

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 133202003170018

SULLIVAN CONVENIENCE CORP.

Respondent.

Respondent requested an emergency hearing on March 19, 2026, which was made within seven (7) calendar days of the date of the inspection which occurred on March 17, 2026.

The emergency hearing was conducted on March 23, 2026, which is within three (3) business days of the Respondent's request.

Lance Lazzaro, Esq., represented the Respondent, Sullivan Convenience Corp.

Kevin Brown, Esq. represented the Petitioner, the Office of Cannabis Management (hereinafter "OCM").

Investigative Specialist Eric Silvanic testified on behalf of OCM.

The Respondent-Owner, Kevin Miranda, testified on behalf of the Respondent, Sullivan Convenience Corp.

I. ISSUE

The allegations set forth in the Notice of Violation indicate that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. This allegation was based upon observations made during a regulatory inspection which was conducted at 5212 Main Street South Fallsburg, New York 12779.

The scope of the emergency hearing was limited solely to the issue as to whether or not the padlocking provisions of Cannabis Law Article 6 § 138-b have been met by a preponderance of the evidence.

Cannabis Law Article 6 § 125(1): Prohibits the sale, cultivation, or distribution of cannabis or cannabis products without the appropriate license or registration.

The law 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-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 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 Regulations at 9 NYCRR 133.25(f)(1)(i-vii).

III. FINDINGS OF FACT

1. Investigator Silvanic testified that two separate complaints were made related to the premises, on January 15, 2026, and March 8, 2026, respectively, prior to his inspection. I consider this information solely as to the effect it had on OCM personnel, which was to spur the agency to investigate the business located at 5212 Main St., South Fallsburg, NY 12779.

2. Investigator Silvanic testified that he is an investigator with OCM. He explained that he received both in-office and field training, since beginning employment with OCM. As part of his training, he was instructed to look for cannabis leaves displayed on business windows and on how to identify cannabis products based on packaging and labeling.

3. Respondent did not have a license to sell adult use cannabis in New York. Investigator Silvanic confirmed that he checked the records to ascertain if Respondent had a New York State license to sell adult use cannabis, and he determined that the Respondent did not.

4. Investigator Silvanic testified that prior entering the business, an undercover OCM employee entered Sullivan Convenience Corporation, seeking to buy “several 1/8 bags” of cannabis. When Investigator Silvanic entered the premises, he stated he observed the Undercover Investigator with one 1/8 bag of cannabis, which is depicted in Exhibit B3. The cup featured in Exhibit B3 was next to the individual Investigator Silvanic later came to know as the Respondent, owner and clerk, Kevin Miranda.

5. Investigator Silvanic explained that he spoke with the clerk, asked for him to provide identification, and ascertained that the clerk, Mr. Miranda, was in fact the owner. Mr. Miranda and Investigator Silvanic agreed that Mr. Miranda willingly led Investigators to a backroom at the premises. Investigator Silvanic testified, that once in the backroom, Mr. Miranda opened multiple bags revealing a large quantity of cannabis flower in bags and empty cannabis packaging with a range of dollar amounts notated on the front.

6. Prior to the hearing, Respondent’s attorney filed a responsive pleading asserting that the Agency lacks personal jurisdiction over Respondent due to a failure to properly serve the Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal. He also argued the Order to Seal should be vacated as the amount of cannabis recovered was a de minimis part of the business activity occurring at Sullivan Convenience. Respondent’s attorney renewed both arguments during the hearing.

7. Respondent testified that he was given the Notice of Violation, Order to Cease Unlicensed Activity during the inspection. However, he stated that he was not given the documents by Investigator Silvanic, nor did he receive a copy by mail, despite giving OCM his address. He also claimed that he did not give his identification to Investigator Silvanic, nor did he interact with him. I do not find Respondent’s account of the inspection to be persuasive. For reasons discussed below, I do not find Respondent’s testimony to be credible on other matters, and as such I am not crediting his testimony in its entirety.

8. Respondent testified that he sold food and drink products in the store, including from overseas, which he stated were more expensive. He stated he also sold toys, phone holders, and ashtrays for about \$30. Based on the Exhibits entered into evidence, I find that Respondent’s store did offer for sale a modest selection of snacks and drinks, foreign and domestic, in addition to toys and assorted novelty items.

9. Respondent testified that he did not offer to sell cannabis to the investigator during the inspection. He explained that he was gifting the undercover investigator cannabis from his personal supply after the investigator inquired as to where he could purchase cannabis. He added that approximately every three weeks, he smoked 1.5 pounds of cannabis, and that the concentrate and edibles recovered from the location would last him about a week. Respondent also stated, without explanation, that he has since stopped all cannabis consumption. When cross-examined about the exorbitant prices of Respondent’s snacks, as extrapolated from Respondent’s own revenue reports, Respondent failed to provide a plausible explanation. As such, I find Respondent’s testimony to be incredible.

IV. ANALYSIS AND OPINION

I find that cannabis products were being offered for sale at Sullivan Convenience Corp. on March 19, 2026. Investigator Silvanic testified credibly, that upon entrance to the business he observed the undercover OCM employee and a 1/8 bag of cannabis in his hand. The bag is featured in Exhibit B13. Investigator Silvanic explained that he observed cannabis product, which were visible from the patron's side of the plexiglass counter inside the window on a shelf to the left. He testified that he also observed a cup with cannabis flower near the clerk and owner, who identified himself as Kevin Miranda. He also pointed out that certain products were semi-visible through the plexiglass shelves. For instance, bags of cannabis flower seen in Exhibit B17 are visible in Exhibit 9, 10, 11, and 12. Loose cannabis flower, concentrate, and other cannabis products were also recovered from the cash register area, as seen in Exhibit B14 and C9, which suggests a need for easy access to products in the vicinity of the cash register. Investigator Silvanic also testified to observing a scale, with cannabis residue which he explained was indicative of cannabis processing. (Exhibit C10). A large amount of cannabis flower was recovered from the premises. Investigator Silvanic explained that he spoke with Mr. Miranda, who brought them into the backroom of the establishment. Large bags of cannabis flower were recovered from the duffle bags which Respondent willingly went through and emptied out for the investigators. Additionally, there were many empty bags, appearing to hold approximately 1oz. of cannabis, with and without cannabis residue which depicted prices, notably all over a \$100. (Exhibit C1-6). Such a price point calls into question Mr. Miranda's testimony that he consumes 1.5lbs of cannabis every 3 weeks, in addition to various types of cannabis concentrate. However, the quantity of cannabis flower, in addition to the empty, but priced cannabis bags, indicate that the cannabis stored on premises was being offered for sale. The totality of the circumstances present at the premises, including the large volume of priced and labeled cannabis flower, location of product in proximity to the cashier, and presence of cannabis flower in the hands of the undercover investigator, indicate by more than a preponderance of the evidence that the Respondent was offering cannabis products for sale on March 19, 2026.

OCM has also proven that the premises in this case were not being used as a residence. Investigator Silvanic testified that he asked the owner if the premises were being occupied as a residence, and he said no. During the hearing, the Respondent did not assert that the premises were a residence.

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. One of the factors in analyzing if the activity was more than de minimis, includes determining if signs and symbols advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises, were present. Exhibit B3 depicts tapestries with aliens consuming cannabis hanging from the ceiling of the premises.

Another of the relevant factors in determining if unlicensed activity is more than de minimis, is whether a large volume or variety of illicit cannabis products was found on the premises during the inspection. Investigator Silvanic observed a large volume and variety on site. The total of product recovered is featured in Exhibit D1. Approximately 12 medium bags of cannabis flower of various strains were found, in addition to a very large vacuum sealed bag of cannabis flower. Additionally, the Investigator observed edibles, vapes, pre-rolls in multiple varieties, other concentrates by, Camino, Punch Bar, multiple varieties of Stiiizy 40's pre-rolls, Whole Melt, Sherbinskis, Mr. Gas, and others. (Exhibit D1-21). There was a wide variety of product categories, brands, and strains at the premises.

The Respondent asserted as an affirmative defense that the cannabis recovered was a de minimis part of the business activity. In support of this proposition Respondent put forth his own testimony, and Respondent's Exhibits 1 and 2, to which OCM counsel stipulated. Exhibit R1 contradicts Respondent's testimony. Respondent stated that the unit counts appearing on Exhibit R1 are accurate. Based on that information, if I were to consider even a portion of the sales records, it is clear that either Respondent is mischarging, confused, or untruthful in his testimony about the cost of food products sold at the store. It is incredible that Spicy Fuego Takis would sell for \$62.25 per bag, the price as reflected in the date in Exhibit R1, regardless of whether they were produced here or in another country. It is even more difficult to believe that a bag of Lays Classic's costs \$20.80. Respondent's own testimony makes that clear. He stated that he sells each bag of regular Takis for \$2 and exotic Takis for \$5 per small bag and \$8-10 for a bigger bag. Respondent's explanation for the exorbitant prices was that at times he sells the snacks as boxes, essentially wholesale. These prices do not explain the records seen in R1. On the date of inspection Respondent testified that he only had two boxes of Takis in stock. Two large boxes is not the stockpile of a wholesaler. Furthermore, it would require each unit of Takis sold to be a box and not an individual bag, calling into question the entirety of Respondent's Revenue records. Though Respondent sold cannabis themed ashtrays (a few were present on seen in Exhibit B9 and B10), and toys, in addition to snacks and drinks, both foreign and domestic, the stock visible in Respondent's store do not seem like a large enough part of the business activity to generate \$14,051.29 in gross sales between March 1st and March 20th. Respondent stated that at times items are sold that do not have a category, however he agreed that these items would be listed as an open item. As such I find Respondent's testimony regarding his business activity to be contradictory and incredible.

I find the unlicensed activity occurring at Sullivan Convenience Corporation 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. Many of the products contained California cannabis warning labels, or no warning labels, which is in opposition to New York Cannabis Law and regulations. Such labels can be seen in Exhibits: D2, D6, D12, D13, D15, D17, D18, D19, D21. Other products contained no warning label, or an ambiguous or non-specific cannabis warning label, such as: D7, D11, D10, D14, D20, and the loose cannabis featured in D1.

Lastly, I will address Respondent's contention that the OTS should be dismissed for improper service. Respondent asserts that OCM committed a fatal jurisdictional error by not putting forth evidence that the OTS was mailed to the Respondent. This argument is unpersuasive

and unsupported by the law. In an administrative proceeding the question of proper service is whether the notice is reasonably calculated under all circumstances to make the parties aware of the proceeding and afford them an opportunity to be heard. (Ruffin v. Lion Corp., 15 N.Y.3d 582, 583 [2010]; Raschel v. Rish, 69 N.Y.2d 694, 696 [1986]; Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, [1950]).

While a party's appearance at a hearing should not deem service requisites satisfied, here there appears to be no dispute that service of the Order to Seal was effectuated on Respondent. In fact, there is no allegation that Respondent did not receive a copy of the sealing order or was otherwise unaware the premises was inspected and sealed. Concededly, two methods of service were made. Personal service was effectuated on the Respondent, a person of suitable age and discretion who identified themselves as an employee, owner, and someone who was in apparent control of the premises. The certificate of service reflects his signature. Additionally, Petitioner OCM established the NOV and OTS were conspicuously posted on the exterior of Respondent's business. Thus, the subsequent reliance on technicalities to overcome the service methods that were effectuated is not persuasive, particularly where prejudice has not been asserted nor demonstrated. (See, e.g., Buscher v. Ehrich, 12 A.D.2d 887, 888 [1961]; see also, Matter of Shopsmart Convenience dba The Garden v. OCM, Insp.207 2024 0717 0025 [CCB, November 2024]; Matter of 7th Avenue Organic v. OCM, Insp. , [CCB, March 2025]; Matter of Frees' Ice Cream Novelties LLC v. OCM, Insp. 134 2625 0212 0093 [CCB, February 2026]). In this matter, Respondent owner, Mr. Miranda was personally served with the OTS. Additionally, the document was posted on the exterior of the storefront. (Exhibit E10). It is within the trier of fact's discretion as to whether the defect in service is so large as to wrest jurisdiction out of her hands. (*See Conrey v. Tellone*, 151 A.D.3d 655, 656 (2017)). "In deciding whether a defect in service is merely technical, courts must be guided by the principle of notice to the defendant—notice that must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" (Ruffin v. Lion Corp., 15 N.Y.3d 578, 582–83, 940 N.E.2d 909, 911 (2010) *citing* Raschel v. Rish, 69 N.Y.2d 694, 696, 512 N.Y.S.2d 22, 504 N.E.2d 389 [1986], *quoting* *583 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 339 U.S. 306, 94 L.Ed. 865 [1950]) While OCM should have served Respondent by mail at his home, using the address he provided on his identification, the defect is technical. It did not prejudice the Respondent's ability to request a hearing in a timely manner, retain counsel, and to be heard on the merits. Not only did personal service in this matter actually make the Respondent aware of his right and the allegations against his business, it afforded him enough time to request an emergency hearing and retain an attorney so that he could be heard. As such, I am denying Respondent's application to dismiss the OTS for lack of jurisdiction.

V. DECISION

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON MARCH 17, 2026, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF 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: March 27, 2026

Laurie Cartwright
Laurie J. Cartwright
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 27, 2026, to the following:
Nickolas Perry
Sheila Wagner
Kevin Brown, Esq.
Lance Lazarro, Esq.