STATE OF NEW YORK
CANNABIS CONTROL BOARD

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IN THE MATTER OF
WICKED GLASS LLC,

APPELLANT-RESPONDENT,

-against-

NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT,

APPELLEE-PETITIONER.

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DECISION ON APPEAL

INSPECTION NO.: 104 2024 0925 0063

On October 9, 2025, Appellant-Respondent Wicked Glass LLC ("Appellant") filed a Memorandum of Law in Support of a Motion to Appeal with the Cannabis Control Board ("CCB") pursuant to New York State Cannabis Law ("Cannabis Law") sections 10 and 17 and Title 9 of the Codes, Rules, and Regulations of the State of New York ("NYCRR") section 133.25 subdivision k. Appellant appeals from a decision and order of the Office of Administrative Hearings ("OAH"), dated September 15, 2025, wherein the presiding Administrative Law Judge ("ALJ") denied Appellant's motion to dismiss an amended Notice of Violation ("NOV") issued by Appellee-Petitioner New York State Office of Cannabis Management ("OCM").

Appellant requests the ALJ issue an Order (a) granting the appeal and vacatur of the decision and (b) granting any such other and further relief as is deemed just and proper.

STATUTORY BACKGROUND

Appellee OCM ("Appellee") is authorized to conduct, without notice, site visits and inspections, of any person, any premises, or place of business cultivating, processing, distributing, selling, or offering for sale cannabis, cannabis product, cannabinoid hemp or cannabinoid hemp extract product, or any product marketed or labeled as such in this state, or engaging in an indirect retail sale, without obtaining the appropriate registration, license, or permit. *(Cannabis Law § 11 [3]; 9 NYCRR § 133.25 [a])*. Unlicensed activity includes "any activity, within the authority of the office or the board to regulate, for which a person should have obtained a license, registration, or permit issued by the office or board, but failed to do the same. *(9 NYCRR § 133.1[i])*.

In response to a violation of the Cannabis Law and related regulations, Appellee is authorized to take enforcement action and impose sanctions, including but not limited to, issuing a notice of violation ("NOV"), seeking civil penalties, seizure of product, and a stop order to cease

unlicensed activity ("cease order"). *(Cannabis Law §§ 132; 138-a; 9 NYCRR § 133.25 [b])*. Appellant is further authorized to issue an immediate sealing order ("OTS") for the building or premises of any business engaged in unlicensed activity upon a finding of an imminent threat to public health, safety, and welfare. *(Cannabis Law § 138-b (1); 9 NYCRR § 133.25[f])*. An OTS must explicitly state the procedure to request an emergency hearing on the sealing order within seven days. *(Cannabis Law § 138-b [2]; 9 NYCRR § 133.25 [g][1])*.

A party may request, or OCM initiate, an administrative proceeding to enforce a cease order and to order a financial penalty be assessed for the violation and such proceeding will be subject to Articles 3 and 4 of the State Administrative Procedure Act ("SAPA") and Title 9 NYCRR sections 133.10(e), 133.11, 133.12(a) and (c), 133.13-133.14, 133.15(a) and (c), 133.16-133.21. *(9 NYCRR §§ 133.25 [i]; 133.10 [a])*. The OAH, through the service of ALJs, shall conduct all adjudicatory proceedings which devolve upon the CCB by requirement of statute. *(9 NYCRR § 133.16)*. An ALJ shall have all the power and authority of presiding officers or hearing officers as defined by the SAPA other pertinent statutes, and regulations. *(Id.)*. The ALJ is responsible for scheduling and conducting all administrative hearings pursuant to the Cannabis Law and related regulations. *(9 NYCRR § 133.17 [a])*. The ALJ is also responsible for reviewing the statement of charges and all motions filed under pursuant to Part 133 of Title 9 NYCRR, as well as issuing decisions on motions and after hearings. *(9 NYCRR §§ 133.17 [a]; 133.21 [a]; 133.25 [i])*. Appellee is permitted to amend the NOV prior to the issuance of a decision on the underlying matter baring substantial prejudice to the respondent. *(9 NYCRR § 133.13)*. An ALJ's decision shall include their findings of facts, legal conclusions, and a penalty. *(9 NYCRR §§ 133.21; 133.25 [i][2])*.

Pursuant to Title 9 NYCRR section 133.25, actions relating to unlicensed activities, any of the parties may appeal the ALJ's decision within thirty (30) calendar days from the date a copy of the decision is received. *(9 NYCRR §133.25 [k])*. Such an appeal shall be made by filing with the CCB, and serving the other party(ies), a written memorandum of law stating the arguments, identifying that part of the ALJ's decision and order to which objection is made, specifically designating the portions of the record relied upon, and stating the grounds for exceptions." *(Id.)*. Upon the filing of an appeal, the CCB shall, based solely on the record on appeal, either confirm the decision in writing, make a written, superseding decision including a statement as to why they have not confirmed the ALJ's decision, or remand the matter for additional proceedings. *(Id.)*.

PROCEDURAL BACKGROUND

Regulatory Inspection

Appellant conducts business as Wicked Glass LLC. The address of Appellant's business is 3107 Delaware Avenue, STE 1, Kenmore, N.Y., 14217 ("3107 Delaware Ave"). On September 25, 2024, Appellee, along with members of the New York State Department of Taxation and Finance ("DTF"), conducted a regulatory inspection, No. 104 2024 0716 0034, of Appellant's business pursuant to Cannabis Law § 138-a and 9 NYCRR § 133.25(a). Based on observations made during the inspection, Appellee issued a NOV alleging unlicensed cannabis sales in violation of Cannabis Law sections 125 and 132. Appellee also issued a cease order, pursuant to Cannabis Law section 138-a subdivision 1 and section 133.25 subdivision c of Title 9 NYCRR, and an immediate OTS pursuant to Cannabis Law section 138-b subdivision 3. On October 3, 2024, Appellant submitted a verified statement of ownership and requested an emergency hearing.

Administrative Proceedings

A hearing on the sealing order was held on October 25, 2024, and was continued on November 7, 2024. On November 12, 2024, the presiding ALJ issued a decision and order extending the OTS for one year from the date of the decision. On December 9, 2024, Appellant submitted an appeal, pursuant to 9 NYCRR section 133.25 subdivision k, requesting the CCB vacate the ALJ's decision and order, the NOV, cease order and the OTS and dismiss the action.

On the same date as submitting the appeal, December 9, 2024, Appellant through counsel, sent a letter to the ALJ and to Appellee asserting that at the time of the inspection Appellee had Appellee sealed not only 3107 Delaware Ave., but also sealed the neighboring premises, 3109 Delaware, Avenue, Kenmore, NY, 14217 ("3109 Delaware Ave"). Appellant requested the immediate reopening of 3109 Delaware Avenue. On or about December 18, 2024, Appellee amended the NOV, cease order, and OTS to include the additional address of 3109 Delaware Avenue. Subsequently, on January 9, 2025, Appellant filed a motion to dismiss the amended NOV. In their motion, Appellant requested the dismissal of the amended NOV, cease order, and the OTS, an order granting the immediate reopening of 3109 Delaware Avenue, and any such other relief deemed just and proper.

On April 1, 2025, Appellee issued a Conditional Notice of Withdrawal of the Order to Seal ("conditional withdrawal notice") for 3107 Delaware Avenue. On April 16, 2025, Appellee issued a conditional withdrawal notice for 3109 Delaware Avenue. The conditional withdrawal

notices were with respect to the OTS and included language that the NOV and cease order were unaffected and remained in full effect.

On June 27, 2025, the CCB issued a decision dismissing Appellant's first appeal as moot with respect to the OTS and remanded the matter to the OAH for further proceedings on the NOV. The CCB determined that the relief sought, was not part of the record and thus not properly before the board. The emergency hearing was solely on the OTS. The merits of the NOV and cease order were not part of the hearing and thus not part of the ALJ's decision to which the Appellant had appealed. *(9 NYCRR § 133.25 [h][4])*. Accordingly, the matter was remanded for additional proceedings on the underlying violation in accordance with the Cannabis Law and regulations.

On July 30, 2025, Appellant filed a second motion to dismiss the NOV and cease order. Appellee filed a response in opposition on August 12, 2025. Respondent replied to OCM's answer on August 16, 2025.

ALJ's Decision on Appellant's Motion to Dismiss

On September 15, 2025, OAH, issued a decision on Appellant's motion to dismiss. The ALJ determined that Appellee's amendment to the NOV and cease order in December 2024 was not in accordance with the regulations. Specifically, the ALJ determined that because Appellee had not sought permission or leave to amend the NOV, it was not properly amended and thus the original NOV and cease order were pending adjudication. However, the ALJ found dismissal of the matter was not the appropriate remedy. The ALJ reasoned that Appellee has the ability to amend an NOV up until the issuance of a final decision on the matter, as long as there is no prejudice to Appellant. As such, the ALJ denied Appellant's motion to dismiss and further ordered that Appellee shall have ten (10) days to move for leave to amend the NOV pursuant to 9 NYCRR section 133.13 and shall include a statement in support of the motion. The ALJ further ordered Appellant ten (10) days to respond to Appellee's motion seeking leave to amend and that the ALJ would rule upon full submission of the parties' papers. The ALJ's decision concluded with stating either party could "appeal t[he] 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)."[1]

[1] While this language was included in the decision and order it appears to have been incorrectly cited. Title 9 NYCRR section 133.23, determination of the board, does not contain a subdivision 'g'. Additionally, the plain language of 9 NYCRR section 133.25 subdivision k contemplates the submission of an appeal to the CCB after a hearing has been concluded and

Arguments on Appeal

On October 9, 2025, Appellant submitted the instant appeal, pursuant to Title 9 NYCRR section 133.25 subdivision k, challenging the ALJ's September 15, 2025, decision denying Appellant's motion to dismiss. In the appeal, Appellant raises exceptions as to (i) whether Cannabis Law 138-b (2) or 9 NYCRR 133.14 prevail as it pertains to service of a NOV; (ii) whether the service of the amended NOV upon Appellant was proper pursuant to such rule; and (iii) whether OCM has the right to seek leave to amend the initial NOV at this time. Appellant included an affirmation from the business owner, Adam Cyphers, dated January 6, 2025, as a reference for a "full restatement of material facts."

On November 4, 2025, Appellee filed a response in opposition. Appellee argues that the motion for appeal should be denied because service was effectuated and already decided upon in the November 12, 2024, decision issued after emergency hearing was held on the sealing order issued against Appellant's business. Appellee also argues that even if service did not strictly comport with the related statute and regulations, dismissal would not be proper. On November 10, 2025, Appellant filed a memorandum of law in further reply of Appellant's motion to appeal.

A hearing has not yet been held on the merits of the underlying violation and the statement of the charges, under any accusatory instrument, the "initial NOV" or the "amended NOV."

QUESTION PRESENTED

Whether there is a direct right of appeal from a non-final ruling made by the presiding Administrative Law Judge prior to the conclusion of the administrative proceeding and the issuance of a final determination on the merits of the underlying matter?

ANALYSIS AND REASONING

Following a review of the record on appeal, the appeal is dismissed, without prejudice, and the matter remanded to the OAH for further proceedings.

The decision to which Appellant appeals is a non-final determination and thus the matter is not ripe for review by the CCB. The NOV has not been adjudicated, and no decision has been issued on the merits. For a challenge to an administrative action to be ripe, the administrative

a decision has been issued by the ALJ. "The record on appeal shall consist of the evidentiary exhibits from and transcript of the hearing, and the memorandums of appeal, opposition, and cross-appeal." (9 NYCRR § 133.25 [k]).

action sought to be reviewed must be final, and the anticipated harm caused by the action must be direct and immediate. *(Boyajian v. Vill. of Ardsley, Zoning Bd. of Appeals, 210 A.D.3d 1079, 1081 [2nd Dept. 2022]; Schaefer v. Legislature of Rockland Cnty., 112 A.D.3d 642, 643, [2nd Dept. 2013]; Matter of Essex County v. Zagata, 91 N.Y.2d 447, 452–453 [1998]).* An administrative determination becomes "final and binding" when two requirements are met: completeness (finality) of the determination and exhaustion of administrative remedies. *(Walton v. New York State Dep't of Corr. Servs., 8 N.Y.3d 186, 194 [2007]; Meyer v. Nassau Cnty. Police Dep't, 235 A.D.3d 641, 642 [2nd Dept. 2025]; Boyajian, 210 A.D.3d at 1081*). "First, the agency must have reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party." (*Meyer, 235 A.D.3d at 642).* Where the anticipated harm is remote or contingent, the controversy is not ripe. *(Schaefer, 112 A.D.3d at 643).* Where there has not been a final determination, the challenge is premature, and it is appropriate to dismiss the petition. (M*eyer, 235 A.D.3d at 642).*

Here, Appellant's appeal is premature because the ALJ's decision was a non-final determination. The decision was issued with respect to Appellant's motion to dismiss the amended NOV. The decision was not a definitive position on the ultimate issue and noted there were additional administrative proceedings forthcoming. Indeed, the ALJ's decision explicitly ordered additional administrative action setting forth a motion schedule for the parties to submit memorandums of law regarding the ability of Appellee to amend the NOV. The ALJ further noted an additional or subsequent ruling would be forthcoming upon receipt of the parties' papers. Thus, the ALJ's decision did not remove a legal issue from the case and there remained additional litigation pending. *(see Bonczar v. American Multi-Cinema, Inc., 38 N.Y.3d 1023 [2022][2]; Outdoor Amusement Bus. Ass'n v. State Tax Comm'n of the State of New York, 55 N.Y.2d 954 [1982][3]; Matter of*

[2] In *Bonczar v. American Multi-Cinema, Inc., 38 N.Y.3d 1023 (2022),* the Court of Appeals addressed whether a non-final order "necessarily affects" a final judgment noting that a non-final order "necessarily affects" the final judgment when reversal of said non-final order "would inescapably have led to a vacatur of the judgment." (*Bonczar, at 1025*). The Court of Appeals clarified that a determination of whether a non-final order necessarily affected the final judgment can be determined by evaluating "whether the nonfinal order "necessarily removed [a] legal issue from the case" so that "there was no further opportunity during the litigation to raise the question decided by the prior non-final order*" (Id. at 1026, citing Siegmund Strauss, Inc. v. East 149th Realty Corp., 20 N.Y.3d 37 [2012]).*

[3] Motion for leave to appeal, dismissed upon the ground that the order sought to be appealed from did not finally determine the action within the meaning of the Constitution, and a separate appeal does not lie from the nonfinal order citing *Matter of Aho, 39 N.Y.2d at 248*.

Aho, 39 N.Y.2d 241 [1976]). Also dispositive to the decision in this matter is that the relief requested by Appellant, dismissal of the NOV and cease order, is not a proper remedy, as stated by the ALJ in the decision denying Appellant's motion to dismiss. While Appellee may not have properly amended the NOV, the ALJ correctly noted that, upon leave being granted, Appellee is permitted to amend the NOV prior to the issuance of a decision on the underlying matter baring substantial prejudice to the respondent and *(9 NYCRR § 133.13; see also, Mandelstam v. McDonald, 229 A.D.3d 912 [3rd Dept. 2024][4])*. In fact, the decision to which Appellant appeals explicitly stated that the matter was not ripe for dismissal as there had been no hearing or final decision issued. *(see 9 NYCRR § 133.17 [e][2])*. Consequently, there was no immediate harm or injury to the Appellant. In fact, any potential injury could be prevented or significantly ameliorated by further administrative action or by steps available to the Appellant during the remaining proceedings. These factors demonstrate the lack of finality with the determination Appellant appeals from.

Appellant improperly seeks review of the ALJ's decision on the motion pursuant to subdivision k of section 133.25 of Title 9 NYCRR and does not cite to any other authority as the basis for review. There is no authority in the Cannabis Law or the regulations authorizing the CCB to review intermediate or non-final determinations. The CCB is a non-judicial administrative appeal body and as such is confined to the procedures and powers prescribed in the statutes and regulations by which it derives its authority. Article 2 section 10 of the Cannabis Law, powers and duties of the CCB, authorizes the CCB to issue a final determination when an administrative decision is appealed. *(Cannabis Law § 10 [18])*. Pursuant to Cannabis Law section 17, formal hearings; notice and procedure, whenever a NOV or order has been served, the respondent shall be provided an opportunity to request a hearing pursuant to the procedures established by OCM and in accordance with SAPA. *(Cannabis Law § 17 [3])*. Following a hearing, parties shall have thirty days to submit a written appeal to the CCB. *(Cannabis Law § 17 [8])*.

In the absence of a decision <u>following</u> a hearing with the OAH on the ultimate issue, an action is not ripe for review by the CCB by way of a direct right to appeal. *(see, Cannabis Law §§ 17 [3], [8]; 9 NYCRR § 133.25 [i] [2]; [k]; see also SAPA §§ 301 [3] and 307 [1]; Bonczar v. American Multi-Cinema, supra; Outdoor Amusement Bus. Ass'n v. State Tax Comm'n of the State of New York, supra;*

[4] Court held that the requirements of due process [in administrative cases] are not as exacting ... as in criminal cases and the governing rule allows an amendment "at any time prior to the submission of the hearing officer's report," provided there is "no substantial prejudice" to the accused.

Matter of Aho, supra). It is the responsibility of the ALJ to review the statement of charges and to issue decisions on motions and after hearings that shall include findings of facts and legal conclusions. *(9 NYCRR §§ 133.17[a]; 133.21[a]; SAPA § 307 [1]).* Thereafter, the CCB shall be responsible for issuing determinations if an exception to the ALJ's decision has been taken. *(9 NYCRR § 133.23 [a]).* Thus, the plain language of the Cannabis Law and related regulations, contemplate a process whereby a hearing is held and a final decision issued before an administrative appeal is submitted to the CCB.

Deviating from a process requiring a final decision before an appeal would be a misapplication of the law that would undermine the role of the OAH and the presiding ALJs in conducting all adjudicatory proceedings which devolve upon the CCB by requirement of statute. *(9 NYCRR § 133.16).* Permitting review by way of an appeal to the CCB for every ruling made in during administrative proceedings by the presiding ALJ would significantly delay the ability to reach final determinations. Additionally, not requiring a final determination after a hearing would limit the development of a full record. The development of a full record and preservation of issues are essential steps for parties seeking an appeal and for a meaningful review. (*see Sabine v. State, 43 N.Y.3d 1015, 1017 [2024]).*

With respect to the factual arguments raised by Appellant, including whether service was properly effectuated, those remain factual issues pending adjudication by the OAH and are thus not properly raised at this time. The ability to prevent or significantly ameliorate the anticipated harm remains available to Appellant through the continued administrative proceedings. Appellant will have further opportunity to renew their objections(s) on the record with the ALJ thereby developing a full record while preserving for review the issues raised.

CONCLUSION

Based on the foregoing, Appellant's appeal is dismissed, without prejudice, and the matter remanded to the OAH forthwith for further proceedings. This constitutes the final decision and order of the Board.

DATED: December 18, 2025