

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. - 205202405220003

34 CONVENIENCE STORE CORP.

Respondent.

The hearing was scheduled for January 15, 2025, at 10:00 am.

34 Convenience Store Corp. (hereinafter “Respondent”) did not appear, nor was Respondent represented at the hearing.

Kevin Marek, Esq., represented the Office of Cannabis Management (hereinafter “OCM”).

Lisa Warner, Investigative Specialist II (hereinafter “Inv. Warner”) testified on behalf of OCM.

John F. Udochi, Esq. Administrative Law Judge (the Presiding Judge)

I. ISSUE

The allegations set forth in the Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal (hereinafter “NOV”) asserts that Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. These allegations are based upon observations made during an inspection which was conducted at Respondent’s retail premises on 34 3rd Ave, New York, NY 10003.

The issues presented for determination are (1) liability on the NOV and (2) penalty to the extent authorized by law. Therefore, the scope of the hearing involves determination whether OCM, by a preponderance of the evidence, was justified in issuing Respondent the NOV and what penalty under Article 6 § 132 is justified. OCM requested the maximum fine of Ten Thousand Dollars (\$10,000).

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 § 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
- (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. This matter concerns the NOV issued by OCM against Respondent, relating to activity at the retail premises known in the record as “34 Convenience Store Corp.”
2. On May 22, 2024, OCM Enforcement conducted an inspection of Respondent’s retail business premises at 34 3rd Ave., New York NY 10011 and issued a NOV dated May 22, 2024. The procedural history showed that a hearing was requested on August 5, 2025, and a preliminary conference took place on August 21, 2025. A second hearing request was made on November 25, 2025, and a hearing was scheduled for January 15, 2026.
3. The hearing was convened as a default inquest pursuant to the Cannabis Law, 9 NYCRR Part 133, and the State Administrative Procedure Act. Before receiving evidence, OCM was required to establish jurisdiction through competent proof of service and proof of default.
4. An affidavit of service dated January 12, 2026 was sworn to by OCM employee, Alicia Pasos, Legal Assistant II, deposing to the fact that on November 25, 2025, she served the NOV, the Notice of Conference/Hearing, the Respondent Response Form, and the Notice of Language Access and Administrative Hearing Rights to Respondent at the service address of 34 3rd Ave., New York NY 10003 (see, Ex. A1, A3 – A10).
5. Alicia Pasos further deposed that service was sent by certified mail, (return receipt requested) and by service through the New York State Department of State (hereinafter “DOS”) to Respondent at the service address of 34 3rd Ave., New York NY 10003 (see, Ex. A5).
6. A copy of OCM’s outgoing certified-mail process, bearing a USPS Certified Mail envelope with tracking number 7017 0190 0001 1707 4810, sent to Respondent’s address on file with DOS was provided at the hearing (see, Ex. A5). DOS is the registered agent for Respondent.
7. A copy of the DOS Receipt for Service of Process served on Respondent at 34 3rd Ave., New York, NY 10003 on November 25, 2025, as noted on the receipt was provided at the hearing (see, Ex. A4).
8. Respondent was properly served, no response was received, and no appearance or answer was filed. Respondent defaulted and OCM proceeded by inquest. Respondent’s default does not relieve OCM of its burden to prove violations and penalty authority by a preponderance of the evidence, and that default operates only as a waiver of Respondent’s right to contest the evidence.
9. OCM presented one witness, Inv. Warner, who testified under oath. Inv. Warner testified she is an Investigative Specialist II with OCM, supervises other investigative staff, and has received training and continuing education in identifying cannabis and hemp-derived products, labeling, and out-of-state packaging, and has participated in well over one hundred and fifty (150) regulatory inspections.

10. Inv. Warner testified that she conducted an inspection of Respondent’s premises on May 22, 2024, during business hours. She testified that the New York State Police and New York State Department of Taxation and Finance (hereinafter “Department of Taxation and Finance”) investigators were present for the inspection.

11. The NOV (see, Ex. A1) was completed by Inv. Warner. She identified her handwriting, signature, and badge number and testified the NOV is a fair and accurate record made in the ordinary course of OCM’s enforcement activity during the inspection.

12. The NOV and supporting documentation, includes a photograph of a New York State identification card for an employee present during the inspection (identified in the exhibit as “Ali A. S. Ezah”), (see, Ex. A2).

13. Inv. Warner testified that, during the inspection, she observed products and equipment consistent with retail sales, including a point-of-sale/credit card processing system (see, Ex. C2). Inv. Warner also testified that she checked licensing records and determined Respondent did not possess an adult-use cannabis license, and that Respondent did possess a New York State hemp license.

14. Inv. Warner testified that she observed products including THC-A flower, Delta-8 concentrates, and hemp products such as hemp cigarettes and hemp pre-rolls.

15. OCM presented evidence of vouchers/receipts from the Enforcement Division prepared in the ordinary course of business, which Inv. Warner testified were prepared during the inspection and accurately reflected the seized items. Inv. Warner testified that the vouchers list the entirety of the products seized in the receipts as follows:

- THC/THC-A flower (listed as “7 THC flower” in the exhibit summary),
- Hemp pre-rolls (listed as “19 hemp flower pre roll cigarettes”),
- Hemp edible gummies (listed as “2 hemp edible gummies”), and
- Delta-8 concentrates (listed as “6 Delta 8 concentrates”). (See, Ex. B1 – B2).

16. Interior photographs were taken by Inv. Warner during the inspection. She testified they are true and accurate depictions of the retail space and include store display areas, a point-of-sale system, and cannabis related imagery (including a statue and a green display item featuring a cannabis leaf), which she interpreted as a marketing and advertising tool or symbol indicative of cannabis sales (see, Ex C1 – C4).

17. OCM presented close-up product photographs and screenshots of certificates of analysis (described in the record as “Marin Analytics” certificates). Inv. Warner testified that the photographs were taken by her during the inspection and the certificates were obtained by her and that they are both accurate depictions of what they entail (see, Ex D1 – D5).

18. Inv. Warner testified that certain products identified were not permissible for sale under Respondent’s hemp license because they were synthetic cannabinoids. Specifically, Inv. Warner testified that the HHC pre-rolls and Delta-8 vape pens were not permissible for sale under Respondent’s hemp license.

19. Inv. Warner testified that the products labeled or represented as THC-A flower were illicit under the hemp framework because the total THC reflected in the certificates of analysis exceeded the regulated threshold. She testified that, after scanning QR codes and reviewing the certificates of analysis, she observed total THC figures including 23.10% and 26.2%, while the permissible level she referenced was 0.3% during her testimony (see, Ex. D4 - D5).

20. Inv. Warner testified that the cannabis-qualifying products were offered for sale based on their display within the retail premises and the presence of retail sales infrastructure. She testified and clarified that not all seized products were cannabis. She confirmed that some items were hemp products while others were THC/THC-A flower and Delta-8 products.

21. Inv. Warner testified that the NOV's "more than *de minimis*" box was not checked because the seized items did not meet the "*de minimis*" threshold for closure and/or sealing in the enforcement activity conducted at Respondent's retail premises. She concluded that OCM did not padlock or seal the store on that basis.

22. Exterior photographs were taken by Inv. Warner during the inspection, showing the front entrance and signage ("SMOKE ZO..." and "COLDSODA"). Inv. Warner testified that the NOV was served on a person of suitable age and discretion in actual or apparent control of the premises and that the NOV was posted at the premises (see, Ex E1 – E2).

IV. ANALYSIS AND CONCLUSIONS OF LAW

Jurisdiction and Default

OCM has subject matter jurisdiction over this enforcement proceeding under the Cannabis Law and 9 NYCRR Part 133.

Service is a jurisdictional prerequisite. In this matter, OCM introduced into evidence the operative NOV, together with an affidavit of service, USPS certified-mail material, and a DOS receipt for service dated November 25, 2025. The affidavit of service attests that OCM served Respondent with the NOV, Notice of Conference/Hearing, Respondent Response Form, and Notice of Language Access and Administrative Hearing Rights (see, Ex. A1, A3 – A10).

The DOS receipt constitutes competent proof that the NOV and accompanying documents were served through Respondent's registered agent for service of process. OCM further represented, and the Office of Administrative Hearings' docket reflected that no answer, response, or hearing request was filed within the response period stated on the Official Notice of Conference/Hearing (see, Ex. A6 – A10).

Therefore, on this record, I conclude that proper service was effected.

The record establishes that Respondent failed to answer, request a hearing, or appear after service, and that the time to respond expired. Respondent is therefore in default.

Accordingly, I find that Respondent was properly served, that the time to respond expired, and that no appearance or answer was filed. Respondent is therefore in default, and OCM was permitted to proceed by inquest (see, Ex. A1, A3 – A10).

A default does not establish liability. It waives only Respondent's right to contest the evidence. OCM must still prove, by a preponderance of the evidence, (i) the statutory violations

alleged and (ii) penalty authority and proportionality. The matter therefore properly proceeded as a default inquest.

Scope of the Inquest

Respondent's default does not relieve OCM of its burden of proof. Therefore, the scope of the inquest involves a determination whether OCM, by a preponderance of the evidence, was justified in issuing Respondent the NOV and what penalty under Article 6 § 132 is justified.

The Inquest

Cannabis Law § 125(1) prohibits a person from cultivating, processing, distributing for sale, selling at retail, or delivering to consumers cannabis, cannabis products, cannabinoid hemp, hemp extract products, or products marketed or labeled as such, without the appropriate registration, license, or permit required by law.

The inquest establishes that OCM conducted an inspection on May 22, 2024, during business hours at Respondent's retail premises and documented products and retail infrastructure consistent with consumer sales. The NOV and corroborating photographs show a retail environment with a point-of-sale system and product displays.

Inv. Warner credibly testified in a clear and consistent manner that based on her training, experience, and review of licensing records, Respondent lacked an adult-use cannabis license, although Respondent held a hemp license. The existence of a hemp license does not authorize the retail sale of cannabis-qualifying products or other products prohibited for hemp licensees.

Inv. Warner's testimony in addition to the documentary evidence submitted by OCM establishes that OCM seized items identified on the vouchers as THC/THC-A flower and Delta-8 concentrates, in addition to hemp products (see, Ex. C3 – C4 and D1 – D5).

Inv. Warner further testified that products observed and seized during the inspection included HHC pre-rolls and Delta-8 vape pens, which she identified as synthetic cannabinoids not permitted for sale by hemp licensees, and that the THC-A flower products exceeded the regulated THC threshold based on certificates of analysis obtained and reviewed by her (see, Ex. B1 – B2 and D1 – D5).

Cannabis Law §§ 3(4) and 3(5) broadly define cannabis and cannabis products to include all cannabis plant material and any product containing cannabis intended for consumption. In contrast, cannabinoid hemp is narrowly limited to products containing no more than 0.3 percent delta-9 THC and otherwise compliant with law. Products exceeding that threshold, or containing synthetic or chemically modified cannabinoids, are not lawful hemp. Accordingly, products marketed or labeled as THC-A flower, where ordinary use converts THC-A to delta-9 THC above statutory limits, as well as products containing Delta-8 THC, HHC, or other synthetic cannabinoids, are properly classified as cannabis or cannabis products. The sale of such products without an adult-use cannabis license constitutes unlicensed cannabis activity in violation of Cannabis Law § 125(1) and is subject to civil penalties under § 132.

Therefore, on this record, I find that Respondent offered for sale, in a retail setting open to the public, products that qualified as cannabis or were otherwise prohibited synthetic cannabinoid products not authorized by Respondent's licensing status. The evidence presented on the record supports the conclusion that Respondent engaged in unlawful retail activity within the scope of Cannabis Law § 125(1).

OCM has enforcement authority under Cannabis Law § 138-a to order cessation of prohibited conduct and to seize prohibited products found in the possession of a person engaged in such conduct. NOV's cease-and-seize enforcement is consistent with that authority.

Accordingly, I conclude that civil penalties are authorized and should be imposed, consistent with proportionality. Cannabis Law § 132(1)(a) authorizes civil penalties up to Ten Thousand Dollars (\$10,000) for unlicensed activity involving cannabis, cannabis products and products marketed or labeled as such. Any penalty imposed must be proportionate to the violation. Cannabis Law § 132(1)(c).

V. PENALTY

Civil penalties are authorized where a person sells cannabis, cannabis products, cannabinoid hemp or hemp extract products, or any product marketed or labeled as such, without the required registration, license, or permit. Cannabis Law § 132(1)(a). Any civil penalty must account for the nature of the violation and be proportionate. Cannabis Law § 132(1)(c). Although Respondent is in default, OCM retains the burden to prove both penalty authority and a justification for the amount imposed based on the record.

The inquest record established that Respondent lacked an adult-use cannabis license, though Respondent held a hemp license. The record also established a retail operation opened during business hours with point-of-sale equipment and product display infrastructure. Products were offered for sale to the public. The evidence further established multiple categories of seized products, including THC/THC-A flower and Delta-8 concentrates. This evidence is corroborated by the presence of products identified as unlawful synthetic cannabinoid items (HHC pre-rolls; Delta-8 vape pens) and cannabis-qualifying flower exceeding the regulated THC threshold as confirmed by Inv. Warner's sworn testimony and the certificate of analysis. The presence of multiple unlawful product types supports a penalty that reflects more than an isolated or inadvertent lapse.

Therefore, Respondent's violation is substantiated by the unlawful items documented on the record. It is also shown by the limited number of items listed and seized that include THC/THC-A flower and Delta-8 (see, Ex. B1-B2). Further, not negating the fact that the certificate of analysis showed that certain products exceeded the regulated THC threshold and that certain synthetic cannabinoid products were not permissible for sale under a hemp license, Inv. Warner testified credibly on the record, that not all seized items were cannabis. This testimony informs the proportionality of penalty imposed in this matter.

However, notwithstanding the foregoing, there was imminent risk to public health and safety based on Respondent's unlicensed and prohibited activities. Offering cannabis-qualifying products and prohibited synthetic cannabinoid products for sale outside the adult-use licensing framework implicates the consumer-protection purposes of the Cannabis Law. It also violates regulated testing, labeling, and lawful distribution controls. Consequently, the record supports the conclusion that these risks justify a meaningful deterrent penalty considering the unlawful product categories proven.

Accordingly, after evaluating the evidence and considering:

- (i) The evidence supporting the retail setting and offer-for-sale proof,
- (ii) The unlawful product categories established by the vouchers, photographs, and certificate of analysis, submitted on the record and

(iii) The limited number of the seized items on the seizure list that also includes hemp items, and that this matter proceeded as an NOV issue adjudication only, I find that a civil penalty below the statutory maximum best reflects proportionality under Cannabis Law § 132(1)(c). A civil penalty of Seven Thousand Dollars (\$7,000.00) is lawful, supported by this inquest record, and proportionate to the violations proven.

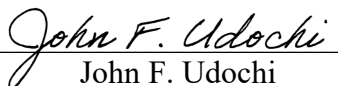
VI. DECISION

NOW, THEREFORE, it is hereby:

1. **ORDERED**, that Respondent is **ADJUDGED IN DEFAULT**, having been properly served and having failed to answer, request a hearing, or appear; and it is further
2. **DETERMINED**, that OCM has proven by a preponderance of the evidence that Respondent violated Cannabis Law § 125(1) by engaging in unlicensed activity involving cannabis, cannabis products and/or products marketed or labeled as such. This was established through the inquest testimony and OCM documents submitted in evidence (see, Ex. A – E); and it is further
3. **ORDERED**, that Respondent shall pay a civil penalty in the amount of **Seven Thousand Dollars (\$7,000.00)** pursuant to Cannabis Law § 132(1)(a), imposed in a manner proportionate to the violation under Cannabis Law § 132(1)(c); and it is further
4. **ORDERED**, that the record of this inquest reflects that the retail premises was not sealed in connection with the operative NOV adjudicated here, and no sealing relief is continued or imposed by this decision.

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

Dated: February 3, 2026


John F. Udochi
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 the Regulations at 9 NYCRR §§ 133.23(g)(5) and 133.25(k).

This decision was sent via email on February 3, 2026, to the following:

Kevin Marek, Esq.
Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.

This decision was sent via certified mail on February 3, 2026, to the following:

34 Convenience Store Corporation
34 3rd Ave
New York, NY 10003