

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**Haven Smoke LLC**

Respondent.

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**DECISION**  
**Inspection No. 118202506170126**

Respondent requested an emergency hearing on June 18, 2025, within seven (7) calendar days of the date of the inspection which occurred on June 17, 2025.

The emergency hearing was conducted on June 24, 2025, within three (3) business days of the Respondent's request.

Mikael Cohn, Esq., represented the Respondent, Haven Smoke LLC

Kevin Marek, Esq. represented the Petitioner, the Office of Cannabis Management (hereinafter "OCM").

Investigative Specialist Zachary Roubelakis testified on behalf of OCM.

Ahmad Qutaish, owner of Haven Smoke LLC, testified on behalf of the Respondent.

Laurie Cartwright, Esq. Administrative Law Judge (the Presiding Judge)

**I. ISSUE**

The allegations set forth in the Notice of Violation 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 was conducted at 794 Dutchess Turnpike Arlington, New York 12603.

The emergency hearing encompassed two issues: whether the padlocking provisions of Cannabis Law Article 6 § 138-b have been met by a preponderance of the evidence and whether the Respondent violated Cannabis Law § 125(1) and § 132(1)(a), and if so, the appropriate civil penalty to be imposed.

## II. APPLICABLE LAW

Cannabis Law § 125(1): Prohibits the sale, cultivation, or distribution of cannabis or cannabis products without the appropriate license or registration.

The law 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 § 138(1): Authorizes the OCM to order any person engaged in unlicensed activity to cease such conduct and permits the seizure of unlawful cannabis products.

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 § 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)).

Cannabis Law § 132(1)(a): Permits the imposition of a civil penalty up to \$10,000 per day for unlawful sales.

The law 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 § 132(1)(c): Requires penalties to be proportionate to the nature of the violation.

The law 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...”

### III. FINDINGS OF FACT

1. Respondent was offering cannabis products for sale without a license issued by OCM.
  - a. Investigator Roubelakis testified during this proceeding that he has conducted approximately 300 regulatory inspections on behalf of OCM. He explained that he has training and experience in conducting regulatory inspections for cannabis. He stated that when analyzing the legality of products, he looks at whether the labels, packaging, and the state trademarks logo comport with New York State labeling requirements. Investigator Roubelakis also stated that he looks for indications that the location is selling or marketing cannabis by looking for: signs, prices, menus, and ATMs/POS.
  - b. The interior of the premises featured a Santa Claus like figure smoking a joint, holding a bong, with cannabis leaves on his necklace and hat. The exterior of the premises had a sign inscribed with “Home of the 4 Gram Eighth.” (Exhibit C24). The store also displayed inflatable “Raw” branded joints. (Exhibit C4)
  - c. During this inspection, Investigator Roubelakis observed approximately 20-25 illicit products. Specifically, he witnessed what he appeared to be: loose and jarred cannabis flower, empty pre-roll tubes, a scale, cannabis edibles, cannabis concentrate in the form of vapes, commercial cannabis pre-rolls, concentrate in the form of live resin, Wonka Bar cannabis edibles, cannabis oil and cannabis diamonds. (Exhibit C and D).
  - d. Investigator Roubelakis testified that the illicit products seized from the premises were not tested or labeled lawfully in accordance with New York law.
  - e. Petitioner presented Exhibit B containing the product vouchered by Investigator Roubelakis. In total he vouchered: 11-1.3g pre-rolls, 2.2 pounds of cannabis

flower (jarred flower and loose pre-rolls), 18-1,000 mg edibles, 9- 200 mg edibles, 29 units of hemp flower<sup>1</sup>, and 1- 225 mg cannabis edible. (Exhibit D).

2. Investigator Roubelakis stated that no part of the sealed premises was used in part as a residence or pursuant to local law or ordinance, zoned and lawfully occupied as a “residence.”
3. The unlicensed activity which warrants an order to seal does not constitute more than a “de minimis” part the business activity.
  - a. Investigator Roubelakis testified that Exhibit D1 contained the total number of cannabis products recovered from the premises. Most of the counter depicted, is empty of product.
  - b. Petitioner and Respondent agreed that the premises sold hookahs, as well as tobacco products. Additionally, tobacco vapes were located in one of the vending machines.
  - c. Investigator Roubelakis testified that the soda machines were not operational during the investigation, and that the store clerk told him the soda was expired. The Respondent however, testified that he was waiting for a licensed electrician to repair the machines. No photos of the alleged expired beverages were entered into evidence.
  - d. Exhibit C depicts many slogans on the floors of the premises that are unrelated to cannabis, such as “love hate, power, Hustle and Motivate, Time is Money, and Aspire, Work Hard.”
  - e. There was a very limited variety of product at the location, which is exemplified by Exhibit D1 and Petitioner’s vouchers.
  - f. There is no evidence that the unlicensed activity is more than a de minimis part of the business activity on the premises.

#### IV. ANALYSIS AND OPINION

While Petitioner has demonstrated that Respondent was selling products that were marketed and labeled as cannabis, Petitioner has not demonstrated by a preponderance of the evidence that this activity was more than a de minimis part of the business activity occurring on the premises. The store contained a full wall of coolers, many hookahs and other smoking apparatuses, what appeared to be a large lounge area, and a wide variety and quantity of tobacco products, including nicotine vapes being stored in a cooler. Respondent testified credibly that his store sells shirts, hookah flavors and charcoal lighting devices, ashtrays, scales and an assortment

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<sup>1</sup> This tribunal is disregarding the recovered hemp flower. No pictures or other documentation of the flower were introduced. There was not sufficient evidence that the hemp flower constituted cannabis.

of beverages. While Petitioner entered Exhibit C15-16 a phonebook with names and products listed, in order to demonstrate sales of illicit product, there was no testimony explaining definitively the nature of the book and when its contents was recorded. Investigator Roubelakis was unable to definitively identify the entries. He also testified that he was told by the clerk that the beverages in the coolers were expired. Petitioner argues the coolers were inoperable. I do not credit this hearsay statement as being truthful. If the sodas were in fact expired and just for show, Petitioner could have taken photographs of the expired labels and placed them into evidence.

Investigator Roubelakis testified that the store contained a large variety and volume of cannabis products, but Exhibit D1 transparently depicts the dearth of products, not even a countertop worth, found in the store. The only product of which there was any meaningful quantity were the cannabis flower cannisters. It should also be noted that only four of those cannisters were labeled with the strain and THC percentage. (Exhibit D1 and D12). The statement that there was a large volume and variety of product present was conclusory, and Petitioner failed to expound upon that analysis or present similar cases. It was noteworthy that Investigator Roubelakis has completed approximately 300 investigations, but did not situate the gravity of the findings in that context. Petitioner did not cite any case to justify sealing or the requested \$10,000 fine. Respondent cites *OCM v. Stonedhenge Smokeshop*, Inspection No.104202406130017 (2024) in support of vacating the order to seal. In that case, a store with a larger variety and volume of cannabis products was unsealed for failure to prove that the business activity was more than de minimis. The store in that matter was far larger and contained far more legal product than Respondent's. I note that as in the instant matter, OCM failed in that case to submit evidence regarding the volume and variety of illicit products in the store in contrast to the other products sold at the location.

## V. PENALTY

Though this tribunal is vacating the order to seal, a fine of less than \$10,000 is still warranted. Comparison to previous enforcement actions further supports the imposition of a mid-range penalty. In *OCM v. Elite Smoke Shop, Inc.*, Inspection No. 109202411200022 (2024), and *Flavor Smoke Shop, Inc.*, Inspection No. 137202402130015 (2025), both respondents were fined \$10,000 based on multiple factors, including large-scale operations and substantial product volumes. Conversely, in *AAA Mount Vernon Gas, Inc.*, Inspection No. 20320241106003 (2024), where the quantity of cannabis was small, limited to a vending machine containing 50-100 products, a \$3,000 penalty was imposed. In this case, 38 products were recovered in addition to the loose cannabis flower. The products were not contained as in *AAA Mount Vernon Gas, Inc.*, and a few of the products such as the Wonka bars and Over the Moon packages could be attractive to minors.

As such, a \$3,500 fine is warranted, to be reasonable, proportionate, and consistent with prior precedent. It reflects the gravity of the offense and considers mitigating factors such as the very limited quantity of product located at the premises, and absence of prior violations.

This tribunal, upon full consideration of the evidence, arguments, and applicable law, determines and orders as follows:

1. The Order to Seal is **VACATED**.
2. Petitioner has failed to satisfy the requirement of § 138(b)(6)
3. The Notice of Violation and Order to Cease Unlicensed Activity is hereby **AFFIRMED**.
4. Respondent is found to have violated Cannabis Law §§ 125(1) 138(a), and 132(1)(a).
5. A civil penalty of **\$3,500** is assessed under Cannabis Law § 132(1)(c).

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 17, 2025, IS HEREBY VACATED FROM THE DATE OF THIS DECISION.**

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 § 132(1), THE RESPONDENT IS HEREBY ORDERED TO PAY A \$3,500 FINE, AS A PROPORTIONATE PENALTY FOR THE UNLICENSED SALE OF CANNABIS AND CANNABIS MARKETED PRODUCTS ON JUNE 17, 2025.**

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

Dated: June 30, 2025

*Laurie Cartwright*  
Laurie Cartwright  
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 §§ 133.23(g)(5) and 133.25(k).

This decision was sent via email on June 30, 2025 to the following:

Nickolas Perry  
Sheila Wagner  
Celena Ditchev, Esq.  
Kevin Marek, Esq.  
Mikael Cohn, Esq.