STATE OF NEW YORK
CANNABIS CONTROL BOARD

----------X

IN THE MATTER OF
STONEDHENGE SMOKE-N-GROW INC.,
APPELLANT-RESPONDENT,

-against-

NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT,
APPELLEE-PETITIONER.

----------X

DECISION ON APPEAL

INSPECTION NO.: 104 2024 0613 0017

On October 9, 2025, Appellant-Respondent Stonedhenge Smoke-N-Grow Inc. ("Appellant") filed a Memorandum of Law in Support of a Motion to Appeal with the Cannabis Control Board ("CCB") pursuant to 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 24, 2025, wherein the presiding Administrative Law Judge ("ALJ") denied Appellant's motion to dismiss the Notice of Violation ("NOV") and Order to Cease Unlicensed Activity ("cease order") issued by Appellee-Petitioner New York State Office of Cannabis Management ("OCM").

Appellant requests the CCB issue an Order (a) granting the appeal and vacatur of the ALJ's September 24, 2025, decision, (b) granting dismissal of the NOV and cease order, and (c) any such further relief deemed just and proper.

STATUTORY BACKGROUND

Cannabis is defined as all parts of the plant of the genus Cannabis, whether growing or not, including its seeds, resin, and any derivative, mixture, or extract. *(Cannabis Law § 3 [5])*. The cannabis plant produces 100 different natural cannabinoids. The most common cannabinoids in the cannabis plant are tetrahydrocannabinol ("THC"), the principal psychoactive compound in cannabis, and cannabidiol ("CBD"). CBD is one of the naturally occurring phytocannabinoids found in hemp and in all cannabis plant strains. While hemp is the same genus and species of the Cannabis plant as adult-use or medical cannabis, it contains lower levels of delta-9 THC, the psychoactive compound. The Cannabis Law defines hemp as the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 THC concentration of not more than three-tenths of a percent (0.3%) on a dry weight basis. *(Cannabis Law § 3 [27])*.

Cannabis Law § 125 states that "[n]o person[1] 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[2] or hemp extract product, or any product marketed or labeled as such, within the state without first obtaining the appropriate registration, license or permit" that is required under the law. Cannabis products, or adult-use cannabis products, means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer. *(Cannabis Law § 3 [9]).*

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

---

[1] Under the Cannabis Law, "person" is broadly defined as "an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity." *(Cannabis Law § 3 [40-a]).*

2 Cannabinoid hemp products include "any hemp, or 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 (0.3%) delta-9 THC." *(Cannabis Law, §§ 3 [3] and 90 [2]).*

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])*. 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 Stonedhenge Smoke-N-Grow Inc. The address of Appellant's business is 7271 State Fair Boulevard, Suite 5, Baldwinsville, N.Y., 13027. On June 13, 2024, Appellee OCM conducted a regulatory inspection, No. 104 2024 0613 0017, of Appellant's business pursuant to Cannabis Law section 138-a and 9 NYCRR section 133.25 subdivision (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 the same day of the inspection, June 13, 2024, Appellant requested an emergency hearing on the OTS with the OAH.

Administrative Proceedings

A hearing was held on the OTS before the OAH on June 18, 2024. The scope of the hearing was to determine whether the OTS issued by Appellant OCM against Appellee's business

premises was in accordance with Cannabis Law section 138-b. On June 25, 2024, the presiding ALJ issued a decision vacating the OTS based upon a finding that Appellant OCM did not establish that the unlicensed activity was more than a de minimis part of Appellee's business activity. Appellee OCM submitted an appeal to the CCB asserting the ALJ improperly vacated the OTS. Appellee OCM requested the ALJ's decision be vacated and the OTS be reinstated.

On or about June 30, 2025, before a decision was rendered on Appellee OCM's appeal, Appellant filed a motion to dismiss the NOV, cease order and the OTS, with the OAH. In their motion to dismiss, Appellant requested "that the arguments presented herein be considered through written submission only" pursuant to SAPA section 301 subdivision 4. In support of the motion, Appellant provided an affidavit from Brandon Bergman, the business owner of Stonedhenge Smoke-N-Grow Inc. The motion to dismiss asserted that Appellee OCM violated Appellant's Fourth Amendment rights by conducting a regulatory inspection that went beyond reasonable bounds and because Appellee OCM did not test products prior to seizing them during the inspection.

Appellee OCM filed a memorandum in opposition to Appellant's motion to dismiss on or about August 13, 2025. Appellant filed a reply to Appellee OCM's opposition on August 19, 2025.

On September 9, 2025, the CCB issued a decision dismissing Appellee OCM's appeal as moot due to the passage of time and the inability to reinstate an OTS beyond one-year from the date of the ALJ's decision. The CCB noted that the decision was limited with respect to the decision on the OTS and was not a decision on the underlying NOV or cease order. Neither the NOV or the cease order were adjudicated as part of the underlying hearing and thus not part of the ALJ's June 25, 2024, decision. The CCB further stated that either party was permitted to request the scheduling of an administrative hearing to enforce the NOV and cease order and seek a financial penalty pursuant to Title 9 NYCRR section 133.25 (h) – (i).

ALJ's Decision on Appellant's Motion to Dismiss

On September 24, 2025, OAH, issued a decision denying Appellant's motion to dismiss. The ALJ found that dismissal of the action was not the appropriate remedy for either a Fourth Amendment violation or for the seizure of products without laboratory testing. The ALJ reasoned that a violation of the Fourth Amendment is addressed by application of the exclusionary rule and not dismissal of the action. The ALJ further reasoned that under the Cannabis Law, Appellee OCM is authorized to seize "cannabis, cannabis products, or any product marketed or labeled as such" from any person found to be engaging in unlicensed activity. *(see Cannabis Law §§ 125; 132; and 138-a [2])*. The ALJ further concluded that the Cannabis Law does not restrict Appellee OCM's regulatory authority to products that are in fact cannabis but also includes products that

are labeled and/or marketed as such. Finally, the ALJ determined that whether the products seized from Appellant's business premises violated the Cannabis Law was an issue to be decided at a hearing on the NOV. Consequently, the ALJ determined that the grounds in which Appellant sought dismissal did not warrant dismissal of the action.

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 24, 2025, decision denying Appellant's motion to dismiss. Appellant takes exception with the ALJ's decision and requests the CCB grant Appellant's appeal, vacate the ALJ's decision and dismiss the NOV and cease order. In support of their appeal, Appellant asserts that (i) the violation of their Fourth Amendment rights requires dismissal of the proceeding; (ii) cannabinoid hemp products lawfully possessed by a licensed cannabinoid hemp retailer cannot serve as the basis for an NOV alleging a violation of "illicit cannabis laws," (iii) Appellee OCM failed to present evidence that the products seized were cannabis; and (iv) an ALJ is permitted to decide issues of fact via written motion and decision.

On November 14, 2025, Appellee OCM filed a response in opposition. Appellee argues that the ALJ correctly determined dismissal was not the appropriate remedy for any Fourth Amendment violation. Appellee OCM further argued that any assertion of a Fourth Amendment violation should be addressed at a hearing held on the NOV and cease order. Appellee OCM distinguishes the hearing held on the OTS from a hearing on the NOV and cease order asserting there are different requirements under the law. Specifically, Appellee OCM contends that the issuance and continuation of an immediate OTS requires a finding that the unlicensed activity not only posed an immediate threat to public health, safety & welfare but that it was more than a de minimis part of the business activity at the premises inspected. That is not a factor for ordering a civil penalty pursuant to Cannabis Law section 132 for a violation of Cannabis Law section 125. Thus, Appellee OCM argues the previous hearing was insufficient to address the Fourth Amendment violations asserted by Appellant.

On November 19, 2025, Appellant filed a reply memorandum in response to Appellee OCM's opposition. In their reply, Appellant contends that they have been asserting a lack of authority for Appellee OCM to issue the NOV and a failure to state a "plausible cause of action" and that such arguments can be made in a motion to dismiss or a motion for summary judgment. Appellant argues that "[n]o matter what the motion is classified as, a failure to oppose or to submit any evidence of opposition requires a grant of the motion," citing to the New York Civil Practice Law and Rules sections 3211 and 3212. Second, Appellant argues Appellee OCM has no evidence to proceed with at a hearing. Additionally, Appellant argues that the failure of Appellee OCM to

contest the alleged Fourth Amendment violation in their opposition memorandum is the functional equivalent of a concession. Finally, Appellant argues that OCM cannot adjudicate claimed cannabinoid hemp violations under illicit adult-use cannabis laws, nor does the NOV contain any alleged violations of cannabinoid hemp.

A hearing has not yet been held on the merits of the underlying statement of charges and the NOV issued following the regulatory inspection of Appellant's business premises.

QUESTION PRESENTED

Whether the CCB has authority to review an administrative appeal, submitted pursuant to Title 9 NYCRR section 133.25 subdivision k, prior to the OAH conducting a fact-finding hearing and issuing a decision including findings of fact and conclusions of law?

ANALYSIS AND OPINION

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

Appellant improperly seeks review of the ALJ's decision denying Appellant's motion to dismiss 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. 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, *[emphasis added]* parties shall have thirty days to submit a written appeal to the CCB. *(Cannabis Law § 17 [8]; 9 NYCRR § 133.25 [k])*. Thereafter, the CCB shall be responsible for issuing final determinations if an exception to the ALJ's decision has been taken. *(see, 9 NYCRR §§ 133.23 [a]; 133.25 [k])*. The plain language of the Cannabis Law and related regulations, contemplate a process whereby the CCB reviews appeals from the decisions of the OAH following a hearing wherein the presiding ALJ makes factual findings and conclusions of law on the underlying merits of the violations contained in the NOV. *(see, Cannabis Law § 17 [8]; 9 NYCRR §§ 133.17 [a]; 133.23 [a]; and 133.25 [k])*.

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, no factual findings were

made, and no determination was reached on the merits of the violation(s) issued by Appellee OCM. For a challenge to an administrative action to be ripe, the administrative 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. *(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 there is no final determination on the matter and the controversy is not ripe for review. *(Schaefer, 112 A.D.3d at 643).* When there is a lack of a final determination, the challenge is premature, and it is appropriate to dismiss the action. *(Meyer, 235 A.D.3d at 642).*

Here, Appellant's appeal is premature because the ALJ's decision did not reach a determination on the ultimate issue(s) and noted additional administrative proceedings were needed to address the factual issues raised. Thus, the ALJ's decision did not remove a legal issue from the case and there was no immediate harm or injury to the Appellant. (*see Bonczar v. American Multi-Cinema, Inc., 38 N.Y.3d 1023 [2022]; Outdoor Amusement Bus. Ass'n v. State Tax Comm'n of the State of New York, 55 N.Y.2d 954 [1982]; Matter of Aho, 39 N.Y.2d 241 [1976]).* 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, including motions to exclude evidence. *(9 NYCRR § 133.17 [7]).* These factors demonstrate the lack of finality with the determination Appellant appeals from and the basis on which the appeal is deemed to have been submitted in advance of the CCB's authority to review an administrative appeal. Deviating from a process requiring a final decision before an appeal can be submitted to the CCB would be a misapplication of the law and would undermine the role of the OAH in conducting all adjudicatory proceedings which devolve upon the CCB by requirement of statute. *(9 NYCRR § 133.16).*

Appellant is correct in that ALJs are permitted to review motions and issue decisions on motions. *(9 NYCRR § 133.17 [a]).* ALJs also have the power, including but not limited to, setting the time and place of hearings, summoning and examining witnesses, admitting and excluding evidence, hearing oral argument or directing written arguments on facts or law, ordering parties to appear for a pre-hearing conference and to take all measures necessary to conduct the hearing and to do so in accordance with the requirements of due process. *(9 NYCRR § 133.17 [d]).* Here,

the ALJ issued a written decision that denied Appellant's motion to dismiss. In denying the motion, the ALJ stated the requested relief, dismissal of the action, could not be granted based on the alleged violation and was not the appropriate remedy if there was any such violation. The ALJ further stated there were factual issues remaining that were "issue[s] for trial." Permitting review by way of an appeal to the CCB for every ruling made during administrative proceedings by the presiding ALJ would significantly delay the agency's ability to reach final determinations. Furthermore, 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]*.

Furthermore, any additional proceedings in this matter should be in accordance with the Cannabis Law, related regulations, this decision and prior CCB appeal decisions. As such, the CCB has previously stated in prior decisions that Appellee OCM is not, as Appellant argues, prohibited from issuing a NOV alleging unlicensed activity against licensees, registrants, or permittees. *(Cannabis Law § 11 [3]; 9 NYCRR § 133.25 [a]; see also, Matter of 325 Smoke Shop Inc. v. OCM, Insp. No. 104202407160034 [CCB, June 2025]; Matter of OCM v. Breckenridge Café NYC LLC DBA Breckenridge Cannabis Café, Insp. No. 103202407180034 [CCB, November 2025])*. A cannabinoid hemp license, or any license issued pursuant to the Cannabis Law, was not designed nor intended to provide a cloak or otherwise insulate the licensee from violations of the Cannabis Law. *(Id)*. Appellee OCM is authorized to conduct … site visits and inspections, of <u>any person, any premises, or place of business</u> [*emphasis added]* 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 …. without obtaining <u>the appropriate</u> [*emphasis added]* registration, license, or permit. *(Cannabis Law § 11 [3]; 9 NYCRR § 133.25 [a])*. In fact, unlicensed activity is defined as "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 so. *(9 NYCRR § 133.1[i])*. Consequently, when a licensee engages in the sale of products that are not authorized or lawful under the license issued, the licensee remains subject to all the provisions of the Cannabis Law and relevant regulatory action. Whether the products in this matter were within the scope of the license Appellant held remains a factual issue pending adjudication and determination following an evidentiary hearing.

With respect to the remaining exceptions raised by Appellant, including whether the regulatory inspection conducted was unreasonable and violated Appellant's Fourth Amendment rights, such arguments are dependent on fact specific findings made following an evidentiary hearing and are thus not ripe for review.

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 CCB.

DATED: February 5, 2026