

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. - 110202406130014

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Respondent.

Respondent requested a hearing on April 10, 2025, for an inspection which occurred on June 13, 2024.

The hearing was scheduled and conducted on June 11, 2025.

The Respondent was represented at the hearing by Nadia Kahnauth and testified on his own behalf.

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

Investigator Raissa Lomba-Ajoku (hereinafter “Lomba-Ajoku”) 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 and Order to Cease Unlicensed Activity (jointly hereinafter “NOV”) 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 on June 13, 2024, on the sidewalk immediately in front of 711 Lydig Ave., Bronx, NY 10462.

The scope of the hearing involves a determination of whether OCM, by a preponderance of the evidence was justified in issuing to Respondent the NOV and what penalty, if any, under Article 6 § 132 is justified. OCM requested the maximum fine of \$10,000.

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....”

III. FINDINGS OF FACT

1. On June 13, 2024, OCM was present in the Bronx when Investigator Lomba-Aioku spotted a table which had been set up on the sidewalk outside 711 Lydig Ave. (Ex. A). The table had illicit product placed on it in a manner that suggested the product was being sold on the street to passing customers. Lomba-Aioku testified that she spotted the product and understood it to likely be illicit product based on her training and experience. There were numerous baskets below the table that could be (and eventually were) used to store the items when not on display (Ex. D1). These facts went unchallenged by the Respondent.

2. Respondent was issued an NOV on the grounds that he was illicitly selling cannabis products without an adult use license. Respondent requested a hearing on April 10, 2025, and the hearing proceeded on June 11, 2025.

3. OCM proved by a preponderance of the evidence that Respondent was selling cannabis products without an adult use license. His actions violated New York State Cannabis Law and OCM properly issued Respondent an NOV.

4. OCM has jurisdiction over an individual selling illicit product in violation of the New York State Cannabis Law. While a brick-and-mortar business may typically be the subject of an NOV, OCM is given the power to issue such notices to any “person” found in violation of the law.

5. An administrative hearing is a proper venue for a Respondent to challenge the actions of OCM as a violation of their rights under the United States Constitution. However, no violation was discovered in this matter.

IV. ANALYSIS AND CONCLUSIONS OF LAW

Lomba-Aioku testified as the sole witness for OCM. She stated that on the day in question, she witnessed Respondent standing behind the table and chatting with individuals on the street as they walked by. The interaction between Respondent and passing pedestrians looked to Lomba-Aioku, to be the act of a man attempting to draw in customers; however, she was unable to confirm the exact topic of these conversations. Respondent, during his testimony, stated that he was not behind the table and, was in fact, never behind the table except at the direction of OCM. Instead, he was merely a bystander on the street watching the actions of the law enforcement personnel present at the location. He stated that his involvement occurred when OCM representatives singled him out from those gathered on the street. In essence, Respondent’s testimony indicated that OCM selected him as a “patsy” and arbitrarily assigned him the ownership of the table and the illicit product. He further testified that he had nothing to do with the table and only began moving the product only after he was instructed by OCM representatives to do so. This testimony is contrary to the testimony of Lomba-Aioku who stated that she saw Respondent moving the product from the table to the baskets below the table prior to their interaction. She surmised that Respondent did this because he noticed her presence and apparent association with law enforcement on site. Lomba-Aioku further testified that it was after Respondent began to clear the table that she approached him and questioned his actions and his presence behind the table. He responded, according to Lomba-Aioku’s testimony, that the products were his and that he was selling the items. She asked if he had a license¹ and Respondent stated that he did not, but that “he needs to make money.” At this point, OCM officers asked Respondent to move the products back onto the table and they began inspecting them (Ex. D2-3). Confirming that the products were labeled as cannabis or otherwise suspected of containing cannabis, OCM seized the items and issued an NOV to Respondent.

¹ Lomba-Aioku testified at the hearing that she checked the OCM database and confirmed that no one matching Respondent’s name had an adult use license. Respondent made no assertion that he was legally operating a cannabis business with a valid license.

Based on the evidence and the testimony presented in this case, I have little difficulty concluding that Respondent was the individual responsible for the table and the products discovered in his possession on the date in question. I find Lomba-Aioku a highly credible witness. Her testimony was consistent throughout and her description of events of the day aligned with the evidence submitted. While there were some gaps in the narrative,² nearly all these gaps are related to events that happened prior to Lomba-Aioku spotting the Respondent standing behind the table. Further, Lomba-Aioku limited her testimony to those facts which she could state with certainty. There is no indication that she fabricated any facts or even embellished what she saw that day. OCM counsel asked her during direct examination to draw the conclusion that the receipts discovered on site belonged to the Respondent. This conclusion would have further supported OCM's case, and while it may have been tempting for Lomba-Aioku to support such conclusions as the inference logically flow, she declined to do so, being unable to positively connect the receipts to the Respondent. This careful parsing of facts further bolstered her credibility, and I believe that the critical statements which Lomba-Aioku testified Respondent made (that he owned the product, he was selling the product, and that he "needs to make money") are, therefore, accurate and are foundational in forming the seminal evidence to conclude that Respondent was selling cannabis products without a license.

While Respondent's testimony attempted to explain the events on the date in question, chiefly that OCM falsely identified him as the party responsible for the illicit product, his explanation simply did not convince me. His presence on the scene, his proximity to the table, and his testimony of being singled out from those gathered on the street require too many leaps of logic. While certainly his explanation – that he was far from his own neighborhood visiting friends when he spotted law enforcement and became curious, at which point he was selected by OCM from those gathered at the location and unfairly assigned blame – could be asserted as a possibility, a much more likely scenario is the one that Lomba-Aioku laid out in her testimony. Since OCM only has the burden of showing by a preponderance of the evidence that Respondent attempted to sell cannabis products without a license, I find that they have met their burden. The evidence submitted shows a number of illicit products (see Ex. D) and Lomba-Aioku testified that she saw the product laid out on the table in a manner consistent with displaying them for potential customers. She stated that she recognized the products as brands with which she was familiar, or which were labeled as cannabis products. Most of the products had a warning "logo" or "government warnings" that notifies the customer that the product contains cannabis (Ex. D2-7) Other products clearly stated that the product contained cannabis (Ex. D4-7). Further, her testimony concerning Respondent's statements that 1. the product was his, 2. he was selling the product, and 3. his reason for doing so was because he needed to make money, all went mostly unchallenged by Respondent. These statements alone likely surpass the threshold burden that OCM bears in this case. While I find that Respondent was, more likely than not, selling cannabis products without a license, before I make a formal decision or impose a penalty, I must address the legal issues raised by Respondent.

² Primarily, OCM's presence on the street and the reason for being at that location remains clouded; however, I do not believe that this is a result of obfuscation on the part of Lomba-Aioku or particularly pertinent to the determination in this case.

Proper Jurisdiction

Prior to the commencement of the hearing, Respondent's attorney asserted that OCM overreached when issuing an NOV to Respondent. Specifically, she argued that Respondent did not own a business and, therefore, could not be held accountable by OCM and issued an NOV. To support this assertion, she highlighted Cannabis Law Art. 6 §131. She places particular emphasis on the word "business" when citing this section. I do not, however, find this section particularly pertinent to her argument as it deals primarily with the local opt-out provisions of cannabis law. More relevant are §§125, 132, and 138-a, which all state that OCM has jurisdiction and may enforce the cannabis law against a "person" who is selling cannabis without the proper license. Even if Respondent's argument that a "business" must be the subject of any NOV, confining the term "business" to a brick-and-mortar establishment is much too limiting. Even a general definition of business focuses on the commercial or profit nature of an activity, not the location (BUSINESS, Black's Law Dictionary (12th ed. 2024)). Further, businesses in the modern economy may frequently operate out of a home, vehicle, or even on a street corner. The IRS uses money generating or the attempt to make an endeavor profitable as the basis for identifying a business (see generally IRS, *Here's how to tell the difference between a hobby and a business for tax purposes* (June 25, 2025, at 10:30 ET), <http://www.irs.gov/newsroom/heres-how-to-tell-the-difference-between-a-hobby-and-a-business-for-tax-purposes>). Respondent's words that "he needs to make money" seems to characterize his actions as a money-making endeavor and in line with a broad definition of the types of illicit operation the statutes are addressing (see generally NY Cannabis Law Art. 6). For these reasons, I find that Respondent's argument that OCM overreached its authority when issuing an NOV to Respondent fall short.

Constitutional Challenge

Respondent's attorney next argued that OCM violated Respondent's constitutional rights during their inspection. Specifically, she cited Respondent's fifth amendment rights and OCM's failure to "Mirandize" Respondent before questioning him. In response, OCM countered that an administrative hearing is not the proper venue to challenge a constitutional violation. I find it unnecessary to parse through the legal arguments in this case as, even if Respondent has the right to be heard on constitutional matters, I would find no violation.

Miranda memorializes constitutional rights to individuals during a criminal interrogation (*Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966)). The specific rights delineated in *Miranda*, concern an individual's Fifth Amendment rights against self-incrimination in a criminal matter. Here, Respondent is not facing criminal charges, but rather a civil fine. This fact severely undercuts Respondent's argument that Lomba-Aioku needed to Mirandize him before she began asking about his presence behind the table. Even if this were a criminal matter, the requirements of *Miranda* do not apply here as the statements made by Respondent do not appear to be in an interrogation setting.³ Whatever fifth amendment rights Respondent has in an administrative hearing do not require that he be advised of those rights in the formal manner outlined in *Miranda*. While arguments have been made that a formal recitation of an individual's *Miranda* Rights should extend to individuals facing other government investigations (e.g., Child Protection) (see, Anna Belle Newport, comment, *Civil Miranda Warnings: The Fight for Parents*

³ It is also questionable whether Respondent was ever placed in custody, also a factor when considering whether *Miranda* is applicable.

to Know Their Rights During a Child Protective Services Investigation, 54 Colum. Hum. Rts. L. Rev. (2023), no such requirement exists.

IV. DECISION

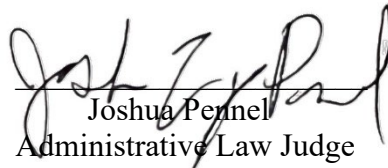
Finding no argument by Respondent that would impact my determination that Respondent was, by a preponderance of the evidence, selling cannabis without a license on June 13, 2024, I am now tasked with imposing a “proportionate” penalty (Cannabis Law Article 6 §132 (1)(c)). OCM requested that the maximum penalty of \$10,000 be imposed on Respondent. Respondent’s operation was small and the product he possessed, while not insignificant, does not rise to the level of product seen in cases where the maximum penalty was imposed (compare, *OCM v. Good Standing Boutique*, Inspection No. 118202410150091 (2024)). In total, it appears that Respondent had approximately two dozen items for purchase (Ex. B1 & D1).⁴ Further, Respondent made no attempt to hide his actions when questioned by OCM. However, his products seemingly violate both the packaging requirements that are designed so as not to entice children (causing them to believe that the product contains a food product) (see Ex. D4) and the potency guidelines that regulate the amount of THC that can be included in any given product (see Ex. D4). Therefore, while his products were limited and he made no attempt to conceal his actions, the violations of the packaging requirements and potency limitations, coupled with the fact that the products were not tested in New York and present a danger to the consumer, I find that a penalty less than that requested by OCM is warranted in this matter.

OCM showed by a preponderance of the evidence that the Respondent engaged in the sale of illicit cannabis or cannabis products without a license, registration, or permit to do so, at the location of the street near 711 Lydig Ave., Bronx, NY 10462. I find that Respondent did violate Cannabis Law Article 6. The Order to Cease Unlicensed Activity is hereby affirmed, and a \$2,500 penalty is assessed.

THE RESPONDENT IS HEREBY ORDERED TO PAY A \$2,500 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 29, 2025


Joshua Pennel
Administrative Law Judge

⁴ It is possible that more products were present, but the accounting and documentation in this case falls short. Lomba-Aioku testified that three vouchers were prepared for this case, but OCM only submitted one into evidence (Ex. B1). I will rely on that voucher and photographic evidence when determining the amount of product.

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 133.25(k). This decision was sent via email on July 29, 2025, to the following:

Nadia H. Kahnauth, Esq.

Kevin Marek, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.