

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-
Smokin Deals LLC.

DECISION
Inspection No. 109202509120033

Respondent.

Respondent requested an emergency hearing on September 16, 2025, which was made within seven (7) calendar days of the date of the inspection which occurred on September 12, 2025.

The emergency hearing was conducted on September 19, 2025, which is within three (3) business days of the Respondent's request.

Mark Overall, Esq., represented the Respondent, Smokin Deals LLC.

Anthony Pitnell, Esq. represented the Petitioner, the Office of Cannabis Management (hereinafter "OCM").

Investigative Specialist Daniel Gregory testified on behalf of OCM.

The Respondent-Owner, Khalil Naji, testified on behalf of the Respondent, Smokin Deals LLC.

I. ISSUE

The allegations set forth in the Notice of Violation 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 2415 Hyde Park Blvd, Niagara, New York 14305.

The scope of the emergency hearing was limited solely to the issue as to whether or not the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance of the evidence.

II. APPLICABLE LAW

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 § 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. Investigator Gregory testified that in the week leading up to the search of Smokin Deals, LLC, he personally, in conjunction with Niagara Falls Police Department, conducted several controlled buys using a Confidential Informant in addition to general premises surveillance. Based on the sales to this informant, a regulatory inspection and search warrant execution was performed at the premises.

2. Investigator Gregory testified that he is an Investigator with OCM. He explained that he received both in office and field training, since being employed by OCM. That instruction included a 6-week general law enforcement training. It also included training in the field and

online on how to determine different products are cannabis, if stores are licensed, and what legal and illicit products were likely to be found at different businesses. He stated that illicit products can generally be identified by logos or images that are not in compliance with New York State law and regulations or that are from out of state.

3. During the hearing Petitioner attempted to enter a search warrant purported to have been issued by the City Court of Niagara Falls, marked for identification as Exhibit A. Respondent objected to this entry given that the name of the issuing Judge was not found on the document, nor was the signature decipherable. The warrant was not authenticatable by Investigator Gregory. Both the proffered document and the document originally seen by Investigator Gregory were copies. They did not contain a court seal, nor had Investigator Gregory ever viewed a copy with a seal. Though I am not bound by the rules of evidence in this proceeding, the reliability and ability to deem a document what it purports to be is always relevant for ensuring due process. To that end and given the fact that the document was missing the signing Judge's name and seal, I admitted the warrant only as to the Investigator's state of mind during the investigation. (See CPLR 4540).

4. Investigator Gregory testified that prior to, and during the regulatory inspection of the Respondent's store he observed an individual by the name of Saeed Kassem on the premises. He explained that based on his discussions with the Confidential Informant, he believed Mr. Kassem was selling cannabis products from the location. On the date of the inspection, a search was conducted of the premises, as well as Mr. Kassem's backpack and vehicle where alleged cannabis products were recovered.

5. During the hearing Respondent's attorney offered to stipulate to the fact that, "all of the items found in Saeed Kassem's backpack and vehicle were cannabis products that were not in compliance with New York State regulations." At that juncture Petitioner only intended to introduce the remaining testimony regarding the presence of illicit cannabis in 4 photographs, D30-33. As such the stipulation was made for those photographs. It is relevant, however, that Respondent does not contest the presence or nature of the products retrieved from Saeed Kassem's backpack and vehicle.

6. Respondent testified that though Mr. Kassem was not an official employee, he allowed Mr. Kassem to run the store while he was in Egypt for one month. Mr. Kassem was also regularly in the store and assisted when Mr. Naji was not there. Respondent stated that he did not give Mr. Kassem permission to sell cannabis from the store.

7. Investigator Gregory confirmed that Respondent did not have a New York State license to sell adult use cannabis.

IV. ANALYSIS AND OPINION

I find that cannabis products were being offered for sale at Smokin Deals LLC. based on four key facts raised during the hearing: Respondent allowed Mr. Kassem to operate the store when he was abroad and away day to day, a notebook was recovered from beside the register containing a list of cannabis related transactions, a confidential informant was sold cannabis at

the location within the week preceding the inspection, and Mr. Kassem made statements about the cannabis present at the premises to Investigator Gregory. The law explicitly states that Orders to Seal may be issued to, “the building or premises of any business engaged in unlicensed activity, when such activity is conducted, maintained, or permitted in such building or premises...” This does not require the business owner to have personal knowledge of the sales, nor does it require the sales be in the course and scope of the employee’s work at the business. In this case, I find that Mr. Naji knew or should have known that Mr. Kassem was regularly selling illicit cannabis from his business. As a business owner it was his responsibility to supervise the conduct of any individual running his business, particularly on so regular a basis. Additionally, I credit Investigator Gregory’s testimony regarding his conversation with Mr. Kassem. He stated that Mr. Kassem told him he was an employee of the store, and that Mr. Naji directed Mr. Kassem to keep any surplus cannabis products in his vehicle. Furthermore, Exhibit F shows many transactions, in cash and by card, for items such as pre-rolls, Treeze brand and Switch products which are seen in C10. It suspends belief that Respondent saw these transactions and did not inquire about the nature of the transactions recorded on these pages. Investigator Gregory also testified that he recovered the following types of cannabis products from Mr. Kassem’s backpack inside of the premises: pre-rolls, disposable vapes, edibles, live resin diamond infused disposable vapes, pre-packaged flower, and liquid live diamond vapes. Investigator Gregory testified that he recovered the following cannabis products from Mr. Kassem’s vehicle: pre-packaged cannabis flower, a variety of edibles, pre-rolls, liquid diamond and live resin disposable vapes, and live resin diamond disposable vapes. Respondent did not contest that the products recovered from Mr. Kassem’s vehicle and backpack were cannabis products that were not in compliance with New York Regulations, and thus illicit. Investigator Gregory also testified that the products observed in Exhibits C and D were illicit cannabis products that were not legal to be sold in New York. For each unlawful product featured in Exhibits C and D, Investigator Gregory explained how he knew the product was a cannabis product based on his experience and training.

OCM has also proven that the premises in this case was not being used as a residence. Investigator Gregory testified that the premises was not a residence. He did not observe a kitchen, shower, or dresser and that the premises was of a commercial nature. Additionally, though he did observe a mattress at the location, Investigator Gregory testified that Mr. Kassem stated no one was living on the premises.

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. One of the factors in analyzing if the activity was more than de minimis, includes determining if signs and symbols advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises, were present. Exhibit E2 and E7 contained signs and symbols in the form of a poster stating “Be The Weed” featuring a man gesturing at cannabis flower, and a Naked Worm brand sticker. Investigator Gregory stated that Naked Worm is a common THC product brand.

Another of the relevant factors in determining if unlicensed activity is more than de minimis, is whether a large volume or variety of illicit cannabis products was found on the

premises during the inspection. On September 12, 2025, Investigator Gregory observed a large volume and variety on site in Mr. Kassem's backpack and car. Both locations contained some of the same products such as: a Boutiq Switch Liquid Live Diamonds vape (Exhibits D16 and C10), Honey Palm Disposable vapes (Exhibits D6 and C7), Treezy Live Resin Diamond Infused disposable vapes (Exhibits D6 and C10,) Cherry Ranger Cannabis Flower (Exhibits D4 and C4), Get Lit Premium Cannabis Pre-Rolls (Exhibits C3 and D4) and Kush King Live Resin Diamond disposable vapes (Exhibits D12, and C13). This indicates that as Mr. Kassem said, extra inventory was being stored in Mr. Kassem's vehicle. Investigator Gregory also observed products in Mr. Kassem's vehicle that were not present inside his backpack, namely: Death Bar edibles in multiple flavors, various edibles knocking off well known candy and snack foods such as Twix and Nerds (Exhibit D7), Bone Head Liquid Diamonds and Live Resin disposable vapes (Exhibit D9), and Fryd Extracts Liquid Diamonds and Live Resin vapes. (Exhibit D14). Some of these products came in multiple flavors or strains, and the general number of items, brands and types of cannabis product indicate a wide variety and volume of product.

Lastly, the unlicensed activity occurring at Smokin Deals LLC, 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. Respondent's attorney conceded that the products in Mr. Kassem's possession were not in compliance with New York State Regulations. Investigator Gregory testified regarding each of the products found in Mr. Kassem's vehicle and backpack, explaining how they were not tested or inspected by New York State, nor did they contain labels stating as such. According to Investigator Gregory, many of the products contained California cannabis warning labels, which do not comport with New York Cannabis Law and regulations. Such labels can be seen in Exhibits: C4, C5, C7, C10, C13, D9, D13, D15, and C18. Other products contained no warning label, or an ambiguous or non-specific cannabis warning label, such as: C9, D20, D22, D24, D26, D28, D31, and D32.


V. DECISION

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON SEPTEMBER 12, 2025, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

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

Please be advised that either party may appeal this decision within 30 calendar days of receipt, according to the specific manner described in

Dated: September 25, 2025


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 25, 2025, to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Anthony Pitnell, Esq.
Mark Overall, Esq.