residence; and
- (b) the unlicensed activity as described in this section is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to this subdivision, the office shall issue a notice of violation and order to cease the unlicensed conduct, which shall constitute notice that such activity must cease immediately. (See Regulations at 9 NYCRR 133.25(f)(2-3)).

Cannabis Law Article 6 §138-b(7) provides that in assessing whether unlicensed activity within a building is more than de minimis, the office or board, as relevant, 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. (See Regulations at 9 NYCRR 133.25 (f)(3)(i-iv)).

Cannabis Law Article 6 §138-b (3) provides that the office may issue an order to seal with an immediate effective date if such order is based upon a finding by the office of an imminent threat to the public health, safety, and welfare. (See Regulations at 9 NYCRR 133.25(f)(1)).

Cannabis Law Article 6 §138-b(4) sets forth the factors that determine an imminent 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. (See Regulations at 9 NYCRR 133.25(f)(1)(i-vii).

III. FINDINGS OF FACT

1. On May 20, 2025, OCM conducted an inspection of Albion Minimart, LLC (hereinafter “Albion Minimart”) located at 45 N. Main St., Albion, NY 14411 (Ex. A3). At that time, an NOV was issued, and the premises were sealed (Ex. A3). On May 22, 2025, Respondent requested a hearing, which was held on June 18, 2025.

2. Gregory testified that the premises to be sealed showed no signs that they were used in total or in part as a residence. He stated that the location did not contain a dresser, shower, kitchen, or other accoutrements typical of a residential location such as clothing. The lack of home furnishings led Gregory to believe that the location was solely used as a business and not a residence. Respondent made no assertion to counter Gregory’s testimony.

3. The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. The amount of illicit product discovered at Albion Minimart was significant and constituted a sizable portion of the business. Hundreds of individual cannabis products were found on site (see, Ex. D).

4. The unlicensed activity being conducted at Albion Minimart constituted an imminent threat to public health, safety, and welfare in that there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6.

5. The evidence indicates that the unlicensed activity posed an imminent threat to public health, safety, and welfare because the location maintained a sizable trade in illicit product and had the product on site to support a sizable business. Some of the products were labeled as containing very high amounts of THC, amounts that far exceed the limits placed on cannabis products in New York (Ex. D38, 47, 57, & 69).

6. The NOV was properly served to a person of suitable age and control at the business. The document was also posted on the front of the premises. Respondent did not challenge service, and no objections were raised regarding the NOV’s introduction at the hearing.

7. A search warrant issued by Orleans County on May 16, 2025, served as the legal basis for the search. OCM joined the inspection after county law enforcement discovered illicit cannabis. The Respondent did not challenge the legality of the search.

IV. ANALYSIS AND CONCLUSIONS OF LAW

During the hearing, Gregory appeared as the sole witness for OCM. He testified that OCM's inspection began alongside Orleans County law enforcement and pursuant to a search warrant issued on May 16, 2025 (Ex. A1-2).¹ Gregory testified that OCM was called in after the initial search by Orleans County law enforcement had commenced. Prior to entering the store, Gregory searched OCM's database and discovered that Albion Minimart possessed neither an adult use nor a hemp license. Upon arriving in the store, Gregory discovered many of the hallmarks of a store open for business. These included a point-of-sale system (including a sign which advertised that the store accepted credit cards), a sign which read "open" on the front window, receipts purported to show recent transactions, a pricing gun, and cash present on site (Ex. C8, 10-15, & 20). Additionally, the store contained a wide variety of products on display in a manner indicative of a business open to the public (Ex. C5-7). Some of the products on display at the store, Gregory testified, were items associated with cannabis and, while legal, are often seen by potential customers as being tell-tale signs of a shop trading in illicit cannabis. Rolling papers, glassware (pipes & bongs), and lighters were all present, which Gregory reported were all related to cannabis consumption (Ex. C7-9 & E2). In addition to legal products being on display, Gregory found items which he suspected, according to his training, contained cannabis. Further, a "logbook" discovered at the store contained a number of items, which Gregory testified he recognized as products which likely contained cannabis, including a number of products under the header "THC" or with a designation that indicates a cannabis product (e.g., indica, sativa) (Ex. C16-17).

Gregory further testified that upon close inspection of the products discovered in the store, many were labeled as containing cannabis products. This included items that outright stated that they contained THC, had a cannabis leaf displayed on the packaging, or had a warning embossed on the packaging (e.g., "CA!," "21+," health warning) which Gregory testified he knew from his training and experience were indicators of a cannabis product (see generally Ex. D). Other products contained words, phrases, or pictures which indicated that the packaging contained a cannabis product (Ex. D18-19, 25, 31, 79, 85-86, 91, & 93). Still other products were packaged in containers which contained a "display window" allowing the product contained within to be viewed (Ex. D24, 60, 73, 81, 83, 92, & 94); these products contained flower or other products which Gregory testified he recognized as cannabis products. Some of the suspected illicit products had price tags which readily identified them as being for sale (Ex. D1, 11, 22, 47, 71, 83, & 89). The price tags on these items were of the same variety as those produced by the "pricing gun" which investigator Gregory found on site (compare Id. & C19), indicating that the tags were placed on the products "in house." In total, there were hundreds of bags (see Ex. B1-8) of individually packaged cannabis flower and additional products ranging from edibles, concentrates, vapes, and gummies, all appearing to contain cannabis. The products varied in type, strength, flavor, and manufacturer. Well-known brands of cannabis including Stiiizy, Tyson, Geek, Blinkers, and Runtz were all present alongside other manufactured products (see generally Ex. D).

¹ The search warrant was admitted into evidence. Gregory testified that he was given the search warrant on the date of the inspection by Orleans County law enforcement. No inference was drawn from the warrant other than it explained OCM's presence at the location. Further, the documented "undercover buys" (Ex. B 21-27) were admitted into evidence as the basis of the search warrant, but not for the veracity of the claims made within the documents.

The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. The amount of illicit product discovered at Albion Minimart was significant and constituted a sizable portion of the businesses total inventory. Hundreds of individual cannabis products were found on site (see, Ex. D). While the amount of legal product on site was also significant (Ex. C-5-9), the volume and variety of illicit products were simply too great to be considered de minimis. No testimony was presented by Respondent as to the size of the total operation, but OCM presented photographic evidence of the store. While there appear to be a great many non-illicit products on display, the amount of illicit product recovered from the store far exceeds the amount which could reasonably be claimed as a de minimis part of a business similar in size to Albion Minimart. I find that the evidence supports a finding by a preponderance of the evidence that Albion Minimart’s trade in cannabis was more than a de minimis part of its business.

The unlicensed activity being conducted at Albion Minimart constituted an imminent threat to public health, safety, and welfare in that there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. None of the products discovered at Albion Minimart appear to have been tested in New York and some showed clear labeling that they were produced out of state and, therefore, did not undergo New York State testing (see generally Ex. D). No products had a New York State inspection sticker. While some had a warning label (either generic or from out of state) (see e.g., Ex. D2 & 6), many of the products discovered on site had no labels at all, other than a name or description of the product and completely lacking a safety warning (see e.g., D25 & 81). The lack of testing and inappropriate labeling makes Albion Minimart actions a danger to the public health, safety, and welfare pursuant to Cannabis Law Article 6 §138-b(4)(g).

Therefore, taken as a whole, the evidence presented by OCM against Albion Minimart is sufficient to determine by a preponderance of the evidence that the store was selling illicit cannabis products. The store was open to the public and had the hallmarks of a typical business. It did not possess an adult use license (or hemp license), which is necessary to sell cannabis products. The store had obvious signs and symbols which would indicate to a consumer interested in purchasing cannabis that Albion Minimart likely traded in such goods. Illicit items were discovered on site, some contained pricing stickers clearly denoting that they were for sale. Even discounting all other factors discussed above, the sheer volume of product, the variety, and the individually packaged products make it highly likely that the store was trading in illicit product. The amount discovered on site far exceeds the personal use limits imposed by New York State Law and the total weight of the product supports a finding that the product was on site for the purpose of sales. Taken as a whole, the product discovered and the signs and symbols which made it likely that a customer would understand that cannabis products could be procured from the store, show by a preponderance of the evidence that Albion Minimart sold cannabis product without an adult use license.

OCM requested that the maximum fine of \$10,000 be levied against Albion Minimart for the violations discovered on May 20, 2025. While the statutes do not provide extensive guidance

for determining the penalty for violations under Cannabis Law Article 6 §125, 132, and 138-a, it does require a penalty proportionate to the violation. Based on this, the large amount of cannabis recovered from Albion Minimart requires a significant penalty under Cannabis Law Article 6 §132 (1)(c). The location likely maintained a sizable trade in illicit product and had the product on site to support a sizable business. Additionally, some of the products were labeled as containing very high amounts of THC, amounts that far exceed the limits placed on cannabis products in New York (Ex. D38, 47, 57, & 69). These products not only violate New York State Law, and the limits placed on total THC, but additionally present a danger to the consumer who purchases and uses the product do to the large concentration of THC. Further, many items were labeled in a manner not in compliance with New York State Law and, therefore, not abiding by regulations designed so as not to entice children to misunderstand the package's contents. A child may confuse a package labeled as "Trips Ahoy" or "Wedding Cake," or which is designed to look like fruit snacks or candy, or which is decorated with cartoon characters, and accidentally ingest cannabis (Ex. D1, 47, 49, 57, 63, 70-71, 85, & 89). The disregard for safety standards, coupled with the large amount of product discovered on site calls for the maximum penalty.

Respondent did not challenge service. The service requirements of the Order to Seal are delineated in Cannabis Law (see Cannabis Law § 138-b). The NOV was given to a person of suitable age and in apparent control of the business (see Ex. E3). No additional address appears to have been given by the person to whom the NOV was given, making the mailing of the NOV unnecessary. Further, Respondent raised no objection to the introduction of the NOV at the hearing and made no argument that he did not receive a copy. A copy of the NOV was also properly attached to the front of Albion Minimart. Therefore, it is determined that service was adequately performed for both the Order to Seal and the Notice of Violation portions of the NOV form.

It should be noted, although Respondent made no argument concerning the validity of OCM's search, it is determined that the search was valid and properly performed. The search warrant issued by Orleans County was the impetus for the search and OCM performed its search and seizure after the search warrant was executed. OCM's participation in this action was secondary and a result of Orleans County law enforcement discovering illicit cannabis product on site during their search.

V. DECISION

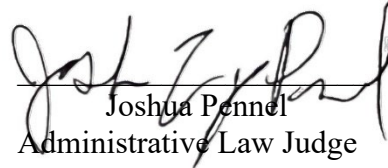
The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 45 N. Main St., Albion, NY 14411. In so doing, Respondent violated Cannabis Law Article 6. The Order to Cease Unlicensed Activity and Order to Seal are hereby affirmed and a penalty is assessed.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON MAY 20, 2025, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

FURTHER, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$10,000 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON MAY 20, 2025.

This constitutes the final decision of the Office of Administrative Hearings. A copy of this decision shall be served upon the parties.

Dated: July 2, 2025


Joshua Pennel
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 §§ 133.23(g)(5) and 133.25(k).

This decision was sent via email on July 2, 2025, to the following:

Zakarya Alharbi

Kevin Marek, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.