

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

MOMMA'S PLACE,

Respondent.

DECISION
Inspection No. - 114202601140032

Respondent requested a hearing on January 20, 2026, for an inspection which occurred on January 14, 2026. The hearing took place on February 13, 2026.

Although the request for a hearing was made within the statutorily defined timeframe required to participate in an Emergency Hearing, Respondent requested a non-emergency hearing, which was conducted on the date listed above.

The Respondent requested the hearing but failed to appear at the hearing. The hearing proceeded in Respondent's absence as a default hearing. Subsequent to the hearing, Respondent requested the matter be reopened.

The Office of Cannabis Management (hereinafter "OCM") was represented by Anthony Pitnell, Esq.

Investigator Eva Chumsky (hereinafter "Chumsky") testified on behalf of OCM.

Joshua Pennel, 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 (jointly hereinafter "NOV") asserts that the 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 201 Lake Ave., Elmira, NY 14904.

The scope of the hearing involves determination whether OCM, by a preponderance of the evidence was justified in issuing to Respondent the NOV and what penalty under Article 6 § 132 is justified. OCM requested the maximum fine of \$10,000. Additionally, this hearing is to determine whether the padlocking provisions of Cannabis Law Article 6 § 138-b have been met by a preponderance of the evidence.

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 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 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

facilities;

(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 9 NYCRR 133.25(f)(1)(i-vii)).

III. FINDINGS OF FACT

1. On January 14, 2026, OCM conducted an inspection of Momma’s Place located at 201 Lake Ave., Elmira, NY 14904 (Ex. E1). At that time, an NOV was issued, and the premises were sealed (Ex. E1). On January 20, 2026, Respondent requested a non-emergency hearing, which was held on February 13, 2026.

2. Despite numerous attempts to contact the Respondent prior to and on the date of the hearing, Respondent failed to attend the hearing. Respondent had previously communicated via email, confirming that the correct email address was used. After a sufficient period, the hearing proceeded as a default hearing without Respondent’s presence. OCM continued to bear the burden of proof, despite the default nature of the hearing. Respondent never appeared at the hearing and no contact prior or during the hearing occurred which might explain her absence.

3. Subsequent to the hearing, Respondent contacted the Office of Administrative Hearing (OAH) requesting “another hearing as I was unable to connect to the app to join.” This request was interpreted as a request to reopen the hearing, and Respondent was asked to submit her rationale for not attending the hearing and an explanation of defenses she planned to present should the matter be reopened.

4. Respondent presented some explanation as to her absence during the hearing but supplied no defenses that might mitigate some of the charges leveled against Respondent. Respondent, therefore, did not meet the burden necessary to warrant reopening the matter.

5. The testimony and evidence support a finding that Respondent was actively selling cannabis. Testimony presented by Chumsky detailed extensive products displayed in a manner consistent with retail sales. Further, the location had many of the accessories used at a “publicly facing” store.

6. The activity occurring at Momma’s Place constituted more than a de minimis part of the business’ commercial activity. There is no evidence that the store traded in anything but illicit products and the total business activity, therefore, appears to result from this illicit trade.

7. Chumsky testified that Momma’s Place showed no signs that the establishment was used in total or in part as a residence. She stated that there was no kitchen or shower, and the store lacked the accoutrements typical of a residence. Chumsky also stated that the Respondent told her that no one lived on site. The lack of home furnishings and Respondent’s statement led Chumsky to believe that the location was used solely as a place of business and not a residence.

8. The unlicensed activity being conducted at Momma's Place constituted an imminent threat to public health, safety, and welfare based on sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6.

9. The Office of Cannabis Management conducted a proper search of the location. Chumsky testified that a request for illicit cannabis, made by an "undercover" employee of OCM, resulted in an offer to sell by an employee of Momma's Place. OCM conducted a regulatory inspection after the offer to sell occurred. Further, advertisements by Momma's Place offering what appeared to be illicit cannabis were displayed on various websites. Chumsky documented these advertisements prior to OCM's arrival on site.

10. Service was properly effectuated by OCM. The NOV issued was given to Respondent and it was Respondent who requested a hearing, using the procedure detailed on the NOV. Further, notice was posted on the storefront and Respondent communicated with OCM and OAH prior to the hearing date.

IV. ANALYSIS AND CONCLUSIONS OF LAW

Default Hearing and Request to Reopen

Respondent requested a hearing for the NOV issued to her after OCM conducted its inspection of Momma's Place on January 14, 2026. Between her request being submitted on January 20, 2026, and the date of the hearing on February 13, 2026, Respondent communicated with both OAH and OCM concerning her hearing. Respondent did not express any concern related to the online hearing process and did not suggest any difficulty related to the process. On the date of the hearing, Respondent failed to appear. Multiple attempts were made on that day to provide the necessary link so that Respondent could appear at the hearing and to request her appearance. She failed to appear and, after waiting nearly half an hour, the hearing proceeded as a default hearing.

Due to Respondent's multiple correspondences prior to the hearing, the fact that she personally received the NOV on the date of the inspection, the fact that she requested the hearing, and the multiple attempts to contact Respondent to ensure her attendance, I find that a default hearing was proper. No communication from Respondent prior or during the hearing suggested she had difficulty accessing the hearing and her steady email correspondence prior to the hearing suggests that she could have contacted OAH even if she had difficulty with the online procedure. The hearing proceeded as a default and was properly executed pursuant to 9 NYCRR §133.18(a)(3).

Subsequent to the hearing, Respondent contacted OAH to explain that she missed the hearing due to her inability to "connect to the app to join" and that she lives "in a very low signal area." While respondent requested "another hearing," this was interpreted by me as a request to reopen the hearing, which is allowed under 9 NYCRR §133.18(a)(4). As such, a request was made of Respondent to formally submit 1) "[a] reasonable excuse for your absence," and, 2) "[a] summary of any meritorious defenses you would introduce at the hearing." These requirements are "well established" components when an applicant requests to "open a default" (see Interboro Mgmt. Co. v. State Div. of Hum. Rts., 139 A.D.2d 697, 527 N.Y.S.2d 453 (1988); see also Blum v. Pathstone Corp., 172 A.D.3d 1679, 102 N.Y.S.3d 134 (2019)).

Respondent submitted details of her excuse for missing the hearing but failed to present any defense that she might raise should her request to reopen the hearing be granted. She stated that she “doesn’t really know what this hearing is for as I don’t have a defense...I don’t plan on presenting evidence so maybe I am mistaken and do not need this hearing?” This admission necessitates a finding that the hearing should not be reopened. Further, OCM presented an overwhelming amount of evidence during the hearing. It is unlikely that Respondent could have presented any defense to mitigate the large quantity of evidence presented or the charges asserted in the NOV. Since, however, she presented no defense, I find that Respondent is not entitled to reopen the hearing and proceed to decide the merits of the case based on the default hearing.

Notice of Violation

During the hearing, Chumsky appeared as the sole witness for OCM. She testified that prior to arriving at Momma’s Place, she researched online the business and found advertisements on Facebook and other websites stating that the store sold cannabis products. OCM also received a complaint via its public complaint system from an unidentified person. Chumsky confirmed that the store did not have an Adult Use Cannabis license. On the date of the inspection, an OCM employee entered the location “under cover” and requested to buy cannabis –Chumsky stated that she heard via telephone the conversation which occurred between the OCM employee and a store clerk and confirmed that the OCM employee asked for “1/8th an ounce of flower.” After being sold the cannabis product, OCM entered Momma’s Place and conducted a regulatory inspection. Chumsky testified that upon entering the store she saw an ATM, security cameras, and display cases filled with products (Ex. A-4-12). Many of the products were labeled with a price tag and there was a “prize wheel” which allowed customers to win “pre rolls” (see Ex. A-8-9). The store also had a sign on the front door stating that the store was “open” (Ex. A-1). The total scene described by Chumsky and supported by the evidence suggests that the store was a publicly facing entity that sold products to the general public. This is confirmed by the controlled buy discussed above. Finally, the store was decorated with many signs and symbols common in businesses and specifically, stores associated with the cannabis industry. Posters and pennants with cannabis leaves or otherwise indicating a relationship with cannabis were displayed throughout the showroom (Ex. A-20-24).

Many of the products prominently displayed around the store and in the display cases constituted items that were labeled as cannabis. Items stated that they contained “THC,” “cannabis,” “resin,” “sativa,” or were labeled with a cannabis warning symbol (Ex. A-7 & 10, B-2-7, 9-14, 19-20, 23-24, & 26-43). Many products also had a warning label advising consumers that the product contained cannabis (see *Id.*). Other items, such as the loose flower packets, diamond, hash, and cannabis butter, Chumsky testified that she recognized as cannabis based on her training and experience (see *generally*, Ex. D). Further, Chumsky stated that some of the products were labeled with product names (e.g., Maui Wowie) or company brands that she recognized as being associated with cannabis (see *generally*, Ex. C). Finally, some of the products used words or phrases on their packaging that references cannabis use (e.g., “High in the Zone”) (see, e.g., Ex. B-40). In total a large amount of cannabis products was recovered from Momma’s Place. Taken as a whole, the evidence presented by OCM against Momma’s Place is sufficient to determine by a preponderance of the evidence that the store was selling illicit cannabis products. The store was open to the public and had the hallmarks of a typical business. It did not possess an adult use license, which is necessary to sell cannabis products. The store had obvious signs and symbols which would indicate to a consumer interested in purchasing

cannabis that Momma's Place likely traded in such goods. Further, illicit items were discovered on site, some contained pricing stickers clearly denoting that they were for sale. Even discounting all other factors discussed above, the sheer volume of product, the variety, and the individually packaged products make it highly likely that the store was trading in illicit products. The amount discovered on site far exceeds the personal use limits imposed by New York State Law and the total number of the products discovered supports the finding that the product was on site for the purpose of sales. Taken as a whole, the product discovered and the signs and symbols which made it likely that a customer would understand that cannabis products could be procured from the store, show by a preponderance of the evidence that Momma's Place sold cannabis product without an adult use license.

Order to Seal

In addition to issuing a Notice of Violation, OCM issued an Order to Seal. This order is detailed on the same form that has been referred to as the NOV. While it has been established that Momma's Place was selling cannabis products OCM is required to prove additional elements to substantiate the Order to Seal.

The unlicensed activity which warranted an order to seal constituted more than a "de minimis" part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. The number of illicit products discovered at Momma's Place was significant and constituted a sizable portion of the business' total inventory. In fact, few, if any legal products were displayed in the store or recovered by OCM. Hundreds of individual cannabis products were found on site (see, Ex. A-C). The fact that there were no legal products leads to the conclusion that illicit sales constituted the primary if not sole business activity being conducted by Momma's Place. Further, a wide variety of products were present on site. Different forms, such as flower, drinks, vapes, liquid consumables, resin, diamond, and hash were all discovered (see, Ex. A-C). A wide variety of brands and flavors were also recovered (see generally, Ex. B & C). OCM has shown by a preponderance of the evidence that the illicit trade was more than a "de minimis" part of the business activity.

The unlicensed activity being conducted at Momma's Place constituted an imminent threat to public health, safety, and welfare in that there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. None of the products discovered at Momma's Place appear to have been tested in New York. Some showed clear labeling that they were produced out of state and, therefore, did not undergo New York State testing (see e.g., Ex. B-28, 30, 34, & 36). No products had a valid New York State inspection sticker.¹ While some had a generic warning label (see e.g., Ex. B-3-6, 24, 26, 29, & 33), many of the products discovered on site had no labels at all, other than a name or description of the product, completely lacking a safety warning (see e.g., Ex. B-7, 16-21, & Ex. D-1-3 & 5-25). Many products appeared to be processed on site, including pre rolls, loose flower, and possibly the syringes of liquid cannabis (see, B-16-21, D-1-3 & 5-25). Scales, rolling papers, bags of loose flower, a grinder with apparent cannabis resin, bags, canisters, and a bump box were all recovered on site, leading to the conclusion that processing was ongoing at Momma's Place (see generally, Ex. D). There is no evidence that Momma's Place abided by any health and safety standards, adding to the public health risk of the store. The lack of testing and

¹ A few products had a "NY" sticker that listed the product as cannabis, but this did not comport with known requirements for a New York State product and was, therefore, not a valid stamp (see, e.g., B-9 & 13).

inappropriate labeling coupled with the on-site processing makes Momma's Place's actions a danger to the public health, safety, and welfare pursuant to Cannabis Law Article 6 §138-b(4)(g).

Chumsky testified that she found no evidence that Momma's Place was being used as a residence. While a couch and TV were located in the store, Chumsky saw no bed, kitchen, or shower present on site. Although a cat was also being kept in the store, Respondent labeled this cat as a "store cat" and not a pet someone was keeping at their home. Chumsky also testified that Respondent told her that no one lived on site. All evidence suggests that Momma's Place was solely used as a business and not a residence.

I find that OCM has proven, by a preponderance of the evidence, all of the elements necessary to substantiate the Order to Seal. Momma's Place was selling cannabis products without a license and the amount being sold constituted more than a de minimis part of the store's business activity. Further, the store's actions constituted a threat to the public's health, safety, and welfare. Finally, the store was not used as a residence, either in part or in whole, and appears to have only been used as a place of business. For these reasons, I find that the Order to Seal was properly issued by OCM.

Penalty

OCM requested that the maximum fine of \$10,000 be levied against Momma's Place for the violations discovered on January 14, 2026. While the statutes do not provide extensive guidance for determining the penalty for violations under Cannabis Law Article 6 §125, 132, and 138-a, it does require a penalty proportionate to the violation. Based on this, the large amount of cannabis recovered from Momma's Place requires a significant penalty under Cannabis Law Article 6 §132 (1)(c). The location likely maintained a sizable trade in illicit products and had the product on site to support a sizable business. Additionally, a few of the products were labeled as containing very high amounts of THC, amounts that far exceed the limits placed on cannabis products in New York (Ex. B-2, 4-6, 7, & 20). These products not only violate New York State Law, and the limits placed on total THC, but additionally present a danger to the consumer who purchases and uses the product due to the large concentration of THC. Further, many items were labeled in a manner not in compliance with New York State Law and, therefore, not abiding by regulations designed so as not to entice children to misunderstand the package's contents. A child may confuse a package labeled as "Nerds" or "Arnold Palmer Half & Half," or which is designed to look like fruit snacks or candy and accidentally ingest cannabis (Ex. B-1-14). Finally, the processing occurring on site allowed for significant sales and this processing lacked the health and sanitation standards required of a properly operating business. The disregard for safety standards, coupled with the large amount of product discovered on site calls for the maximum penalty.

V. DECISION

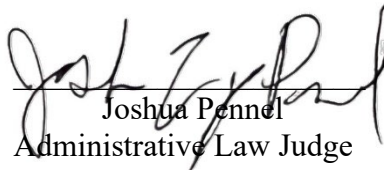
The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 201 Lake Ave., Elmira, NY 14904. In so doing, Respondent violated Cannabis Law Article 6. The Order to Cease Unlicensed Activity and Order to Seal are hereby affirmed and a penalty is assessed.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JANUARY 14, 2026, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

FURTHER, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$10,000 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON JANUARY 14, 2026.

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

Dated: March 19, 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 March 19, 2026, to the following:

Anthony Pitnell, Esq.

Kelly Bush

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.