

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

**DECISION: RESPONDENT’S
MOTION TO DISMISS**

Inspection No. 104202409250063

Wicked Glass, LLC.

Respondent.

Respondent filed a motion to dismiss on July 30, 2025.

OCM answered Respondent’s motion August 12, 2025.

Respondent subsequently replied to OCM’s answer on August 16, 2025.

The Respondent is represented by Julia C. Evans of Harris, Esq., Beach, Murtha.

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

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

I. ISSUE

The issue is whether the OCM proceeding against Respondent on the amended Notice of Violation and Order to Cease Unlicensed Activity (hereinafter “amended NOV”) issued December 18, 2024, should be dismissed, namely, for defective service or improper amendment.

II. APPLICABLE LAW

9 NYCRR §133.18 Administrative Law Judge Hearings

(a) Appearances.

- (1) a respondent may appear in person or through representation by an attorney. The office may appear for a hearing by an attorney, by an employee of the Office of General Counsel under the general supervision of an attorney admitted to practice law in New York State, or by a law 38 student in accordance with a student practice order issued by the Office of Administrative Hearings. If a party appears through representation by an attorney, service of papers shall be made upon the attorney. It will be the party's responsibility to notify all other parties if there is a change in representation.

9 NYCRR § 133.13 Amendment of Pleadings Any party may amend or supplement a pleading at any time prior to the issuance of the administrative law judge's decision upon the approval of the administrative law judge, if there is no substantial prejudice to any party.

9 NYCRR § 133.14 Service of Papers All notices and papers connected with a hearing, other than the notice of hearing, may be served by electronic mail or regular first class mail, unless otherwise stated. Except where otherwise provided, service by regular first class mail shall be deemed complete five (5) calendar days after mailing.

9 NYCRR § 133.25 Actions Relating to Unlicensed Activities

(g) In the event that the office issues an order to seal with immediate effect:

- (1) The office will deliver any order to seal to the owner of the business or other person of suitable age and discretion in actual or apparent control of the premises at the time of the inspection and will post the order to seal at the building or premises that have been sealed, secured and closed. The order will remain in effect pending a hearing and final determination of the board, or until such order is vacated by the office. An order to seal will explicitly state the procedures to request an emergency hearing on the order to seal within seven (7) calendar days and the right to have the emergency hearing on the order to seal held within three (3) business days of a request.

III. FINDINGS OF FACT

1. On September 24, 2025, OCM conducted a regulatory inspection of Wicked Glass LLC at 3107 Delaware Ave, Suite 1, Kenmore, NY 14217. During that inspection, OCM also entered an adjacent storefront numbered 3109 Delaware Ave., Kenmore, NY 14217.

2. That same day, an Order to Seal (hereinafter "OTS") and NOV was issued for the business Wicked Glass LLC 3107 Delaware Ave, Suite 1, Kenmore, NY 14217.

3. On October 25, 2024, the parties appeared for the scheduled hearing. The hearing was adjourned and subsequently held on November 7, 2024.
4. On November 12, 2024, ALJ Paul Pearlman issued a decision upholding the OTS for 3107 Delaware Ave., Kenmore, NY 14217.
5. Respondent filed an appeal of ALJ Pearlman's decision on December 9, 2024.
6. On December 18, 2024, OCM issued an "amended" NOV and OTS, and emailed it to Respondent's attorney.
7. The December 18, 2024, OTS and NOV was issued not only to 3107 Delaware Ave., but also to 3109 Delaware Ave.
8. OCM employee Donna LaForest affirmed that on December 18, 2024, she mailed a copy of the amended NOV and OTS to the Respondent, Adam Cyphers at 850 Ohio Avenue, North Tonawanda, New York 14120.
9. On April 18, 2025, at a conference before me, OCM withdrew the NOV as to 3109 Delaware Ave.
10. On April 1, 2025, OCM issued a conditional withdrawal notice for the Order to Seal for 3107 Delaware Ave.
11. On April 16, 2025, OCM issued a conditional withdrawal notice for the Order to Seal for 3109 Delaware Ave.
12. On June 27, 2025, the CCB issued a decision on the appeal remanding the NOV and Order to Cease on the amended document to OAH.

IV. ANALYSIS AND CONCLUSIONS OF LAW

The service requirements proscribed in the OCM regulations for an NOV differ from those of an OTS. OCM intends to proceed on the amended NOV and Order to Cease. Thus, the only issue of service currently remaining before OAH is whether the amended NOV was properly served. Respondent argues that the original OTS and NOV were improperly served. Respondent further asserts that the amended NOV and OTS was also improperly served as Respondent's attorney did not agree to accept service, and Respondent did not receive the amended NOV in the mail. 9 NYCRR §133.18 dictates that if a Respondent has an attorney, service is to be made through that attorney. There is no indication in the motions or record, that Respondent's attorney affirmatively refused service, only that she did not affirmatively consent to accepting service. This provision makes counsel's acceptance of service on behalf of Respondent the default.

Respondent also argues that the amended NOV needed to be personally served on Respondent. However, the service regulations applicable to the NOV are derived from 9 NYCRR §133.14 not 9 NYCRR §133.25(g)(1). The NOV did not need to be served personally but was required to be sent by email or first-class mail, and in this case where Respondent was represented by counsel, it was necessary that it was served on counsel. Respondent additionally asserts service of the amended NOV was improper as it was not served at the time of the inspection. Requiring an amended NOV to be served at the time of inspection would negate any ability of a party to Amend. Amendment as of right, upon approval of the ALJ, is enshrined in 9 NYCRR § 133.13.

Lastly Respondent asserts that the amended NOV should be dismissed as Respondent had no authority to issue it. On this point, Respondent is correct as to the assertion, but not the remedy. OCM has yet to seek ALJ approval to Amend the Notice of Violation and Order to Cease Unlicensed Activity. Though Petitioner seeks to proceed on the amended NOV, permission to amend was never sought or granted. OCM has the ability to seek and obtain this approval up until the issuance of a decision on this matter, as long as there is not substantial prejudice to the Respondent. As such and given that the hearing on the NOV regarding 3107 Delaware Ave. has not yet commenced and a decision has not yet been issued, the matter is not ripe for dismissal. Currently, the only formal accusatory instrument before OAH is the original NOV and Order to Cease Unlicensed Activity regarding 3107 Delaware Ave.

V. DECISION AND ORDER

In accordance with OCM regulations, the amended NOV was not properly amended. As such, the NOV pending before OAH is the original NOV.

WHEREFORE, THE RESPONDENT'S REQUEST TO DISMISS IS DENIED. IT IS FURTHER ORDERED:

1. That OCM shall, within the same ten (10) day period, move for leave to amend the Notice of Violation pursuant to 9 NYCRR § 133.13, and such motion shall be accompanied by an explanation of the amendment and a statement addressing whether prejudice to Respondent would result.
2. That Respondent shall have the right to file a response to OCM's motion to amend within ten (10) days of service of the motion.
3. That the Administrative Law Judge will rule on the motion to amend upon full submission of the parties' papers, considering the requirements of 9 NYCRR § 133.13 and principles of due process.

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

Dated: September 15, 2025

Laurie J. 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 September 15, 2025, to the following:

Julia C. Evans Esq.

Anthony Pitnell, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.