

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. - 118202507010128**

**MIX SMOKESHOP, CORP**

Respondent.

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Respondent requested a hearing on July 3, 2025, for an inspection which occurred on July 1, 2025. Due to an error in the submission, the request did not qualify as an emergency hearing and proceeded as a non-emergency hearing on July 16, 2025.

The Respondent was represented by Mikael Cohn and he testified on his own behalf.

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

Investigator Zachary Roubelakis (hereinafter “Roubelakis”) 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 1890 South Road, Poughkeepsie, NY 12601.

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 July 1, 2025, OCM conducted an inspection of Mix Smokeshop, Corp. (hereinafter “Mix”) located at 1890 South Rd., Poughkeepsie, NY 12601 (Ex. A). At that time, an NOV was issued, and the premises were sealed (Ex. A). On July 3, 2025, Respondent requested a hearing, which was held on July 16, 2025.
2. The testimony and evidence support a finding that Respondent sold numerous product that contained THC-A. While Respondent argued that the statutes controlling the sales of cannabis and hemp products are confusing, this does not justify the extensive stock of illicit products maintained at the store.
3. Roubelakis testified that the premises to be sealed showed no signs that they were used in part or in total as a residence. He stated that the location did not contain a shower, bed, or kitchen appliances. The lack of home furnishings led Roubelakis to believe that the location was solely used as a business and not a residence. Respondent made no assertion to counter this testimony.
4. 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 Mix was significant and while a wide assortment of legal products was displayed, the illicit products sold constituted a sizable portion of the business. Hundreds of individual cannabis products were found on site likely constituting tens of thousands of dollars’ worth of merchandise (see, Ex. D, F, & G; Respondent Ex. 1).
5. The unlicensed activity being conducted at Mix 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. Further, OCM’s evidence showed by a preponderance of the evidence that Mix engaged in on-site processing.
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. Mix possessed a hemp license and OCM’s search was consistent with a regulatory inspection allowable under the statutes and regulations.

### **IV. ANALYSIS AND CONCLUSIONS OF LAW**

During the hearing, Roubelakis appeared as the sole witness for OCM. He testified that OCM’s inspection began with a controlled buy, resulting in the purchase of three canisters of

loose cannabis leaf (Ex. D9).<sup>1</sup> He testified that before going into the store, he searched OCM's database and discovered that while Mix had a hemp license it did not possess an adult use cannabis license. Upon arriving in the store, Roubelakis discovered many of the hallmarks of a store open for business. These included a point-of-sale system (Ex. B4-7), an electronic sign which read "open" on the front window (Ex. C1), and an ATM (Ex. B10). Additionally, the store contained a wide variety of products on display in a manner indicative of a business open to the public (Ex. C2-6). Some of the products on display at the store, Roubelakis testified, were items associated with cannabis and, while legal, are often seen by potential customers as being telltale signs of a shop trading in illicit cannabis. Rolling papers, glassware (pipes & bongs), lighters, and hookahs were all present, which Roubelakis reported were all related to cannabis consumption (Ex. C2-5 & F4). In addition to legal products being on display, Roubelakis found items which he suspected, according to his training, or which were readily labeled as products which contained cannabis.<sup>2</sup> Further, Roubelakis testified that a display on the cash register listed various strains of cannabis and that the strains listed corresponded with loose flower displayed on the display cabinets (compare Ex. B7 & D1-8). Finally, Roubelakis stated that he discovered multiple scales and other evidence that Mix engaged in processes on site (see Ex. B8-9 & D11).

Respondent rested his entire defense concerning the sale of cannabis on a lack of knowledge that THC-A constituted an illicit product under the New York Cannabis Law. No argument was made to dispute that Mix is a store owned by Respondent, that it is opened to the public, and that it sells products containing THC-A. Roubelakis testified that during the inspection, Respondent argued that THC-A is legal to sell and, alternatively, if it is not legal to sell, that he was unaware of the prohibition. Respondent provided the investigative team several printouts showing that the products in the store did not contain Delta-9 THC (Ex. E). The assertion in these printouts was bolstered by the testing reports Roubelakis matched with products seized from the store (Ex. H). Roubelakis testified that he did not think any of the products recovered from Mix contained Delta-9 THC to a degree sufficient that they would qualify as illicit.<sup>3</sup> Respondent submitted an invoice into evidence that listed many THC-A products, but did not appear to contain any Delta-9 THC products (Ex. 1). In total, what is likely hundreds of products were seized by OCM from Mix, all of which are illicit under New York State Cannabis law. While Respondent testified credibly that he did not understand that THC-A products were illicit in New York, he also did not present any real mitigation. It is quite possible that Respondent was ignorant of the statutes which qualify THC-A as an illicit THC product; however, this ignorance alone can provide him no relief. His testimony provided no evidence that he relied on expert opinion or even legal advice when selecting the products he wished to

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<sup>1</sup> Details of the controlled buy were not presented by OCM. It is unnecessary to discuss the circumstances surrounding the controlled buy as I find sufficient evidence that Mix was selling cannabis without the establishment of a controlled buy. Further, OCM submitted sufficient evidence that the illicit products found on site were displayed and no argument was made by respondent that OCM's presence or its search was invalid.

<sup>2</sup> Almost the entirety of the products discovered on site and purported by OCM to contain cannabis were items that contained Tetrahydrocannabinolic acid (hereinafter "THC-A"). While this is viewed under the law as being distinct from THC, it is still classified as an illicit product when sold without an adult use license (see Cannabis Law Art. 1, §3(53)). Roubelakis testified that all the products seized exceeded the "Total THC" threshold described in the law. The evidence supports such a conclusion.

<sup>3</sup> The evidence submitted may establish that certain products did, in fact contain Delta-9, (see Ex. F1), but due to Roubelakis' testimony and the fact that it is unnecessary to show Delt-9 products to establish the occurrence of an illicit trade, I will not make this determination.

order, stock, display, and sell. Instead, he testified that he consulted his son, an individual who seems to have no legal training or expertise in this field. I agree with Respondent's assertion that the regulations and even the statutes which govern cannabis are difficult to apply and potentially confusing; but a person who makes the choice to trade in hemp or products that contain some form of THC must ensure that their actions follow the law. This is especially true given the fact that THC is still a federal proscribed narcotic. The case at hand seems to provide an inverse situation, atypical in the trade of cannabis in New York where a product may be legal at the federal level is, nonetheless, illicit under New York law. While I do not think that Respondent intentionally violated the law, neither can I point to a definitive act that he took that might alleviate some of the responsibility. He bought products without an understanding of the law and did not seek out knowledgeable opinions, which would have, no doubt, advised him that THC-A qualifies as a cannabis product. The products seized were varied and of a high volume (see Ex. D, F, & G). These products were on display and many of them had price tags listing their sale price. Finally, Respondent admitted that he sold these THC-A products. These facts are sufficient to prove that illicit cannabis was being sold by Respondent.

Roubelakis testified that he saw no evidence that Mix was being used as a residence. He stated that he saw a couch in the office, but that he did not see a shower, bed, or any kitchen appliances. While Roubelakis stated that he did not conduct an extensive search of the location, he stated his supervisors did and that they made no note of any residential accoutrements. He stated that his supervisors have approval powers as it relates to the Order to Seal, and their approval supported the assertion that there was no residence use of this property. This lack of a thorough search by Roubelakis is problematic, but the testimony is sufficient to establish the fact that no part of the business was used as a residence by a preponderance of the evidence. Hearsay is allowable in an administrative hearing, making the statements of Roubelakis' supervisors, and their approval of the Order to Seal, admissible. Further, Roubelakis did observe a substantial portion of the store. Finally, Respondent made no assertion that the location was used as anything other than commercial purposes and listed an alternative address as his home address. OCM bears the entirety of the burden to show that the location was not used as a residence, and the totality of the facts show this by a preponderance of the evidence.

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 Mix was significant and constituted a sizable portion of the businesses total inventory. Hundreds of individual cannabis products were found on site (see, Ex. D, F, & G). While the amount of legal product on site was also significant (see Ex. C2-6), the volume and variety of illicit products were simply too great to be considered de minimis. Respondent produced a document that showed that more than \$5,000 of mostly illicit product had recently been purchase by Respondent and Roubelakis testified that he overheard Respondent talking on the phone stating that approximately \$30,000 worth of product was being seized by OCM. Mix had a large volume of illicit product and Respondent's inventory of these products was varied in its flavors, brands, forms, and strength. The NOV prepared by Roubelakis states that cannabis flower, concentrate, edibles, vapes, and pre-rolls were all recovered from the location (Ex. A). This assertion is supported by the evidence submitted. Further, many signs and symbols

associated with cannabis use were present on site. Advertisements, blow ups, decorations, signage, and other products, all legal, but they serve as indicators that illicit products may be found on site. Volume, variety, and signs and symbols are all factors in determining whether the illicit product being sold by Mix is more than de minimis. While Respondent make a valiant argument that the amount of legal inventory should substantiate a claim of de minimis, the amount of product present at Mix makes any argument that the products were a de minimis part of the business, fall short. While the evidence shows 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. I find that the evidence and testimony support a finding by a preponderance of the evidence that Mix's trade in cannabis was more than a de minimis part of its business.

The unlicensed activity being conducted at Mix 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 Mix appear to have been tested in New York (none possessed the necessary state stamp that proves that the product underwent the necessary testing) and the evidence shows that many or all the products were produced out of state, never undergoing New York State testing (see generally Ex. H & Respondent Ex. 1). While some products had a generic warning label indicating that the product contained cannabis (see, e.g., Ex. F1-2, 7, 9, & 11; G1-2, 6, 8, 11, 24), many of the products discovered on site had no safety warning (compare Id. & Ex. F & G). The products seized from Mix did not meet the necessary testing and labeling requirements of New York, failing to inform potential users of the dangers associated with cannabis products. Further, it is highly likely that Mix was processing cannabis on site by weighing and packaging loose flower discovered in the store (see Ex. B 9 & D11; see generally Ex. D). This alone qualifies as a safety hazard as it is unlikely that Mix followed the safety and health guidelines required of a processor and certainly did not undergo inspection that would confirm that safety and health guidelines were followed. The lack of testing, inappropriate labeling, and on-site processing makes Mix's actions a danger to the public health, safety, and welfare pursuant to Cannabis Law Article 6 §138-b(4)(g). In conclusion, I find that OCM showed by a preponderance of the evidence that Respondent was selling illicit products, that the amount sold/seized constituted more than a de minimis amount, and that the selling of these products constituted a threat to public health and safety.

As for the Notice of violation/Order to Cease Unlicensed Activity, the evidence presented by OCM against Mix 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, 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 Mix likely traded in such goods. Illicit items were discovered on site, many with corresponding price 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 Mix sold cannabis product and OCM was justified in issuing a Notice of Violation.

OCM requested that the maximum fine of \$10,000 be levied against Mix for the violations discovered on July 1, 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 Mix 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. F1-, 7, 9, 11 &G13-18). 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 due to the large concentration of THC. Finally, OCM showed that on-site processing was likely occurring, further posing a danger to the consumer. 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 Respondent personally (see Ex. A). A notice was also posted on the door of the store and Respondent requested a hearing via the instruction contained on the NOV. Respondent also appeared at the hearing, supporting a finding that he was properly and adequately served.

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. Respondent possessed a valid hemp license and OCM's search was in line with proper inspection of a licensee. Further, many, if not all, of the products discovered at Mix were on display in the display cases and on the shelving behind the counter. These products were readily viewable by any customer in the store and were in plain view of Roubelakis.

## 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 1890 South Road, Poughkeepsie, NY 12601. 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.

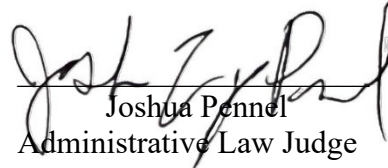
**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 1, 2025, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

**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 JULY 1, 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

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:

Mikael Cohn, Esq.

Abir Ahmed, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.