

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**  
**Inspection No. - 202202405230002**

**ROC CITY SMOKE SHOP, CORP.,**

Respondent.

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The Office of Cannabis Management requested a hearing for an inspection which occurred on May 23, 2024. The hearing was held on March 9, 2026.

The Respondent did not appear and was not represented by counsel at the hearing.

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

Senior Investigator Bryan Paredes (hereinafter “Paredes”) 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 (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 conducted at 872 6<sup>th</sup> Ave., New York, NY 10001.

The scope of the hearing involves determination of whether OCM, by a preponderance of the evidence, was justified in issuing to Respondent the NOV and what penalty under Cannabis Law Article 6 §132 is justified.

## **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....”

## **III. FINDINGS OF FACT**

1. On May 23, 2024, OCM conducted an inspection of Roc City Smoke Shop, Corp. (hereinafter “Roc City”), located at 872 6<sup>th</sup> Ave., New York, NY 10001. OCM requested a hearing to determine the validity of the NOV. The hearing was held on March 9, 2026.

2. OCM effected service upon Respondent by mailing a hearing notice to the business address. On Monday, December 29, 2025, Harris Jones of Scholnik Law contacted the Office of Administrative Hearings (hereinafter “OAH”) and stated that he represented Respondent. At that time, he requested an adjournment of the January 13, 2026, hearing date. This request, unopposed by OCM, was granted and a new date of March 9, 2026, scheduled. This date was agreed to by both parties. On the date of the hearing, Harris Jones failed to appear at the hearing. Multiple emails were sent to Mr. Jones in the days leading up to the hearing, acting as reminders of the hearing, and Counsel for OCM, Mr. Ahmed, attempted to contact Mr. Jones via telephone at my request after the start time of the hearing had passed. Mr. Ahmed stated that Mr. Jones could not be reached. Instead, Mr. Ahmed left a message with an individual acting as Mr. Harris’

assistant. OAH also sent an email after the commencement of the hearing to inquire whether Mr. Harris would be attending. Mr. Harris never reached out to OCM or OAH either during (or after) the hearing and the determination was made to proceed with a default hearing.

3. The testimony and evidence support a finding that Respondent was offering for sale cannabis. Testimony presented detailed a publicly facing store with products on display in a manner consistent with a showroom. While OCM recovered only a small amount of product, the product prominently listed that it contained cannabis, and some were displayed in a showcase.

4. The testimony and evidence support the finding that the products recovered from Roc City were illicit. Roc City did not possess an adult use cannabis license and did not possess proper authorization for its conduct.

5. The Office of Cannabis Management conducted a proper search of the location. The product recovered was in plain view and the storefront was open at the time OCM entered.

#### **IV. ANALYSIS AND CONCLUSIONS OF LAW**

##### ***Service and Notice***

I find the notice OCM provided Respondent constituted adequate notice for the hearing held on March 9, 2026, and concerning the NOV issued on May 23, 2024. OCM mailed a copy of the Notice of Hearing more than forty-five (45) days prior to the date of the hearing (see 9 NYCRR §133.10(f)) and the notice provided the date of the alleged offense, the inspection number associated with the NOV, the pertinent sections of the law, specifically Cannabis Law Article 6, §138-a, and the penalty which may be assessed (\$10,000). It can be assumed that Respondent obtained the services of Scholnick Law as Mr. Harris represented Respondent during preliminary scheduling matters. The failure of Mr. Harris to appear at a hearing date, which he agreed to, does not impact the service and notice issue. The hearing comported with the applicable requirements delineated in the New York Cannabis Law, 9 NYCRR §133, and the New York State Administrative Procedures Act. While adequate service allows the hearing to proceed as a default, it does not remove OCM's burden to provide sufficient evidence that a violation occurred and that a penalty is warranted.

##### ***Validity of the Regulatory Inspection***

Paredes testified that upon arrival at Roc City, the store front was lit and the front door open. The store front had a sticker listing the credit cards it accepted and advertised that it had an ATM on site (Ex. B-1). Inside, the store had an ATM and a cash register (Ex. B-4-5). A variety of goods were on display for sale. Most were typical of a grocery store, but the store contained advertisements, decorations, and products that Paredes stated led him to believe, due to his training and experience, that cannabis might be available at the store. These items included a "RAW" inflatable, empty bags that stated the contents contained cannabis, and glassware commonly associated with cannabis (Ex. B-1, 3, & 7-8). Displayed in a showcase were a variety of items that advertised that they contained hemp (Ex. B-9). Mixed in with these hemp products were a few cannabis products (Ex. B-9-10). Respondent possessed neither an adult use or hemp license. The fact that the store was open, contained products and advertisements which

insinuated that cannabis might be procured on site, and displayed a variety of hemp and cannabis products support a finding that OCM conducted a valid regulatory search of Roc City and legally sized illicit products found within.

### ***Determination Concerning Notice of Violation***

Paredes stated that he discovered a small number of pre-rolled cannabis products in the area near the cash register. He identified these as cannabis based on their appearance and the fact that they were labeled as “hybrid” and had a California cannabis warning on the wrapper (Ex. B-6). These were found in an area readily accessible by employees of Roc City and support a finding that they were for sale. Each was individually packaged, undercutting any argument that might be made that the products were for personal use. It is more likely than not, with the testimony provided, that these products were held by Roc City for sale to customers. Additionally, a small number of products, also labeled with the California cannabis warning label were located in the store Ex. B-9). These products were in a display case which could be easily viewed by customers. While these products seem to contain “Delta-8” cannabis, this qualifies as cannabis under New York law (see NY CANBS §3(52)). The total number of products recovered in the store is unknown. Paredes testified that a number larger than displayed in the photos submitted into evidence were recovered, but he was unable to give an exact number. While I believe that OCM has shown that a small number of illicit products were available for sale, I am limited to the evidence presented and find that only a half dozen illicit products were recovered. While it is possible that OCM recovered a larger number, as Paredes testified, I find the evidence lacking and am unable to consider further items. I do not find that the empty, unused bags on display (Ex. B-7-8) can support a finding that the store was processing, in part, due to the fact that no loose cannabis or other processing tools were recovered. Bags alone are insufficient to overcome the preponderance of the evidence standard. The small amount recovered, while a violation of cannabis law, does not warrant a significant fine.<sup>1</sup>

### ***Penalty***

Due to the small amount of illicit product recovered from Roc City, I am compelled to impose a small penalty. Cannabis law requires a “proportional” penalty, and I believe the evidence supports a small penalty due to the total number of products documented as recovered from the store – six. It is unlikely that any of the products were tested for safety or quality assurance and there is a hazard for the consumers, but the amount recovered is of such a small quantity that it makes any danger presented limited by the handful of products recovered.<sup>2</sup>

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<sup>1</sup> Respondent’s attorney’s failure to appear left Respondent unable to present even the barest of opposition to OCM’s contention that the products at the premises were being offered for sale. In a case where such a small number of products were offered as evidence of Respondent’s actions, the absence of opposition all but determined the result.

<sup>2</sup> While a large number of hemp products appear to have been available for purchase at Roc City, OCM did not request a penalty under the New York State Hemp Law. Further, no notice was provided to Respondent that OCM might seek sanctions for the hemp products.

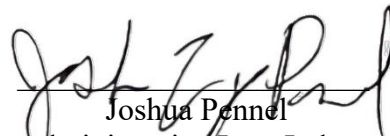
**DECISION**

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 872 6<sup>th</sup> Ave., New York, NY 10001. In so doing, Respondent violated Cannabis Law Article 6.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6, RESPONDENT IS HEREBY ORDERED TO PAY A \$500 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON MAY 23, 2024.**

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

Dated: March 24, 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 e-mail on March 24, 2026, to the following:

Harris Jones, Esq.

Abir Ahmed, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.

This decision was sent via certified mail on March 24, 2026 to the following:

ROC City Smoke Shop Corporation

d/b/a Roc City Smoke Shop

872 Sixth Ave  
New York, NY 10001