

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. 104202406130017

STONEDHENG SMOKE-N-GROW INC.

Respondent.

Respondent filed a motion to dismiss on July 21, 2025.

OCM answered Respondent's motion on August 13, 2025.

Respondent subsequently replied to OCM's answer on August 19, 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 Notice of Violation and Order to Cease Unlicensed Activity (hereinafter "amended NOV") issued June 13, 2024, should be dismissed, namely, for violations of the Respondent's 4th Amendment rights and failure to test or properly identify cannabinoid hemp products before labeling them as illicit.

II. APPLICABLE LAW

Cannabis Law Article 6 §125(1) provides that: “No 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 within the state without obtaining the appropriate registration, license, or permit therefore required by this chapter unless otherwise authorized by 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(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 and their place of business, including a vehicle used for such business;”

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)(a) provides that “where such person has been ordered to cease such conduct pursuant to subdivision one of section one hundred thirty-eight-a of this chapter, such person may be assessed a civil penalty of no more than twenty thousand dollars per day for each day during which such violation continues after receiving such order in addition to the additional civil penalties set forth above...”

Cannabis Law Article 1 §3 (3) defines "Cannabinoid hemp" as any hemp and any product processed or derived from hemp, that is used for human consumption provided that

when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

Cannabis Law Article 1 §3 (27) defines "Hemp" as the plant *Cannabis sativa* L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section.

III. FINDINGS OF FACT

1. On June 13, 2024, OCM conducted a regulatory inspection of Stonedhenge Smoke-N-Grow, located at 7271 State Fair Boulevard, Baldwinsville, New York 130217.
2. According to Respondent-Owner, he received a call from the store manager when OCM agents arrived at the store, and he himself arrived shortly thereafter.
3. Respondent-Owner stated that approximately fifteen agents searched public and non-public areas, as well as his person, without a warrant.
4. Respondent-Owner attests that he presented his hemp retail license and attempted to show OCM personnel his documentation regarding the products being seized, but they refused to look at it.
5. OCM personnel subsequently issued an Order to Seal (OTS) and Notice of Violation and Order to Cease Unlicensed Activity (NOV) to Respondent.
6. Respondent requested a hearing on the same day the regulatory inspection was conducted.
7. On June 18, 2024, an emergency hearing on the OTS was held.
8. On June 25, 2024, I issued a decision vacating the OTS for failure to submit sufficient proof regarding the volume and variety of the product seized from Respondent's store.
9. OCM subsequently appealed.
10. On September 9, 2025, The Cannabis Control Board issued a decision dismissing the appeal as moot.

IV. ANALYSIS AND CONCLUSIONS OF LAW

The Respondent states that OCM's actions violated their 4th Amendment rights, citing *Finn's Liquor Shop, Inc. V. State Liquor Auth.*, 24 N.Y.2d 647 (1969) and *Super Smoke N Save LLC, et al. v. NYS Cannabis Control Board, et al.*, and therefore moves for a dismissal of the action. The penalty for obtaining evidence based on a violation of the 4th Amendment is not dismissal of the action, but application of the exclusionary rule. "In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generated through its deterrent effect, rather than a personal constitutional right of the party aggrieved." (*People v. Young*, 55 N.Y.2d 419, 425, 434 N.E.2d 1068, 1071 (1982) citing *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613, 620, 38 L.Ed.2d 561). Therefore, the Respondent's motion for a relief of dismissal cannot be granted based on the alleged violation.

The Respondent also argues that this action should be dismissed for failure to test the products which were seized and labeled as illicit.

A motion to dismiss is not the appropriate forum to litigate whether individual-seized products are or are not cannabis. 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 a license is subject to a civil penalty. The law doesn't restrict penalties simply to products that are in fact cannabis but includes any product that is labeled or marketed as such. Whether or not the products seized from Respondent's store comport with Cannabis Law Article 6 §132(1)(a) is an issue for trial, not a motion to dismiss. Therefore, the Respondent's motion to dismiss the action cannot be sustained.

V. DECISION AND ORDER

The reasons alleged in Respondent's motion are not grounds for granting a dismissal of the action.

WHEREFORE, THE RESPONDENT'S REQUEST TO DISMISS THE ACTION IS DENIED.

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

Dated: September 24, 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 24, 2025, to the following:

Julia C. Evans Esq.

Anthony Pitnell, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.