

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

206 Candy and Convenience Inc.

Respondent.

DECISION: RESPONDENT’S
MOTION TO DISMISS THE
ORDER TO SEAL
Inspection No. 110202407250031

Respondent requested a hearing on the Notice of Violation (hereinafter NOV) and Order to Seal (hereinafter OTS) July 1, 2025. The inspection occurred on July 25, 2024.

Subsequently, two conferences were held, on July 18, 2025, and July 23, 2025, with respect to preliminary issues as to the OTS.

The Respondent moved to dismiss the OTS. Petitioner opposed Respondent’s motion.

The Respondent is represented by Masood Syed, Esq.

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

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

I. ISSUE

The allegations set forth in the NOV and OTS 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 206 W. 231st Street Bronx, New York 10463, on July 25, 2024.

The scope of the motion to dismiss was limited solely to the issue as to whether the proscribed padlocking period of one year has run and the OTS is to be dismissed as a matter of law, or if the padlocking is tolled by the Cannabis Law Article or the OCM regulations.

II. APPLICABLE LAW

Cannabis Law Article 6 § 138-b (9) Any order to seal issued by the office or the board issued pursuant to this section shall be effective for one year from the later of the posting of the order or the date of the judgment provided for in this section. An order to seal shall be vacated by the office of the board, upon notice to the office, if the respondent submits sufficient evidence to the office or the board by an affidavit and such other proof as may be submitted by the Respondent that the unlicensed activity has been abated. An order vacating an order to seal shall include a provision authorizing the office, or any police officer or peace officer who assisted with the execution of the order to seal, to inspect the building or premises without notice for the purpose of ascertaining whether or not the unlicensed activity has been abated. Any police officer or peace officer with jurisdiction may, upon the request of the office, assist in the enforcement of an inspection provision of an order vacating an order to seal.

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)(8)(d) Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five thousand dollars or by a class B misdemeanor, or both, provided such order or notice contains therein a notice of such penalty, and shall be referred to the local district attorney for enforcement. The office shall also adhere to the procedures in this subdivision when executing an order to seal issued in accordance with this section.

III. FINDINGS OF FACT

1. The following facts are uncontested, and form part of the record during the two preliminary conferences related to this matter involving Respondent and Petitioner.
2. On July 25, 2024, OCM Investigator's performed a regulatory inspection of Respondent's business, 206 Candy and Convenience Inc. Based on their findings they issued an OTS and padlocked the business pursuant to Cannabis Law Article 6 § 138-b.

3. On July 31, 2024, the New York City Sherriff's Office conducted an investigation at 206 Candy and Convenience Inc., which on that date, was in operation, and pursuant to their investigation, issued an OTS and padlocked the premises.
4. Respondent filed paperwork to change his business into a convenience store pursuant to Cannabis Law Article 6 § 138-b (9). The store was inspected again by the Sherriff's Office. After which, the Sherriff's Office issued a final determination finding no imminent threat of public safety and recommended removal of the padlock they had placed on the premises. The Sherriff's Office removed the padlock they had placed on the premises in August of 2024.
5. On approximately June 24, 2025, OCM conducted a secondary investigation of Respondent's business. There were no products seized during that investigation.
6. Though there were no additional findings warranting a second NOV or OTS, OCM padlocked the premises and reissued the OTS pursuant to the original OTS issued on July 25, 2024.
7. Respondent requests at this juncture that the padlock be removed as of July 25, 2025, and the OTS issued July 25, 2024, be dismissed.
8. OCM states that due to the Respondent's request for a hearing on the OTS on July 1, 2025, before the OTS expires, it intends to pursue the OTS. During the July 23rd conference Mr. Marek stated, "my position is that if the adjudication wasn't requested, it would be removed after the year it was issued. But because the adjudication was requested that we go forward with the adjudication and the removal of the padlock will be based off of the decision from the adjudication." OCM also states that if they were to prevail on the OTS, it would be upheld for one year.
9. OCM asserts that the Respondent's request allows the OTS to be extended, and the one-year time frame to be effectively tolled until the final decision is issued on the OTS.
10. OCM was given until the close of business on July 24, 2025, to submit case law in support of its position.
11. On July 24th, Mr. Marek sent an email to Mr. Syed, the ALJ, and OAH stating that he did not find any case law in support of his argument.

IV. ANALYSIS AND CONCLUSIONS OF LAW

The plain language of the Cannabis Law requires that the OTS be in place for one year from latter of two events: the posting of the OTS or the date of judgement upholding the OTS. In this instance, an adjudication of the OTS did not take place prior to the end of the year after which the OTS was posted on Respondent's business. Thus, only one of the two contingent events has taken place, the posting of the OTS, and the law would require the OTS to expire.

However, OCM argues that the statutory one-year duration of the OTS should be tolled based on the adjudication of Respondent's hearing request.

OCM has failed to cite a provision of law, regulation, or case, permitting or requiring the tolling of the one-year time frame due to either the padlock being removed, or as OCM asserts, the Respondent requesting a hearing. Respondent has successfully proven that the one-year limit on the OTS has run. There is no pending decision to be issued on the OTS, nor did a hearing commence prior to the expiration of the OTS. Additionally, OCM stated that their witness was not available prior to the expiration of the OTS on July 25, 2025. Therefore, they would have been unable to defend the OTS at an OTS hearing prior to the expiration of the OTS.

There is no provision in the regulations or Cannabis Law that would toll the one-year time frame based on the request for a hearing on the OTS. Neither does OCM present case law in support of its position. To order the one-year time frame tolled on the eve of its expiration would be to circumvent or add to the regulations and the law as enacted by the Legislature. OCM's position would also imply that after the issuance of an OTS, because there is the potential of its adjudication and a resulting decision, an OTS must stay in place until that decision is issued, regardless of the time it takes for that decision to be issued. The law does not allow for that outcome. Additionally, there are monetary and criminal penalties prescribed for the mutilation or removal of a posted order in Cannabis Law §138-b(7)(d), and tolling of the order is not one of the remedies.

Therefore, to adopt OCM's position would require this tribunal to create a tolling mechanism that the Legislature and the Cannabis Control Board did not enact, thereby exceeding the authority of the Office of Administrative Hearings. The absence of such tolling language in Cannabis Law § 138-b(7) or 9 NYCRR § 133.25 strongly suggests that the Legislature intended the one-year timeframe to be a strict limitation, not subject to extension unless by final adjudication.

DECISION

In accordance with Cannabis Law § 138-b(7) and 9 NYCRR § 133.25, an OTS may remain in effect for no more than one year from the date of issuance, unless extended by a final adjudication or other provision of law.

The OTS hearing has not taken place in this matter prior to the expiration of the OTS by operation of law. Therefore, I find that the OTS has been vacated per the statutory time limit, and no hearing can take place on the OTS because the relief requested by Respondent, to vacate the OTS, has already been granted by operation of law.

WHEREFORE, PURSUANT TO CANNABIS LAW ART. 6 §138-b (5), THE ORDER TO SEAL, ISSUED ON JULY 25, 2024, IS HEREBY FOUND TO BE VACATED BY OPERATION OF LAW, ONE YEAR FROM THE DATE ON WHICH IT WAS POSTED.

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

Dated: July 29, 2025

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

This decision was sent via email on July 29, 2025, to the following:

Kevin Marek, Esq.

Masood Syed, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.