

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. - 132202512030005

BROCKPORT CONVENIENCE CORP.,

Respondent.

Respondent requested a hearing on December 7, 2025, for an inspection which occurred on December 3, 2025. The hearing was held on December 29, 2025.

The Respondent, Waleed Harbi represented himself and testified on his own behalf.

The Office of Cannabis Management was represented by Abir Ahmed, Esq.

Investigator Nyiesha Francis (hereinafter “Francis”) testified on behalf of OCM.

Joshua Pennel, Esq. Administrative Law Judge (the Presiding Judge)

I. ISSUE

The allegation in the NOV indicates that the Respondent was offering cannabis and hemp products, as defined by Cannabis Law, for sale without an appropriate registration, license, or permit. This allegation was based upon observations made during a regulatory inspection which was conducted at 4756 Lake Rd., Brockport, NY 14420.

The scope of the hearing involves the determination of whether OCM, by a preponderance of the evidence, was justified in issuing to Respondent the NOV and what penalty, if any, is justified. OCM requested no specific penalty.

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 §132(2) states that [a]ny registered organization or licensee, who has received notification of a registration or license suspension pursuant to the provisions of this chapter, who sells cannabis, cannabis products, medical cannabis or cannabinoid hemp or hemp extract during the suspension period, shall be subject to prosecution as provided in article two hundred twenty-two of the penal law, and upon conviction thereof under this section may be subject to a civil penalty of not more than five thousand dollars.

Cannabis Law Article 5 §107 states that “the failure to comply with a requirement of this article, or a regulation thereunder, may be punishable by a civil penalty of not more than one thousand dollars for a first violation[.]”

Cannabis Law Article 5 §109 prohibits “the retail sale of cannabinoid hemp ... unless the retailer is licensed under this article.”

III. FINDINGS OF FACT

1. On December 3, 2025, OCM conducted an inspection of Brockport Convenience Inc. (hereinafter “Brockport Convenience”) located at 4756 Lake Road, Brockport, NY (Ex. A). At that time, OCM issued the NOV (Ex. A). On December 7, 2025, Respondent requested a hearing, which was held on December 29, 2025.

2. Brockport Convenience did not possess an adult-use cannabis license or a license to sell hemp products. OCM did establish that Brockport Convenience was openly selling hemp

products, but it failed to meet its burden to show that Brockport Convenience was selling cannabis products in violation of Can Law Art. 6 §125.

3. Although Investigator Francis testified credibly, her testimony as to the sale of cannabis products relied on double-hearsay and left open too many questions as to the circumstances surrounding the purported sale. Her testimony relied on the conveyance of facts she received from a fellow investigator, who, in turn, relied on the statements of Jalal Hussein (hereinafter “Hussein”) (Ex. B). The testimony failed to provide sufficient details and denied Respondent an opportunity to properly question the events.

4. Although some evidence of processing was introduced, I do not find that packaging alone is sufficient to establish this fact. Although packaging is a likely component in processing, the inability of OCM to show other, more pertinent accessories of processing falls short of the preponderance of the evidence standard. While Respondent’s claim that the business sold packaging in bulk may be, as OCM suggested, “not credible,” it is OCM that bears the burden of proving that Respondent was engaging in illicit transactions.

5. The hemp cigarettes recovered from Brockport Convenience constitute a violation and are subject to penalties pursuant to Cannabis Law Art. 5 § 107.

6. Although Respondent made no argument concerning service, I find that OCM properly effectuated service of the NOV.

IV. ANALYSIS AND CONCLUSIONS OF LAW

OCM presented sufficient evidence to show that Respondent's store was open at the date and time of the inspection. It had a neon “OPEN” sign illuminating its window and its doors were open (Ex. B-1). The store possessed the telltale signs of a publicly facing business including a point-of-sale system, ATM, and products on display with price tags (Ex. B-2-4 & C-10-11). Francis testified at the hearing that she entered Brockport Convenience after another investigator with OCM told her that Hussein, who was currently staffing the store, offered to sell a packet of cannabis. The packet in question consisted of approximately 3.5 grams of cannabis flower and was the total amount of cannabis product recovered from the store (Ex. C-1-2). Hussein claimed that he was not a “regular,” “full-time” employee when questioned by Francis. He stated that he was only filling in for the regular employee, Ali Al Farini (hereinafter “Al Farini”). Respondent supported this assertion through his testimony by stating that Al Farini was not present on the date of the inspection because he was “visiting his family.” Respondent stated “he did not know [Hussein] very well,” because it was Al Farini who hired and trained Hussein. Francis’ inspection uncovered no further illicit cannabis, although she did discover and document three cartons of hemp cigarettes – with an estimated 600 cigarettes in total (Ex. C-10-11). In addition to the small amount of cannabis and the hemp cigarettes, Francis also testified that Respondent possessed and had on display an array of empty and unused cannabis packages (Ex. C-3-9). These packages varied in appearance, but all generally advertised that they contained cannabis products. Respondent testified that these empty packages were sold to customers and never contained illicit product while in the store.

Although not entered into evidence, other cannabis products, in addition to the 3.5-gram packet of cannabis flower, were listed on the NOV. When questioned as to the other products, Francis stated that they did not factor into her issuance of the NOV. Francis testified that all of the additional products were discovered on Hussein's person and one is left to conclude that this exclusion was prompted by the fact that the other items were discovered on Hussein's person and neither displayed nor secreted in Respondent's store. Francis also stated, however, that the packet of cannabis flower was not displayed in the store but rather was "pulled ... out of [Hussein's] pocket" when the OCM investigator asked him for cannabis. OCM argues that the cannabis flower be attributed to Respondent due to Hussein's action of selling the product to an OCM investigator, but I do not believe that this is sufficient to assign that product to Respondent. Respondent correctly highlighted during his testimony that the design adorning the package of 3.5 grams of loose flower is visually different than any of the packets displayed in the store (compare C-1-2 & 33-9). One would expect that if the packet purportedly offered for sale by Hussein were processed "in house" that the packet would match one of the designs featured on the empty packets displayed. It did not. Further, the only evidence presented that Hussein offered to sell the packet of flower to an OCM investigator is the testimony of Francis, who was not a witness to the transaction. Although hearsay is allowed as evidence at an administrative hearing, Francis' testimony is hearsay based on hearsay. Her testimony relayed the conversation she had with her fellow investigator who, in turn, relayed the conversation he had with Hussein. This uncorroborated "double hearsay" is insufficient to substantiate the claim that Respondent was selling cannabis. Francis' testimony left open questions as to exactly what was said and the circumstances surrounding the purported sale. Respondent was, therefore, denied the necessary opportunity to challenge the facts, limited as they were. Finally, OCM did not propose a valid rationale for why the packet of flower was attributed to Brockport Convenience while the other products discovered on Hussein were not. This seems to present an internal lack of logical consistency from OCM which they never clarified. If Hussein's possession of the "other products" connoted his ownership over those products, than his possession of the packet of flower should result in the same conclusion. If this is true, then he was likely acting as an independent "bad actor" when selling the packet to the investigator.

OCM next argued that the presence of the empty packets displayed in Brockport Convenience demonstrates that Respondent was actively processing cannabis. They claim that processing is, per se, sufficient to establish that a store is selling cannabis. I do not disagree with this assertion and have, in prior instances, found processing sufficient to establish a party's intent to sell illicit cannabis. However, I do not believe that OCM has substantiated its claim that Brockport Convenience was processing cannabis in its store. While the packets are certainly suspicious and Respondent's claim that the store sold the packets in bulk to customers may not hold up under strict scrutiny, neither does OCM present any other evidence of processing. The accoutrements typically demonstrating processing are all absent from the evidence. There are no scales, trays, grinders, or other items that aid in the act of processing. Further, there is no cannabis (other than the 3.5 grams packet) found on site. The presence of empty packets is insufficient to establish that Respondent was processing illicit cannabis, therefore, there is insufficient evidence that Respondent was actively selling cannabis at Brockport Convenience.

Although OCM failed to meet its burden as to whether Brockport Convenience was selling cannabis, OCM did document the hemp cigarettes on site (Ex. C 10-11). Respondent conceded that he displayed these for sale. I find by a preponderance of the evidence that these

cartons of cigarettes constitute the total amount of products being sold at Brockport Convenience without the proper license.¹

V. PENALTY

Typically, when determining a penalty related to an NOV, Can. Law Art. 6 §132 controls. This is because in most instances, the contraband documented in the NOV constitutes a cannabis product. A violation of Cannabis Law Article 6, under either §125 or §138-A for the sale of cannabis, provides that a penalty may be assigned under §132. But while §125 defines illicit product as “any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product” (emphasis added), §132 allows only for penalties concerning “cannabis, cannabis products, medical cannabis, or any product marketed or labeled as such.” While hemp is mentioned in §132, it is limited solely to a business whose hemp license has been suspended, yet it continues to sell hemp products (see Can. Law Art. 6 §132(2)). This is not applicable to the current case. Therefore, an entity is not subject to a penalty under §132 for hemp sales.

This is not to say that the sale of hemp without the necessary license is legal (see Can. Law Art. 5 §109) or that no penalty can be assessed for the illicit sale of hemp, but it is Article 5 of the Cannabis Law, not Article 6, which outlines the penalties associated with this type of non-licensed sale. Cannabis Law Art. 5 §107 penalizes non-compliance with the Cannabis Law with a fine of up to \$1,000 for a first violation. This would include selling hemp products without a license (Can. Law Art. 5 §109).² This is further delineated by NYCRR 114.17(b), which discusses violations of Art. 5 and their potential penalties. Therefore, a violation, such as that found in this case, may be penalized under these provisions. Because the statute allows a penalty “up to” \$1,000 but provides no further guidance as to how to determine the appropriate penalty, it would seem to require a proportional penalty based on the circumstances of the illicit conduct, similarly to the analysis required under Cannabis Law Art. 6 §132.

Respondent admitted during his testimony that he knowingly displayed the hemp cigarettes for sale. Although he qualified this statement, highlighting that the cartons had been on display for most the time he had owned the business, and that he had never sold any to a customer, he did not dispute his ownership of the products. OCM, however, provided no evidence of an actual sale. If these products were cannabis products, this would not present an issue, as Art. 6 §132 allows for a penalty if there is an “offer to sell.” Article 5, however, has no such language. Under §109, an entity is prohibited from “retail sales” of hemp. Respondent testified that he had not sold the hemp cigarettes, that they were displayed “since he opened the business,” but that he “can’t get rid of them” or “sell them,” suggesting that they are not a product desired by the consumer. His testimony is credible, and it is probable that no sales of this product occurred. However, the definition contained in Can. Law Art. 1 defines “retail sales” as an act “to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell” (Can. Law Art. 1 §3(46)) (emphasis added). Under this definition, not that contained in

¹Respondent did not challenge service. The NOV was given to a person of suitable age who was holding themselves out as an employee of the store. The notice and NOV were posted on the door of the store, which Respondent was aware of, 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.

² I will note that §107 is cited on the NOV and the Respondent, therefore, had sufficient notice that a penalty under that statute is possible.

Can. Law Art. 6, I find that a display alone satisfies the prohibitions of §109. Due, however, to the relatively small amount of hemp discovered on site and Respondent's testimony, only a minimal fine is called for.

Respondent raised one additional matter during the hearing. He stated that, among his reasons for requesting a hearing was his motivation to have the sticker removed from his business, which he testified was harming his business and causing customers to stop shopping at the store. Removal of the sticker posted by OCM (Ex. B-5) without proper authorization risks a penalty according to the language of the NOV, and Respondent requested this authorization. While I do not find specific language which grants me the authority to grant his request, Cannabis Law Art. 2 §17(8) allows for a formal hearing to "make appropriate determinations and issue a final order in accordance therewith." Under this language, I believe I am granted the power to grant his request if warranted.

I find that the warning affixed to Brockport Convenience displays inappropriate and false statements. The warning specifically states that illicit cannabis was seized from the store. This is untrue as determined by this decision. Nowhere on the warning does it mention illicit hemp sales. Further, the warning discusses a the "threat to public health," associated with illicit cannabis, which I conclude could cause some customers to bypass Respondent's store and harm his business.


DECISION

OCM showed by a preponderance of the evidence that the Respondent engaged in the sale of hemp products without a license, registration, or permit to do so, at the location of 4756 Lake Rd., Brockport, NY 14420. I find that Respondent violated Cannabis Law Article 5. The Order to Cease Unlicensed Activity is hereby affirmed, and a penalty of **\$100** is assessed. Further, Respondent is authorized to remove the warning affixed to Brockport Convenience with the following conditions: 1. This authorization commences 30 calendar days after the date of the decision's issuance. 2. If OCM appeals this decision within the statutorily allotted timeframe under 9 NYCRR §§ 133.23(g)(5) and 133.25(k), the authorization is stayed until such time as a final determination is made. 3. Failure to comply with these conditions may subject Respondent to penalties as delineated in the NOV and under cannabis law.

WHEREFORE, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$100 FINE UNDER CANNABIS LAW ARTICLE 5 §107 FOR VIOLATIONS UNDER ARTICLE 5 §109, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT HEMP ON DECEMBER 3, 2025. FURTHER, RESPONDENT IS AUTHORIZED TO REMOVE THE WARNING STICKER AFFIXED TO BROCKPORT CONVENIENCE IN ACCORDANCE WITH THE CONDITIONS OUTLINED ABOVE.

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

Dated: January 12, 2026



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 January 12, 2026, to the following:

Abir Ahmed, Esq.

Waleed Harbi

Nickolas Perry

Sheila Wagner

Celena Ditchav, Esq.