

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**  
**Inspection No. 205202407020015**

**MNS 0928 Corp. DBA Happy Trees**

Respondent.

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An Emergency Hearing was held on July 9, 2024, resulting in a decision on July 15, 2024, affirming and extending the Order to Seal (OTS) for one year. Subsequently, the Respondent requested a hearing on the Notice of Violation and Order to Cease Unlicensed Activity (NOV). No appeal was filed following that decision. At the present hearing, both parties were advised and did not object to the factual findings from the prior hearing forming the basis for determining any civil penalty.

A hearing consisting solely of oral arguments was held on April 3, 2025. Neither party called witnesses nor submitted additional evidence. At the conclusion of the hearing, the Respondent requested permission to file a motion on an issue raised during the oral argument. The Respondent's motion was submitted on April 24, 2025. The Petitioner responded on May 23, 2025, following an extension, and the Respondent replied on May 30, 2025. The rulings on those motions are incorporated into this decision.

Kevin Brown, Esq., represented the Office of Cannabis Management (the Petitioner).

Joseph Bondy, Esq., represented MNS0928 Corp. DBA Happy Trees (the Respondent).

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

## **I. ISSUE**

This matter arises from the NOV issued to the Respondent following a regulatory inspection conducted by the Office of Cannabis Management (OCM) on July 2, 2024, at 14620 34th Avenue, Flushing, New York. The allegations state that the Respondent was offering cannabis products for sale without the requisite license, registration, or permit in violation of the New York Cannabis Law.

The scope of this decision is limited to determining whether, by a preponderance of the evidence, the Respondent violated Cannabis Law § 125(1) and § 132(1)(a), and if so, the appropriate civil penalty to be imposed under § 132.

## **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.

The law states 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 § 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. The facts on which this NOV hearing is based were established during the emergency OTS hearing conducted on April 3, 2025. There were no additional facts or evidence presented by either party during the instant hearing.

2. At the NOV hearing on April 3, 2025, neither party disagreed with the factual findings from the July 9, 2024, hearing being utilized to determine any civil penalties. No new testimony or exhibits were introduced. The facts from the original hearing on the OTS are summarized below as described in the initial decision.

Respondent was offering cannabis products for sale without a license issued by OCM. During the hearing, Investigator Warner explained that she has training and experience in identifying illicit cannabis products. Her training emphasized detecting counterfeit, out-of-state packaging, and non-compliant New York State packaging. Investigator Warner testified that on July 2, 2024, she, along with other law enforcement, conducted a regulatory inspection of MNS 0928 Corp. She explained the routine OCM investigators undertake during every regulatory inspection; reconnaissance of the location, an evaluation of illicit versus licit products, whether the quantity of illicit product is de minimis, whether the premises is a residence, and if there is volume and variety of product on site- a determination of whether the premises should be closed. The Investigator stated during her testimony that, although she was not aware of a written OCM inspections handbook, there were clear rules on how regulatory investigations should be conducted. Investigator Warner's testimony made it clear that a protocol existed to delineate regulations that guaranteed the certainty and regularity of application. During the regulatory inspection at the premises, Investigator Warner observed Respondent offering multiple illicit cannabis products for sale, namely: edibles (including THC lemonade), Delta 8 and Delta 10 concentrates, Delta 8 vape cartridges and products, pre-rolls, and flower. (Refer to Exhibit B and C)... A large variety and volume of illicit cannabis brands and products were offered for sale at MNS 0928 Corp., according to Investigator Warner. She testified that the location was selling cannabis pre-rolls (Exhibit B pg. 9; Exhibit C pg. 22-23), edibles (Exhibit B pg. 13-14; Exhibit C pg. 4-6, 13, 16, and 23-24), vape cartridges (Exhibit C pg. 17-22, and 25), and dabs (Exhibit C pg. 22). Most of these product types were available in multiple brands or varieties.

3. During the April 3, 2025, hearing, the Respondent renewed his objections under the Fourth Amendment and filed a motion citing the decision in *Super Smoke N Save v. New York State Cannabis Control Board*, 226 N.Y.S.3d 847 (Sup. Ct. Albany 2025), seeking retroactive application of the court's preliminary injunction findings.

4. The Respondent asserted that the entirety of the administrative proceeding remained pending, and that *Super Smoke N Save* required the tribunal to reopen or reconsider the legality of the July 2, 2024, inspection.

5. The Respondent did not seek to introduce new facts, call witnesses, or reopen the evidentiary record from the July 9, 2024, hearing. The motion and reply submitted by the

Respondent and the responsive filing by OCM were considered part of the record to determine the civil penalty associated with the NOV.

6. The factual findings upon which the present decision is based are consistent with and drawn directly from the prior OTS hearing record, as supplemented by the April 3, 2025, hearing.

7. The Respondent did not offer new or previously unavailable evidence that would warrant reopening the underlying factual record. The *Super Smoke N Save* decision cited by the Respondent pertains to a preliminary injunction in a separate proceeding. It cannot be applied retroactively to the facts in this case, nor has it been finalized on appeal.

8. The inspection findings and the Respondent's conduct formed the basis for the issuance of the NOV and the assessment of civil penalties under Cannabis Law Article 6.

#### **IV. ANALYSIS AND OPINION**

On April 3, 2025, Respondent's counsel renewed Fourth Amendment objections at the NOV hearing, contesting OCM's photographic evidence as inadmissible "fruit of the poisonous tree." The tribunal allowed both parties to submit motions on the evidentiary objections and the applicability of the *Super Smoke N Save* decision. No new facts or evidence were introduced at the hearing. Accordingly, the findings in this decision are based on the evidentiary record established during the July 9, 2024, emergency hearing on the OTS.

The Respondent contends that the *Super Smoke N Save* decision should be applied retroactively to this case. The Respondent argues that, "New York law generally presumes retroactive application of judicial decisions that do not establish new legal rules, particularly where a matter remains pending." (Respondent's April 24, 2025 Motion at 2). The Respondent states that this matter remains pending and claims that, if the record from the initial hearing is insufficient, *Super Smoke N Save* requires either reopening the OTS hearing or reexamining the constitutionality of the April 2, 2024, inspection. These arguments are unpersuasive and without merit.

#### **The Administrative Proceeding is not Pending.**

The Respondent contends that this administrative proceeding remains pending. (Respondent's motion dated April 24, 2025). However, this argument is inconsistent with both the factual record and applicable law. As the Court in *Matter of Peckham v. Calogero*, 54 A.D.3d 27 (1st Dep't 2008), aff'd 12 N.Y.3d 424 (2009), recognized, "Once an administrative agency has decided a matter, based upon a proper factual showing and the application of its regulations and precedent, the parties to that matter are entitled to have the determination treated as final." Accordingly, after the 30-day appeal period elapsed without challenge, the July 15, 2024, decision became final and binding.

On July 15, 2024, this tribunal issued a decision affirming the emergency OTS after finding that the Respondent had offered cannabis products for sale without a license issued by OCM. This decision was final and most relevantly, appealable within 30 days per the OCM Regulations at 9 NYCRR 133.25(k). The Respondent did not submit an appeal to the Cannabis Control Board asking to overturn this decision, nor did the Respondent file an appeal or a legal proceeding in any other forum asking for a court to find that Respondent's 4<sup>th</sup> Amendment rights, or any other constitutional right, had been violated. The issue before this tribunal is whether the Respondent committed the offenses listed in the July 2, 2024 NOV, and if so, what the appropriate penalty should be. The factual allegations in the NOV substantially overlap with those resolved in the July 15<sup>th</sup> decision. During the April 3, 2025 hearing, the Respondent did not request that prior findings be reopened to present any new evidence. Moreover, neither party objected to the prior hearing record forming the factual basis for the determination on the NOV and penalty.

***Super Smoke N Save* is not a Final Decision on the Merits and cannot be Applied Retroactively.**

Respondent submitted a few cases regarding the retroactive application of decisional law. However, *Super Smoke N Save*, is not a final decision on the merits, but rather a decision on a preliminary injunction. At this stage it would be improper to opine as to whether, when final, the determination on the merits in *Super Smoke N Save* should be applied retroactively.

As a threshold matter, the effect of *Super Smoke N Save* was solely to grant a *preliminary injunction*. The court in that case explicitly limited its inquiry to “whether the respondent’s action should be enjoined as a likely violation of the Fourth Amendment” (*Super Smoke N Save*, at 3). It did not decide the merits and the matter remains subject to appellate review. Accordingly, it is not a binding precedent and is not subject to retroactive application.

Preliminary injunctions and temporary restraining orders are governed by CPLR § 6301<sup>1</sup>, which authorizes such relief in actions where a defendant is threatening, committing, or continuing acts that violate a plaintiff’s rights in a manner that may render a judgment ineffectual. The statute is forward-looking; it is designed to restrain ongoing or imminent conduct during the pendency of litigation. It does not contemplate relief for past, completed actions.

In *Super Smoke N Save*, the court issued a preliminary injunction addressing the scope of warrantless inspections conducted by OCM. However, the injunction is limited in scope and applies only to future regulatory conduct involving the specific petitioners in that case. The order does not impose retroactive obligations on OCM with respect to prior inspections or adjudicated matters, except as they pertain to specific parties. (See *Super Smoke N Save*, at 11.)

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<sup>1</sup> CPLR 6301 in relevant part states, “A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.”

Moreover, *Super Smoke N Save* is not a final decision on the merits and therefore does not constitute new decisional law for purposes of retroactive application. *Super Smoke N Save*'s orders do not require Petitioner to take any steps regarding cases that have already been decided. Nor do they require Petitioner to take any steps that would affect the instant matter. To the extent that *Super Smoke N Save* enjoins OCM from specific actions, it's enjoined from: future warrantless searches of the petitioners named in that action, certain search methods in future regulatory inspections, and actions related to parties to that lawsuit. Accordingly, the decision has no bearing on past regulatory searches that have been fully litigated or adjudicated. Therefore, retroactive application is neither appropriate nor required. Respondent's reliance on *Super Smoke N Save* fails to establish any basis to revisit the findings in this matter and to suppress the evidence in the underlying July 15, 2024, decision.

During the April 3, 2025 hearing, Respondent's asked this Tribunal to overturn the OTS decision, based on his analysis and application of *Super Smoke N Save*. Alternatively, Respondent requested that this tribunal convene a "limited evidentiary hearing focused solely on the constitutional validity of the July 2<sup>nd</sup> search." (Respondent's motion dated April 24, 2025). As a counter to Respondent's arguments, Petitioner raised the doctrine of collateral estoppel, generally.

### **The Doctrine of Collateral Estoppel Precludes Additional Evidentiary Proceedings**

Collateral estoppel precludes Respondent from asserting that this tribunal should reach a different conclusion regarding the most recent proceeding and the issue of Respondent's offer(s) to sell cannabis without a license. "Collateral estoppel applies when (1) the issues in both proceedings are identical; (2) the issue in the prior proceeding was actually litigated and decided; (3) there was a full and fair opportunity to litigate in the prior proceeding; and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits" (*Gersten v. 56 7<sup>th</sup> Ave. LLC*, 88 A.D.3d 189, 201, 928 N.Y.S.2d 515, 524 citing; *Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 500–501, 478 N.Y.S.2d 823, 467 N.E.2d 487 [1984]; *Gramatan Home Invs. Corp. v. Lopez*, 46 N.Y.2d 481, 485, 414 N.Y.S.2d 308, 386 N.E.2d 1328 [1979])." The issue in both proceedings was identical. The Respondent had a full hearing regarding the OTS where witnesses were called, exhibits presented, and where Respondent had an opportunity to testify and confront witnesses testifying against him. The hearing, regarding among other things whether he was offering cannabis for sale without a license, was fully litigated and a final decision was issued by OAH after the hearing record was closed. Therefore, the Respondent cannot relitigate this issue.

Additionally, the Fourth Amendment arguments raised by Respondent regarding the appropriate regulatory search parameters, were well developed prior to *Super Smoke N Save*. During the NOV hearing, Respondent stated that his 4<sup>th</sup> Amendment rights were violated because *Super Smoke N Save* limited the number and nature of investigators and law enforcement officers that could be present at a regulatory inspection. Respondent also argued that the search performed was not a regulatory search. However, Respondent could have raised those arguments in greater detail in the first instance at the April 3, 2025 hearing. Further, the Respondent has not

presented any new or previously unavailable facts that would justify reopening the record. There is no legal or factual basis warranting such relief. Administrative adjudications will not be reopened absent a compelling justification. See *Peckham*, supra. The interest in the finality of administrative adjudication when the issues have been addressed, the record closed, and a decision has been rendered weighs heavily against such relief.

Therefore, in conclusion, this tribunal holds that:

1. *Super Smoke N Save* is a preliminary injunction, not a final decision on the merits, and remains subject to an ongoing appeal. It does not create a binding precedent or require retroactive application to a closed administrative proceeding.
2. The tribunal's final decision on July 15, 2024, found that the Respondent had unlawfully offered cannabis products for sale. That decision became final after the 30-day appeal window closed under 9 NYCRR § 133.25(k). Under well-settled principles of collateral estoppel, the Respondent is barred from relitigating that issue.
3. The Fourth Amendment arguments raised by the Respondent regarding the alleged constitutional deficiencies were presented and addressed at the OTS hearing. No compelling justification has been provided for reopening the OTS hearing record under applicable legal standards, and Respondent's request is barred by the doctrine of collateral estoppel. See *Peckham v. Calogero*, 12 N.Y.3d 424 (2009).

## V. PENALTY

Cannabis Law § 132(1)(c) provides that any civil penalty assessed must be proportionate to the nature of the violation. In this case, the Petitioner has requested the maximum fine of \$10,000, while the Respondent has asked for a nominal penalty of \$1.

Although the Petitioner cited general factors that led to the extension of the OTS, the Petitioner did not present a compelling justification for imposing the statutory maximum. There was no evidence of aggravating circumstances such as excessive volume of illicit cannabis products, repeated violations, or significant financial gain, which might warrant the highest available penalty.

The inspection conducted on July 2, 2024, revealed that the Respondent was unlawfully offering cannabis products for sale without a license, including a moderate quantity and wide variety of illicit cannabis goods. Notably, the inventory included edibles and beverages that were brightly packaged and resembled familiar candies such as imitation Skittles and gummies, products that pose a particular risk to children and raise public health concerns.

Testimony from Investigator Warner confirmed that the quantity of illicit products, while substantial, did not exceed what is typically encountered in enforcement operations. She also testified that the store was depleted of saleable items after the illicit inventory was removed.

There was no evidence of continuous commercial activity or significant profit from unlicensed sales.

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 aggravating factors, including large-scale operations and substantial product volumes. Conversely, in *AAA Mount Vernon Gas, Inc.*, Inspection No. 20320241106003 (2024), where there was a small quantity of cannabis not being actively marketed, a \$3,000 penalty was imposed.

While Respondent's conduct in this matter was unlawful and involved marketing cannabis products that could appeal to minors, the circumstances do not warrant the maximum penalty. However, the sale of cannabis-infused edibles packaged to mimic popular candy brands, along with the moderate quantity and variety of products offered, justify the imposition of a significant civil fine.

Accordingly, a fine of **\$6,000** is deemed reasonable, proportionate, and consistent with prior precedent. It reflects the seriousness of the offense and considers mitigating factors such as the limited scale of products and the absence of previous violations.

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

1. The Notice of Violation and Order to Cease Unlicensed Activity is hereby **AFFIRMED**.
2. Respondent is found to have violated Cannabis Law §§ 125(1) and 132(1)(a).
3. A civil penalty of **\$6,000** is assessed under Cannabis Law § 132(1)(c).

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 § 132(1), THE RESPONDENT IS HEREBY ORDERED TO PAY A \$6,000 FINE, AS A PROPORTIONATE PENALTY FOR THE UNLICENSED SALE OF CANNABIS AND CANNABIS MARKETED PRODUCTS ON JULY 2, 2024.**

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

Dated: July 11, 2025

  
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 July 11, 2025 to the following:

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.

Kevin Brown, Esq.

Joseph A. Bondy, Esq.